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**RAPE IN ENGLAND 1600-1800:  
TRIALS, NARRATIVES AND THE QUESTION OF CONSENT**

Rebecca Frances King

Submitted to the University of Durham for the degree of  
Master of Arts in Social Sciences, 1998

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## **Abstract**

**Rape in England 1600-1800: trials, narratives and the question of consent.**

**By Rebecca King.**

**Submitted to the University of Durham for the Degree of Master of Social Sciences, 1998.**

This thesis examines the meanings of sexual violence within early modern English society. It focuses particularly on attitudes towards rape as expressed in statute and the operation of the legal system, the attitudes of individuals in court records, and representations of rape in literature. The history of rape is located within contemporary historical debate about early modern sexuality, gender and women.

The first chapter charts the evolution of the law of rape, the prosecution of rape in the assize court, and the degree of suspicion about accusations expressed by jurists. The high standards of evidence demanded in rape cases and contemporary confusion about rape law are examined. This work draws on statute, law-books and law reports, and trial pamphlets. The second chapter is a close reading of Ely and Northern Assize Circuit deposition material dating between 1640 and 1750, and 1780 and 1800. The content and conventions of these documents are explored, exposing the highly selective reporting of rape. The extent to which we may treat depositions as 'narratives' is critically assessed. The third chapter is a reading of the public representations of sexual violence in seventeenth and eighteenth century literature. This work examines beliefs about motivation to rape, and the extreme contemporary sensitivity to false accusations of rape, which became increasingly visible from the later seventeenth century. The conclusion draws on all the material presented in the thesis to illustrate the highly selective nature of reporting, demonstrating that in a climate of scepticism, a woman only reported rape if she could fit her story to a believable stereotype.

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## Introduction: A History of Rape

In an essay of 1986, Roy Porter poses the question: 'Does Rape have a Historical Meaning?', which he proceeds to answer in the negative. His essay counters the feminist historical interpretation of rape presented by Susan Brownmiller, who envisages rape as a mechanism of social control employed by men to uphold patriarchy throughout the history of western civilisation. Porter argues that rape had a very minimal social function in pre-twentieth century society, and did not maintain patriarchal hegemony in the way that Brownmiller and others have suggested.<sup>1</sup> He also resists the opposing argument presented by Edward Shorter, that rape functioned to relieve pre-industrial sexual repression, by arguing that human sexual desire cannot be reduced to a biological constant.<sup>2</sup> Porter's essay concludes that women were rarely raped in the past, and where a rape did occur it was an aberrant act committed by a marginalised man at the edges of his own society. His argument is based on the premise that patriarchy was too well established to require defence, and the somewhat more dangerous assumption that reported rapes reflect a reality of a low rate of sexual assault. His exploration of the ways in which we should understand rape in historical context is largely invalidated by the lack of solid evidence adduced to support his argument. Valid as his criticisms of Brownmiller and Shorter are, as a champion of hidden histories of mental illness and sexuality, it is surprising to find Porter effectively denying rape a history by invoking sexual cultural relativism.<sup>3</sup> He reaches this conclusion because he constructs his question of 'historical meaning',

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<sup>1</sup>S. Brownmiller, *Against Our Will: Men, Women and Rape* (London, 1976), passim; C. Smart and B. Smart (eds.), *Women, Sexuality and Social Control* (London, 1978), passim.

<sup>2</sup>E. Shorter, 'On Writing the History of Rape', *Signs*, III (1977), 471-82.

<sup>3</sup>See for example, Roy Porter, *Mind-forg'd manacles: a history of madness in England from the Restoration to the Regency* (Harmondsworth, 1990), passim; G.S. Rousseau and Roy Porter (eds.), *Sexual underworlds of the Enlightenment* (Chapel Hill, 1988), passim; Roy Porter, 'The Secrets of Generation Display'd': *Aristotle's Master-piece* in eighteenth century England' in R.P. Maccubbin (ed.), *'Tis Nature's Fault: Unauthorised Sexuality during the Enlightenment* (Cambridge, 1987), pp. 1-21; Roy Porter, 'History of the Body' in Peter Burke (ed.), *New Perspectives on Historical Writing* (Cambridge, 1991), pp. 206-232.

and therefore this essay, within the constrictive functionalism of the feminist and modernisation perspectives on rape which he sought to counter. This thesis will take as its starting point an evidence-based history of rape, which seems a more useful conceptual category to begin with than a questionable focus on the function of rape. This work will be in the spirit of the 'new history', and informed by the research of the anthropologists and sociologists of sexuality.<sup>4</sup>

Exponents of the 'new history', such as Peter Burke (and Porter himself) have recently asserted the need for a 'total' history which recognises that everything, including the significance of gesture, and the minutiae of everyday routine, has a past which can be explored and related to the rest of historical writing. In this sense, it is important to research a history of rape to illuminate not only the experience of those who were raped and those who raped, but the image of rape in the mentality and everyday habits of early modern men and women. Rape has not yet attracted an integrated writing of its history, because historians have seen rape as a peripheral and dangerously controversial subject lacking in documentary evidence. Contemporary work on the cultural construction of sexuality reveals the validity of research into rape as a part of this more inclusive history.<sup>5</sup>

A welcome awareness of cultural relativism is very much implicit in the move away from so-called 'traditional history'. Burke stresses the utility of the idea of 'habitus' expressed by the sociologist Pierre Bourdieu, who believes that

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<sup>4</sup>Roy Porter, 'Rape - Does it have a historical meaning?' in S. Tomaselli and R. Porter (eds.), *Rape: An Historical and Cultural Enquiry* (Oxford, 1986), pp. 216-236.

<sup>5</sup>Roy Porter, 'History of the Body', *passim*; Peter Burke, 'Overture: the New History, its Past and its Future' in Burke (ed.), *New Perspectives*, pp. 1-23.



social groups select behaviours from their cultural repertoire in response to particular situations.<sup>6</sup> This idea has much to offer an historical interpretation of rape. The cultural relativism of sexuality has recently come to be stressed by historians such as Jeffrey Weeks, Alan Bray and Tim Hitchcock, taking their cue from Foucault's *History of Sexuality*, in which he argues that 'sexuality must not be thought of as a kind of natural given which power tries to hold in check, or as an obscure domain which knowledge tries gradually to uncover'.<sup>7</sup> Anthropologists such as Mary Douglas show how all forms of sexuality may vary considerably between different times and different places even within our own century. Peggy Reeves Sanday takes an anthropologically comparative approach to rape, setting out to categorise levels of rape in modern societies. She discovered that although certain cultures such as Polynesia were extremely 'rape-prone', there were many other cultures such as the Minangkabau of West Sumatra which she categorised as 'rape-free', where sexual violence was virtually unknown. Sanday identifies an interesting pattern of lack of sexual assaults in cultures characterised by a 'complementarity' of gender roles, and low levels of physical violence in general.<sup>8</sup> Historians of 'sodomy' show just how far concepts of sexuality changed in the early modern period, and have identified a key transition. In the eighteenth century there was a shift from a concept of sodomitical sex as just one sin of lust (though a heinous one), to the development of an identity of the 'homosexual'. This 'homosexual' man was attracted only to other men, identifiable by his

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<sup>6</sup>Burke, 'Overture: The New History', pp. 3-4, 18.

<sup>7</sup>Jeffrey Weeks, *Against Nature: Essays on history, sexuality and identity* (London, 1991), passim; Alan Bray, *Homosexuality in Renaissance England* (London, 1982), passim; Tim Hitchcock, *English Sexualities, 1700-1800* (Basingstoke, 1997), passim; M. Foucault, *The History of Sexuality: An Introduction* (Harmondsworth, 1990), p. 105.

<sup>8</sup>Mary Douglas, *Purity and Danger: an analysis of the concepts of pollution and taboo* (London, 1966), passim; Peggy Reeves Sanday, 'Rape and the Silencing of the Feminine' in Tomaselli and Porter (eds.), *Rape*, pp. 84-101.

behaviours, and appearance. A recognition of the social and historical construction of sexuality must be explicit in any historical work on rape, and provides its justification.<sup>9</sup>

While the history of rape remains to be written, the non-historical writing on rape provides valuable lessons in method for the writing of a history of sexual violence. Sexual violence has been explored in many academic disciplines, including socio-legal studies, sociology, anthropology, literary criticism and art history.<sup>10</sup> Sociological writers such as Michael Teague, Barry and Carol Smart, and Allison and Wrightsman have made welcome attempts to study understandings (and misunderstandings) of the locations of rape in contemporary culture, and in particular in the role of the media in shaping opinion on rape. Sociologists have interrogated patterns of reporting and levels of non-reporting of rape, and their explicitly analytical methods are a useful example to the historian. The sociologists too are Foucault's children; their focus on the

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<sup>9</sup>Jeffrey Weeks, *Against Nature*, passim; Tim Hitchcock, *English Sexualities*, passim; M. Foucault, *The History of Sexuality: An Introduction*, p. 105; Alan Bray, *Homosexuality*, passim; G.S. Rousseau, 'The Pursuit of Homosexuality in the Eighteenth Century: "Utterly Confused Category" and/or Rich Repository?' in R.P. Maccubbin (ed.), *'Tis Nature's Fault: Unauthorised Sexuality during the Enlightenment* (Cambridge, 1987), pp. 132-168; Randolph Trumbach, 'Sodomitical Subcultures, Sodomitical Roles, and the Gender Revolution of the Eighteenth Century: The Recent Historiography' in R.P. Maccubbin (ed.), *'Tis Nature's Fault: Unauthorised Sexuality during the Enlightenment* (Cambridge, 1987), pp. 109-121.

<sup>10</sup>Legal writing on the subject of rape includes Jennifer Temkin, *Rape and the Legal Process* (London, 1987), passim. See also *Unlawful Sex: Offences, Victims and Offenders in the Criminal Justice System of England and Wales: The Report of a Howard League Working Party* (London, 1985), passim. Sociological work includes Michael Teague, 'Rapists talking about Rape: an exploration of masculine culture in criminal justice', *Social Work Monographs*, 121 (1993), passim; Smart and Smart (eds.), *Women, Sexuality*, passim; Julie Allison and Lawrence S. Wrightsman, *Rape: the Misunderstood Crime* (London, 1993), passim. For an introduction to the anthropological work, see Douglas, *Purity and Danger*, passim; Sanday, 'Rape and the Silencing of the Feminine', passim. Literary criticism includes Frances Ferguson, 'Rape and the Rise of the Novel', *Representations*, 20 (1987), 88-112. Pioneering work on rape and art history has been done by Deborah Cheney, 'Visual Rape', *Women's Studies Occasional Papers*, 20 (1990), passim.

relevance of the composition of masculine and feminine roles and sex scripts to levels of sexual violence in society is illuminating. Michael Teague's work on the attitudes of male sex offenders whom he interviewed at Grendon Prison reveals men psychologically unremarkable, but ambivalent towards sexual coercion and violence. The men shared an extremely rigid view of gender roles, where masculinity was equated with aggressive sexual prowess and dominance.<sup>11</sup>

The work of Teague, and other sociologists on rape, is impressive in scope and detail, but tends to be disfigured by a worrying ahistoricism. These writers often make the implicit or explicit assumption that the ten-fold increase in reported rapes in the western world in the second half of the twentieth century, reflects a reality of increased sexual violence. It may well be that this rise in reported rapes in the last few decades of this century reflects such an increase in actual sexual violence, but the writing of the sociologists is impoverished by a lack of understanding of rape as a behaviour with a history, which has not sprung forth newly formed into late twentieth century rape crisis.<sup>12</sup> Laura Gowing has recently stressed the need to view gender as a series of shaping conflicts, as territory always in contention throughout history.<sup>13</sup> Public representations and private understandings of gender roles and sexualities must be carefully traced in any given period for a nuanced understanding of the locations and forms of sexual violence.

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<sup>11</sup>Teague, 'Rapists talking about Rape', passim; Smart and Smart (eds.), *Women, Sexuality*, passim; Allison and Wrightsman, *Rape: the Misunderstood Crime*, passim.

<sup>12</sup>In 1947 240 cases of rape were reported in England. There were 1,090 reported cases in the year 1976, and reported figures had doubled to 2,288 by the year 1986. Temkin, *Rape and the Legal Process*, p. 8. See also Allison and Wrightsman, *Rape: the Misunderstood Crime*, p. 9. Teague, 'Rapists talking about Rape', passim; Smart and Smart (eds.), *Women, Sexuality*, passim; *Unlawful Sex*, passim.

<sup>13</sup>Laura Gowing, *Domestic Dangers: women, words and sex in early modern London* (Oxford, 1996), p. 27.

An evolutionary theory of rape has been set out in the works of writers such as the Thornhills and Dizinno, who argue that social behaviours are evolved in the same way as physical characteristics, by natural selection. Males and females have evolved differing tendencies to maximise the propagation of the species, the more likely male tendency being to inseminate the largest number of females possible. Dizinno and the Thornhills illustrated this argument with a study of *Panorpa*, the Scorpion Fly. The smaller flies, incapable of attracting mates by catching food to present as a courting gift, copulate forcibly with female scorpion flies.<sup>14</sup> The biological imperative is a difficult question both for the historian and the anthropologist, but it requires a leap of faith to speak of scorpion flies and human sexuality in the same sentence.<sup>15</sup> Human sexuality is not a biological given, and today, just as in early modern England, sexuality accommodates many non-procreative behaviours such as oral sex. The act of rape itself includes non-procreative behaviour, in that it is not only fertile individuals who are raped, but also pre-pubescent girls and post-menopausal women. Anthropologists and historians find social behaviours such as rape exhibited in widely varying ways in different times and places. If such behaviours are in any way biologically evolved, then this perspective is accommodated by the historical approach I have used in my own work.<sup>16</sup>

What little historical work does exist on rape has tended to concentrate on theories of rape as social function rather than on evidence-based research. This is

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<sup>14</sup>Randy Thornhill, Nancy Thornhill and Gerard A. Dizinno, 'The Biology of Rape' in Tomaselli and Porter (eds.), *Rape*, pp. 102-121.

<sup>15</sup>Porter, 'Rape', in Tomaselli and Porter (eds.), *Rape*, passim.

<sup>16</sup>For a critique of the socio-biological approach to rape which includes some of the objections made above, see Allison and Wrightsman, *Rape: the Misunderstood Crime*, pp. 15 and 36.

a major weakness in both Brownmiller and Shorter. A feminist theory of rape has been articulated in historical context by Susan Brownmiller, who traces rape through various historical periods in an eclectic book first published in 1975, *Against Our Will: Men, Women and Rape*. Brownmiller argues that rape has functioned throughout history as a mechanism of social control to perpetuate a patriarchally dominated society. Rape 'is nothing more or less than a conscious process of intimidation by which all men keep all women in a state of fear.' Rape is not conceived as primarily motivated by sexual impulse, but rather as part of a general male desire to control women, restricting women to the domestic sphere more by the fear of rape than by its reality.<sup>17</sup> Brownmiller deserves to be congratulated for having made the first step towards a history of rape, but the shortcomings of this rather reductionist perspective become clear when Brownmiller's work is put into anthropological and historical context. Her argument does not sit well with the realities of seventeenth and eighteenth century English society, where diaries show that women seem to have felt little restriction of their movements for fear of rape.<sup>18</sup> Brownmiller's ideas have been

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<sup>17</sup>E. Shorter, 'On Writing the History of Rape', passim; Brownmiller, *Against Our Will*, passim. For the passage cited here see Brownmiller, *Against Our Will*, p. 15.

<sup>18</sup>Anna Clark has argued that in the eighteenth century fear of rape did not keep women outside the public sphere, though nineteenth century women were told to restrict their movements due to fear of rape. Anna Clark, *Women's Silence, Men's Violence: Sexual Assault in England 1770-1845* (London, 1987), pp. 1-6. Roy Porter has suggested that no women expressed fear of rape in early modern England in diaries. Porter, 'Rape', pp. 221-2. I have made a cursory survey of early modern women's diaries to see whether women expressed any concern about walking alone in isolated areas or at night due to fear of rape. I found that no such fear seemed to be limiting women's movements, though women living at the time of the Civil War, such as Alice Thornton, did find their movements restricted due to fear of troops. Rape seems to have happened relatively rarely during the Civil War, though Alice Thornton described in her diary how she had escaped planned rapes twice. See C. Jackson (ed.), *The Autobiography of Mrs. Alice Thornton*, in Publications of the Surtees Society LXII (1875), pp. 44-47. For the low incidence of rape during the civil war see Charles Carlton, *Going to the Wars - the Experience of the British Civil Wars 1638-1651* (London and New York, 1992), pp. 259-60 and 296-8. (Carlton mistakenly refers to Alice Thornton as Alice Townsend). I examined C. Morris (ed.), *The Journeys of Celia Fiennes* (London, 1947); Dorothy M. Meads (ed.), *Diary of Lady Margaret Hoby 1599-1605* (London, 1930); John Loftis (ed.), *The Memoirs of Anne, Lady*

profitably thought-provoking in that they have encouraged the study of rape as a socially conditioned phenomenon, rather than a common contemporary view of the rapist as a sexually deviant psychopath. This label of sexual psychosis for the rapist has militated against an understanding of rape as just one potential violent behaviour in the human repertoire, which is best understood in the context of a given society.<sup>19</sup>

A competing modernisation theory of rape, postulated by Edward Shorter, sees rape as historically continuous in pre-industrial England.<sup>20</sup> His 1977 article in *Signs* suggests that rape only decreased due to the growth in sexual permissiveness during and after the industrial revolution. He argues that rape occurred due to the frustrated elemental sex drive of early modern men. This hypothesis is not only deeply unfashionable, but also hard to support on its own terms. There was a late age at first marriage in the seventeenth and eighteenth century, but prenuptial pregnancy rates show that not all courting couples were abstaining, and frustrated men were surely always less likely to rape than to pay a prostitute, or resort to auto-eroticism.<sup>21</sup> Shorter's claim that a more permissive

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*Halkett and Ann, Lady Fanshawe* (Oxford, 1979); D. H. Woodforde (ed.), *Woodforde Papers and Diaries* (London, 1932); Vita Sackville-West (ed.), *The Diary of Lady Anne Clifford* (London, 1923); D.G. Greene (ed.), *The Meditations of Lady Elizabeth Delavel*, The Publications of the Surtees Society CXC (1978); *Autobiography of Mary, Countess of Warwick* in Percy Society: Early English Poetry, Ballads, and Popular Literature of the Middle Ages XXII (1898); J.B. Williams (ed.), *Memoirs of Mrs Savage* (London, 1829).

<sup>19</sup>Brownmiller, *Against Our Will*, passim; Smart and Smart (eds.), *Women, Sexuality*, passim.

<sup>20</sup>E. Shorter, 'On Writing the History of Rape', passim.

<sup>21</sup>E. Shorter, 'On Writing the History of Rape', passim. Approximate rates of prenuptial pregnancy have been calculated at a fifth of brides in the sixteenth and seventeenth centuries, and a third in the eighteenth century; J.A. Sharpe, *Early Modern England: A Social History 1550-1760* (London, 1987), p. 43. See also K. Wrightson, *English Society 1580-1680* (London, 1982), pp. 84-86, 145-6, 166; Angus McLaren has suggested that masturbation was an ongoing feature of early modern sexuality. A. McLaren, *A history of contraception: from antiquity to the present day* (Oxford, 1990), p. 155; Jim Sharpe has suggested that London and the sea ports would have been well-provided with prostitutes, and that some women in rural areas also prostituted themselves. J.A. Sharpe, *Early Modern England*, p. 46.

modern society would lack rape suits oddly with the high levels of reported rape in modern America (some thirteen times that of England and Wales despite a population only approximately five times larger), and seems to have little foundation in reality.<sup>22</sup>

The first researched work on rape in early modern England is an essay by Nazife Bashar, published by the London Feminist History Group in 1983. She explores what she sees as the central paradox in the legal treatment of rape in this period; rape was a felony, condemned in literature, and by all eminent commentators, but few cases were prosecuted. She found rape constituted less than one per cent of all indictments in the Home Counties Circuit between 1558 and 1700. She assumed, not unreasonably, that 'it is unlikely that over nearly one hundred and fifty years, 1558-1700, in Sussex for example, only 48 women were raped, or in Hertfordshire, only 21'. Bashar follows this with a discussion of the various reasons for under-reporting, including the low conviction rate, the time and expense necessary to prosecute, and the emotional toll of accusation, display and examination. This dissertation will explore these general reasons for under-reporting in more depth, but will go further than Bashar, and argue for selectivity of reporting. Significant under-reporting of certain types of sexual crime can be discerned from the dominance of a particular type of case in court, where there is ample evidence that sexual assault occurred in other spatial and social contexts.<sup>23</sup>

Bashar explores the low rate of conviction for sexual violence, which was only one in five between 1600 and 1649, and then fell to only one conviction in

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<sup>22</sup>Allison and Wrightsman, *Rape the Misunderstood Crime*, p. 9.

<sup>23</sup>N. Bashar, 'Rape in England between 1550 and 1700' in The London Feminist History Group, *The Sexual Dynamics of History* (London, 1983), pp. 29-42. See below, pp. 121-142.

every eight cases between 1650 and 1700. She found that conviction was more likely where the victim of the sexual assault was a child.<sup>24</sup> She cites examples of specific court-cases to demonstrate the difficulties of securing a conviction, even where a case appeared very strong.<sup>25</sup> She stresses that in the sixteenth century the law of rape was being used by ordinary women to prosecute for sexual assaults,<sup>26</sup> and suggests that rape came not to be punished by the courts except in the case of young girls, who were virgins. 'Rape of a virgin, a young woman, was regarded as theft of her virginity, the property of her father to be used in procuring an advantageous marriage.' Only these rapes which involved property in the form of a daughter's virginity could secure a conviction in the courts; adult women were likely to secure a conviction only where they were designated virgin on the indictment.<sup>27</sup>

Bashar's article is based on a narrow range of evidence: she used the Home Counties assize indictments to establish statistical patterns in prosecutions, conviction and age of victims.<sup>28</sup> Bashar's conclusions can only be tentative because her evidence is limited and her samples are relatively small. Her central

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<sup>24</sup>Bashar, 'Rape in England', pp. 34-35 and 37-38.

<sup>25</sup>Bashar cited a trial pamphlet report of the case of Sibila May, who brought a case of rape in 1683. Her alleged assailant was acquitted because he had blindfolded her during the assault, and she could not identify him. Strangely enough, the same man was convicted of robbing her house and stealing a ring from her on the same occasion. Bashar further suggested that many cases of rape were pragmatically prosecuted as attempted rape, to increase the chance of conviction. Bashar, 'Rape in England', p. 36 and *passim*.

<sup>26</sup>Bashar argued that at some time before the sixteenth century heiresses had formed the majority of women prosecuting under the laws of rape. Bashar, 'Rape in England', p. 41 and *passim*; Carter found that 'servile' men and women formed the majority of participants in his fourteenth century rape cases. J.M. Carter, *Rape in Medieval England: An Historical and Sociological Study* (London, 1985), p. 54.

<sup>27</sup>Bashar, 'Rape in England', p.42.

<sup>28</sup>She also makes limited use of other types of evidence such as contemporary drama. See Bashar, 'Rape in England', p. 33.



conclusion is over-simplistic, and does not stand up to close scrutiny. Her suggestion that women were designated as virgins on the indictment seems to be based on the use of the word *defloravit* in some of these documents, and the occasional use of the word 'virgin'.<sup>29</sup> However, Samuel Johnson's *Dictionary* defined 'deflower' as a general word for ravishment, and the printed indictments from Middlesex include the word on at least one indictment relating to the case of a married woman. Some of these indictments relating to the youngest children of six and seven use the term *defloravit*, whereas others do not.<sup>30</sup> Figures presented later in this dissertation will show that most of the women appearing in the assize depositions of Ely and the Northern Assize Circuit were not children, but young single women of middling sort status.<sup>31</sup> Virginity is rarely mentioned in rape depositions or in trial pamphlets, so it seems unlikely that virginity was the key issue in seventeenth and eighteenth century rape trials.<sup>32</sup> The connection between under-reporting, low rates of conviction, common suspicion of accusing women, and contemporary ambivalence towards coercive intercourse will be explored at length later in this thesis.

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<sup>29</sup>The word 'virgin' is used in J. C. Jeaffreson (ed.), *Middlesex County Records* II (1936), p. 62. See also Rev. J.C. Atkinson (ed.), *North Riding Records 'Yorkshire Quarter Sessions Records'*, III (London, 1885), p. 250b. For *defloravit* see Jeaffreson (ed.), *Middlesex County Records* I, pp. 96, 113, 134, 193, 202, 209 i), ii), 240, 257, 286 and Jeaffreson (ed.), *Middlesex County Records* II, pp. 13, 29, 62.

<sup>30</sup>Samuel Johnson, *Dictionary of English Language* (ed.), Alexander Chalmers (London, 1755, reprinted London, 1994), entries under 'Rape', 'Deflower', 'to Ravish' and 'Ravisher'. For an indictment using *defloravit* of a married woman see Jeaffreson (ed.), *Middlesex County Records* I, p. 134.

<sup>31</sup>See below, pp. 66-67.

<sup>32</sup>See below, pp. 35, 77-8, 91, 106-7, 119. Fletcher has suggested that virginity was of some importance to early modern women. Anthony Fletcher, *Gender, Sex and Subordination in England 1500-1800* (London, 1995), p. 102; Elizabeth Foyster, 'The Concept of Male Honour in Seventeenth Century England', Ph.D. thesis, University of Durham (1996), pp. 74-76. However, Anne Laurence, amongst others, has suggested that lack of virginity does not seem to have been a bar to successful marriage. Anne Laurence, *Women in England 1500-1760: A Social History* (London 1994), p. 69.

Historians seem to have kept a discreet silence on the vexed question of sexual violence in early modern England.<sup>33</sup> There has been little follow-up of Bashar until Miranda Chaytor's recently published article on rape: 'Husband(ry): Narratives of Rape in the Seventeenth Century'. Moving from the statistics to linguistics, she claims court depositions of rape can be read as narratives, and that the women framed their stories in validating terms of their despoiled husbandry: disrupted work and torn clothes.<sup>34</sup> She sees this as a mirror-image of the way in which the rest of society viewed rape as theft until the mid seventeenth century. She suggests that, after this date, rape came to be viewed in terms of sexuality, as a question of consent. Husbandry as a validating narrative ceases to be available to all but the poorest women in society, and so upper-class women (who have retreated from household production) no longer feel able to bring allegations of

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<sup>33</sup>Work published on the history of sexual violence outside England includes that of Diane Miller Sommerville, 'The Rape Myth in the Old South Reconsidered', *Journal of Southern History*, 61 (1995), 481-518; Attina Grossman, 'A Question of Silence: The Rape of German Women by Occupation Soldiers', *October*, 72 (1995), 43-64; Karen Dubinsky, *Improper Advances: Rape and Heterosexual Conflict in Ontario 1880-1929* (London, 1993), passim; James Kelly, "A Most Inhuman and Barbarous Piece of Villainy": An Exploration of the Crime of Rape in Eighteenth Century Ireland', *Eighteenth Century Ireland*, 10 (1995), 78-107. Work has been carried out on other periods of English history. See Julie Coleman, 'Rape in Anglo-Saxon England' in G. Halsall (ed.), *Violence and Society in the Early Medieval West* (Woodbridge, 1998); J. M. Carter has written on rape in Medieval England, see J. M. Carter, *Rape in Medieval England*, passim; Barber has written on the nineteenth century in Jill Barber, "Stolen Goods": The Sexual Harassment of Female Servants in West Wales during the Nineteenth Century', *Rural History, Economy, Society and Culture*, 14 2 (October, 1993), 123-136; Anna Clark has covered the last quarter of the eighteenth century, and focused most closely on tracing change in the legal, personal and representational understandings of rape between the seventeenth and later eighteenth centuries. Her book begins where this dissertation ends, but some of her later eighteenth century material is drawn upon for later chapters. See Anna Clark, *Women's Silence*, passim; Antony Simpson has published an essay on the law of consent and rates of reporting of child rape in eighteenth century London. His arguments will be covered most fully in relation to representations of child victims in rape pamphlets. See below, pp. 98-101. See Antony Simpson, 'Vulnerability and the age of female consent: legal innovation and its effect on prosecutions for rape in eighteenth-century London' in Rousseau and Porter (eds.), *Sexual underworlds*, pp. 181-205.

<sup>34</sup>For a discussion of the concept of narrative and other historians who have read documents in this way see below, pp. 58-82.

rape to court.<sup>35</sup> Resting as it does on the dubious methodology of reading the legal document as a woman's narrative, this article is a highly problematic piece. As I will show, assize depositions can be much better viewed as a dialogue between the accusing woman, and the JP. At the same time, Chaytor's chronology is also highly questionable. From at least the late sixteenth century jurists describe rape as a crime of sexual assault against the woman herself, and the stories of resistance are reported in earlier assize depositions just as they are in the later ones. The article assumes a contemporary concept of rape as theft, and seems to read the husbandry metaphor into, rather than from, the depositions themselves. As a whole, it is characterised by a rather anachronistic, speculative approach which interprets individual depositions carelessly.<sup>36</sup>

A more successful application of close reading to the history of rape has been achieved by Hindle and Herrup, who have written illuminating articles which closely read two very different but equally well-documented allegations of sexual assault.<sup>37</sup> Hindle's article explores the punishment of Margaret Knowsley in 1625 for supposedly slanderously accusing the vicar of Nantwich of sexually assaulting her. This article demonstrates the acceptance by the Nantwich magistrates of the vicar's sexual assaults on Knowsley, who was employed by him as a servant.

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<sup>35</sup>Miranda Chaytor, 'Husband(ry): Narratives of Rape in the Seventeenth Century', *Gender and History*, 7:3 (November, 1995), 378-407. Other work suggests that this idea of domestic withdrawal is questionable. See Amanda Vickery, 'Golden Age to Separate Spheres? A review of the categories and chronology of English women's history', *The Historical Journal*, 36:2 (1993), 383-414. It seems unlikely that better-off women ever brought cases to court in any number. See above, p. 10, n 26.

<sup>36</sup>The questions of narrative and the chronology of changing attitudes to rape will be discussed below. For narrative see below, pp. 58-82, for changing attitudes see below, particularly pp. 119-120 and 140-142.

<sup>37</sup>Steve Hindle, 'The shaming of Margaret Knowsley: gossip, gender and the experience of authority in early modern England', *Continuity and Change*, 9:3 (1994), 391-419; Cynthia Herrup, 'The Patriarch at Home: The Trial of the 2nd Earl of Castlehaven for Rape and Sodomy', *History Workshop Journal*, 42 (1996), 1-18.

They punished her for slander, despite the letters that they had received from his previous employers in Newcastle, which betrayed his long-standing reputation for sexual incontinence. This ambivalence about sexual coercion is clear in contemporary literature, which will be explored in chapter three, and this case shows that such attitudes were not confined to fiction. Cynthia Herrup's article on the Castlehaven trial shows how contemporary understanding placed rape as one heinous sin of lust within a vicious lifestyle which led to iniquity. This understanding of rape is clearly present throughout the period, and will be discussed later in this thesis.<sup>38</sup> Although these articles have provided illuminating vignettes of sexual violence in early modern England, a history of rape cannot be extrapolated from micro history alone, which lacks chronological scope.

There remains a need for a nuanced history of sexual violence in the context of early modern society. The neglect of the subject has resulted in a de facto separation of the history of rape from the historiographies of sexuality, masculinity and women's history, into which rape must now be re-integrated. Rossiaud's study of rape in fifteenth century Dijon, and Ruggiero's work on Renaissance Venice are illuminating, because both studies painstakingly locate rape within contemporary social context. Ruggiero argues that the Renaissance stress on aggressive masculinity meant that rape of a young virgin provided a way to express domination and sexual supremacy over the female; rape must be understood in the context of contemporary conceptions of the masculine, the feminine and sexuality.<sup>39</sup>

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<sup>38</sup>See below, pp. 108-120.

<sup>39</sup>G. Ruggiero, *The Boundaries of Eros: Sex, Crime and Sexuality in Renaissance Venice* (Oxford, 1985), passim; Jacques Rossiaud, 'Prostitution, Youth, and Society in the Towns of Southeastern France in the Fifteenth Century' in Robert Forster and Orest Ranum (eds.),

The only historian to have researched rape in terms of early modern sexuality and gender is Susan Amussen, who makes a valiant attempt at an analysis of rape in the context of masculinity.<sup>40</sup> She raises the question of competing codes of early modern manliness in the context of the 1647-93 Northern Circuit rape depositions, which she over-optimistically accepts as a fairly accurate indication of low levels of sexual violence.<sup>41</sup> Amussen comments that the men indicted for these crimes almost exclusively deny that intercourse occurred, rather than excusing themselves by claiming consent. She claims that 'the men distance themselves not just from the violent assault of rape, but from any sexual activity...extra-marital sexual activity was not a part of their presentation of themselves to the world.' This may be true, but as we shall see, the accused men were able to rely on this flat denial of rape because contemporaries believed so strongly that women often lied about rape. The accused could then present himself as a non-fornicating innocent man, a victim of a false allegation of rape.<sup>42</sup> Amussen's work highlights the importance of an attention to the public representations of non-consensual intercourse for a full understanding of the contemporary construction of gender and sexuality. She under-estimates the relevance of the literature and ballad material featuring coercive sex in courtship, sometimes portrayed as considerably forceful. The prevalence of the sexually confident man as a literary theme suggests that sexual

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*Deviants and the Abandoned in French Society: Selections from the Annales* (Baltimore, 1978), pp. 1-46.

<sup>40</sup>Susan Dwyer Amussen, 'The part of a Christian man': the cultural politics of manhood in early modern England' in Susan Dwyer Amussen and Mark A. Kishlansky (eds.), *Political culture and cultural politics in early modern England; Essays Presented to David Underdown* (Manchester, 1995), pp. 213-233.

<sup>41</sup>For a discussion of under-reporting see below, pp. 121-142.

<sup>42</sup>For a further discussion of the accused men's depositions see below, pp. 68-69.

prohown probably was seen as a significant part of male identity.<sup>43</sup> Anthony Fletcher and Elizabeth Foyster describe the importance of sexual virility to the reputation of a seventeenth century husband.<sup>44</sup> The cuckolded husband was marked by the shame of having been unable to satisfy his wife sexually. It has recently been argued that this male sexual prowess was increasingly celebrated in the eighteenth century.<sup>45</sup> This dissertation will attempt to evaluate the importance of aggressive sexuality for early modern masculinity as represented in literature, and in interactions between ordinary men and women.

The seventeenth century conception of gender was one of social construction, where the male and female bodies were thought of as essentially the same, and gender was primarily seen as a learnt role. Despite this framework for understanding gender, differences between the sexes were recognised in contemporary medical literature, and women were seen as physically weaker than men.<sup>46</sup> Laqueur has described the eighteenth century as a time when this idea of the 'one-sex body' was increasingly eroded, and gradually replaced with the notion of 'sexual difference', where gender was read from the body. New 'natural' gendered characteristics were defined, which represented a shift from an earlier notion of woman. Women in the sixteenth and seventeenth centuries were

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<sup>43</sup>See below, pp. 83-120 for a discussion of attitudes to rape in contemporary literature.

<sup>44</sup>Anthony Fletcher, *Gender, Sex*, p. 104; Elizabeth Foyster, 'The Concept of Male Honour in Seventeenth Century England', pp. 233-237.

<sup>45</sup>Hitchcock, *Sexualities*, passim.

<sup>46</sup>Brian Gibbons and Anthony Fletcher are among many historians to have expressed this understanding of gender, following Laqueur. See Brian Gibbons, 'Gender in British Bemenhist Thought', Ph.D. thesis, University of Durham (1993), pp. 25-29; Fletcher, *Gender, Sex*, p. xvi. For a description of how women were educated to inculcate these gender ideologies see L. Pollock, 'Teach her to live under obedience: the making of women in the upper ranks of early modern England', *Continuity and Change*, 4 2 (1989), 231-258. For work on gender which displays understandings of women as physiologically different from men see Patricia Crawford, 'Attitudes to Menstruation in Seventeenth-Century England', *Past and Present*, 91 (1981), 47-73.

conventionally represented as more sexually voracious than men, but also depicted as weaker and so more likely to be immoral, vengeful and dissembling.<sup>47</sup> By the end of the eighteenth century women were increasingly characterised in prescriptive literature as sexually passive, and men as the more sexually demanding sex. Women were newly imbued with positive characteristics such as particular moral strength and religiosity.<sup>48</sup> This thesis will consider whether these suggested redefinitions of gender and sexuality in the course of the eighteenth century affected attitudes to rape or levels of sexual assault.

Women in seventeenth and eighteenth century England were theoretically subjugated, being unable to hold most public offices. A woman was legally disabled when she married, becoming subsumed in the legal identity of her husband. As a *femme couvert* a married woman was theoretically unable to hold property in her own name, or to make a will.<sup>49</sup> There were a large number of misogynistic early modern proverbs including 'many women many words, many geese many turds'.<sup>50</sup> Women's intellectual and physical inferiority was generally accepted, but in practice women were often respected partners in their marriages

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<sup>47</sup>Thomas Laqueur, *Making Sex: Body and Gender from the Greeks to Freud* (Cambridge, Mass., 1990), passim. For a description of the seventeenth century concept of the voracious woman see Anne Laurence, *Women in England*, p. 66. For the redefinition of femininity see also Hitchcock, *English Sexualities*, pp. 45-50.

<sup>48</sup>The work of Valerie Fildes and the contributors to her edited volume suggests that there was a positive construction of maternity throughout early modern England. This must remind us of the need for a nuanced view of this alleged gender shift. Valerie Fildes (ed.), *Women as Mothers in Pre-Industrial England: Essays in Memory of Dorothy McLaren* (London, 1990), passim; Hitchcock has commented that some women had always been honoured for their spirituality. Hitchcock, *English Sexualities*, p. 43. For a description of this alleged transition in perceived gender characteristics, see Fletcher, *Gender, Sex*, pp. 391-396.

<sup>49</sup>Anne Laurence, *Women in England 1500-1760: A Social History*, pp. 15, 228-230; Susan Amussen, *An Ordered Society: Gender and Class in Early Modern England* (Oxford, 1988), p. 3; Fletcher, *Gender, Sex*, pp. 1-27; Amy L. Erickson, *Women and Property in Early Modern England* (London, 1993), passim; Pollock 'Teach her to live under obedience', passim.

<sup>50</sup>Fletcher, *Gender, Sex*, pp. 4 and 14.

and full members of their communities. Amy Erickson has delineated how the theoretical lack of property rights was circumvented in practice, so that married women did conduct business, hold property and make wills.<sup>51</sup> Diaries show the extent to which conjugal relationships in this period could be a true emotional and financial partnership, in which the wife was expected to have considerable personal capacity.<sup>52</sup> How may we interpret difficulties of prosecution and conviction for rape in the context of the theoretical subjugation, but practical agency of early modern women?

In seventeenth century England couples seem usually to have abstained from intercourse until firm plans for marriage had been made. This is borne out by the extremely low level of illegitimacy, but relatively frequent incidence of prenuptial pregnancy, which has been calculated at approximately one fifth of brides.<sup>53</sup> This demographic regime changed in the eighteenth century, where levels of illegitimacy and prenuptial pregnancy both rose, and after the mid

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<sup>51</sup>Amy L. Erickson, *Women and Property in Early Modern England*, passim.

<sup>52</sup>Wrightson, *English Society*, pp. 92-104; Laurence, *Women in England*, p. 235. Capp has described how women were able to exercise agency without challenging their men. B. Capp, 'Separate Domains? Women and Authority in Early Modern England' in P. Griffiths, A. Fox and S. Hindle (eds.), *The Experience of Authority in Early Modern England* (Basingstoke, 1996), pp. 117-138; Adrian Wilson has explored one enclave of female power in his work on the birth ritual: Adrian Wilson, 'The ceremony of childbirth and its interpretation' in Fildes, *Women*, pp. 68-107; Bennett has described how women in Medieval England were also theoretically disabled, but exercised informal personal power. J.M. Bennett, *Women in the Medieval English Countryside: Gender and Household in Brigstock before the Plague* (London, 1987), pp. 178-180. Susan Amussen has also described women's practical agency: Amussen, *Ordered Society*, p. 118-123. Female agency is also the theme of the work presented on crime in J. Kermode and G. Walker (eds.), *Women, crime and the courts in early modern England* (London, 1994).

<sup>53</sup>Wrightson, *English Society*, pp. 84-6; J.A. Sharpe, *Early Modern England*, p. 43. The regime of early modern sexuality presented in this work is rather more believable than the picture of a rampant Somerset peasantry presented by Quaife. In the light of the demographic statistics Quaife seems to over-estimate the degree of sexual immorality among ordinary people. See G. R. Quaife, *Wanton Wenches and Wayward Wives: Peasants and Illicit Sex in Early Seventeenth Century England* (London, 1979), passim.



century there was a general increase in population.<sup>54</sup> An innovative hypothesis has recently been presented by Tim Hitchcock, who argues that these changes, and the attendant increase in discourses of sexuality over the eighteenth century, reflect an increase in the number of couples engaging in penetrative sex.<sup>55</sup>

Since it is as yet uncertain how rape fits within this research into the cultures of sex and gender in early modern England, the discussion presented in this thesis will locate rape within these debates.

The notion of 'rape' is a blurred category in our own time, attracting both wider and more narrow interpretations as to what physical acts and what degree of coercion constitute rape, and what standards of proof are necessary. In this work I have tried to be sensitive to early modern understandings of words used in these documents to mean an act of forced penetration. Samuel Johnson, writing in 1755, defined 'Rape' as the 'violent defloration of chastity', 'to Ravish' was: 'to constuprate by force; to deflower by violence'.<sup>56</sup> I have used these words in their seventeenth and eighteenth century sense and have also used other modern words for forced intercourse, such as non-consensual sex, sexual violence and sexual assault, interchangeably. Where I intend to imply more contemporary ambiguity I have used the term 'coercive intercourse' for forceful sexual behaviour.

Compared to earlier studies, this one views rape from a wider evidential base. The work presented here will aim for a greater breadth of understanding by

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<sup>54</sup>J.A. Sharpe, *Early Modern England*, p. 43; Hitchcock, *English Sexualities*, pp. 25-28.

<sup>55</sup>Hitchcock, *English Sexualities*, pp. 39-45.

<sup>56</sup>Samuel Johnson, *Dictionary of English Language*, entries under 'Rape' and 'to Ravish'. Johnson also stated a positive meaning in his definition for 'to Ravish': 'to delight, to rapture', and this ambiguity is discussed further below, on pp. 90-91.

analysing the prosecution of rape in the legal system, private conceptions of sexual violence, and public representations of ravishment. This is an exercise in the integration of the history of rape into the mainstream of historiographical developments in the fields of women's history, the construction of gender, and the history of sexuality. The approach taken here is that of the historian as ethnographer; the creation of a qualitative reading of the meanings of sexual violence in early modern England, taking the Weberian definition of culture used by Geertz that: 'man is an animal suspended in webs of significance he himself has spun'. It has been suggested that the ethnographer is best viewed as an observer creating a new interpretation by her reading. This Geertzian criticism of the anthropologist holds equally true for the historian, and for the work of this thesis. Historical work does not simply mirror the cultures we observe through documents, our fieldwork, because every observation is a reading. It is the historian's task, just as it is the ethnographer's, to attempt to give the most faithful account in the context of what is known. Geertz himself cited Robert Solow's comment that we must on no account take the attitude 'that as a perfectly aseptic environment is impossible, one might as well conduct surgery in a sewer'.<sup>57</sup> I am conscious that this thesis is one reading of the tangled meanings of rape in early modern culture. My hope is, however, that this work constitutes a first step in the writing of a history of rape in early modern England.

The first chapter outlines the development of the law of rape, the conduct of rape trials, and the attitudes of legal writers to the crime. It is based on an analysis of statute, seventeenth and eighteenth century law-books and law reports, and the procedural elements of the (mainly eighteenth century) trial

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<sup>57</sup>Clifford Geertz, *The Interpretation of Cultures* (London, 1975), pp. 5, 30.

pamphlets. The second chapter is a micro-historical close reading of eighty-one Ely and Northern Assize Circuit depositions dating between 1640 and 1750, and 1780 and 1800. This intimate reading draws on both quantitative and qualitative work to create an analysis of the content and structure of these documents. The third chapter is a reading of the public representations of nonconsensual sex in seventeenth and eighteenth century literature, including Restoration drama, and eighteenth century newspapers, national periodicals and novels, but with particularly close attention to the seventeenth century ballads and the late seventeenth and eighteenth century trial pamphlets. This work will create a picture of the aetiology ascribed to rape by contemporaries, under what conditions raped women were understood sympathetically, and the locations of ambiguity towards sexual violence. The conclusion draws on all the material presented in the thesis to uncover the selectivity of reporting, and sketches a tentative chronology for changing attitudes to rape over the period, integrating these changes into the wider changes in attitudes to sexuality and the construction of gender roles.

## Chapter One: The Law of Rape

'(Women onely Women) then have nothing to do in constituting Lawes, or consenting to them, in interpreting of Lawes, or in hearing them interpreted at lectures, leets or charges, and yet they stand strictly tyed to mens establishments; little or nothing excused by ignorance'.<sup>1</sup>

In modern feminist writing the blame for low levels of convictions for rape in our own society is often attributed to shortcomings in the law itself and the operation of the male-dominated legal system. Modern legal writers, such as Jennifer Temkin, have published programs of law reforms, and Sue Lees writes persuasively of the relevance to perceptions among women of police attitudes to rape, the high number of cases which are 'no-crimes' by the police and Crown Prosecution Service, and how judges use their discretionary powers to allow sexual history evidence to be presented in court.<sup>2</sup>

The history of the law of rape has received surprisingly limited attention from modern historians and legal writers, despite its many interesting paradoxes. Julie Coleman has written on the Anglo-Saxon law codes, and Ives and Post have conducted fairly extensive research into the medieval statutes concerning rape and abduction.<sup>3</sup> Brundage has covered rape in canon law, and two rather speculative articles by Mortimer Levine and Gilbert Geis cover changes in legislation under

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<sup>1</sup>*The Lawes Resolutions of Womens Rights* (London 1632, reprinted New York and London, 1978), p. 2.

<sup>2</sup>S. Brownmiller, *Against Our Will: Men, Women and Rape* (London, 1976), passim; Jennifer Temkin, *Rape and the Legal Process* (London, 1987), passim; Sue Lees, *Carnal Knowledge* (London, 1996), passim.

<sup>3</sup>Julie Coleman, 'Rape in Anglo-Saxon England' in G. Halsall (ed.), *Violence and Society in the Early Medieval West*, (Woodbridge, 1998), passim; E.W. Ives, 'Agaynst Taking away of women' in E.W. Ives, R.J. Knecht and J.J. Scarisbrick (eds.), *Wealth and Power in Tudor England: Essays presented to S.T. Bindoff* (London, 1978), passim; J. Post, 'Ravishment of Women and the Statutes of Westminster' in J.H. Baker (ed.), *Legal Records and the Historian* (Cambridge, 1978), pp. 150-164; J. Post, 'Sir Thomas West and the Statute of Rapes, 1382', *The Bulletin of the Institute of Historical Research*, 53 (1980), 24-30.

Elizabeth I<sup>4</sup>, and Matthew Hale's interpretation of rape law respectively.<sup>5</sup> An essay by Antony Simpson pulls together this material to some extent, but no account synthesises the recent research on various statutes, and considers it in the context of the law books and case law.<sup>6</sup> The early modern statute law, and its interpretation by lawyers, magistrates and judges, is potentially of the utmost relevance to levels of reporting, the types of cases that are reported, and levels of conviction. Statute law and legal writing both influenced and reflected attitudes to rape in wider society.

This chapter is intended to provide a synthesis of earlier research, and will then proceed to an analysis of the discussion of rape in early modern law books, and the importance of the limited case law. Trial pamphlets, mostly dating from the eighteenth century, will be surveyed for procedural content to gain an impression of how rape was tried in the courtroom.<sup>7</sup>

In March 1651 William Booth told a magistrate in the West Riding of Yorkshire that he had asked Richard Wright, a labourer, 'why he would ravish his dame Janet Sykes' and had seen him 'fall down upon his knees and desire Janet Sykes to forgive him to which she replied that she would now forgive him, but as soon as she was able to go abroad she would command [?] herself at law against him.' Janet

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<sup>4</sup>James A. Brundage, *Sex, Law and Marriage in the Middle Ages* (Aldershot, 1993), pp. 62-75; Mortimer Levine, 'A More than Ordinary Act of Rape', *American Journal of Legal History*, 7 (1963) 159-164.

<sup>5</sup>Gilbert Geis, 'Lord Hale, Witches and Rape', *British Journal of Law and Society*, 5 (1978), 26-44.

<sup>6</sup>Antony Simpson, 'Vulnerability and the age of female consent: legal innovation and its effect on prosecutions for rape in eighteenth century London' in G. S. Rousseau and Roy Porter (eds.), *Sexual underworlds of the Enlightenment* (Chapel Hill, 1988), pp. 181-205.

<sup>7</sup>Doubts have been raised about the reliability of the pamphlets. The issue of the reliability of this material, and readership will be addressed more fully later in this thesis, but procedural information about the trials contained within these pamphlets is probably least susceptible to deliberate sensationalist alteration. Such material is the type of information that the pamphleteer would be least likely to have any motivation to alter. See below pp. 96-97. See also J.H. Langbein, 'The Criminal Trial Before the Lawyers', *University of Chicago Law Review*, 45 (1978), 263-316; J.H. Langbein, 'Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources', *The University of Chicago Law Review*, 50:1 (1983), 1-136; J. S. Cockburn, *Introduction to the Calendar of Assize Records* (London, 1985), p. 98. For a fuller discussion of the pamphlet material see below, pp. 94-104.

Sykes had carried out her resolution.<sup>8</sup> If a woman was determined to prosecute for rape, she had to take her case to a magistrate, and had to pay for subpoenas to have the witnesses brought to answer questions and a warrant to apprehend the accused for examination. She (and her husband if she was married) also had to pay the fees for recognizances to bind over herself and her witnesses to give evidence in court.<sup>9</sup> When her case reached court, the woman had more fees to pay, such as the money due to the clerk for the peace or the clerk of the assize for writing the indictment. The total cost to a woman of a prosecution for rape was between ten shillings and a pound, the average cost of a prosecution for felony.<sup>10</sup>

The trial of a rape case usually took place at the assizes, which were held twice a year in spring and summer.<sup>11</sup> A grand jury was sworn in, received the bill of accusation and heard the prosecution's evidence to decide whether there was sufficient evidence for the matter to proceed to trial.<sup>12</sup> The bills affirmed as 'true' by the grand jury went forward to the assize court, and the accused was then indicted and arraigned. An assize trial usually lasted approximately half an hour from arraignment to plea, followed by the deliberation of the jury.<sup>13</sup>

The Northern Assize Circuit records do not yield the outcome of Janet Sykes' case, but few rape accusations were reported in this period, and fewer still ended in conviction. Contemporary legal writers often rated rape and murder as crimes of equal severity, but a comparison of Beattie's figures from the Surrey court records reveals that rape cases had much less credibility in the eyes of grand juries and trial juries than

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<sup>8</sup>PRO ASSI 45/4/2/68, and 45/4/2/69.

<sup>9</sup>J.M.Beattie, *Crime and the Courts in England 1660-1800* (Princeton, 1986), p. 41. See also J.H. Baker, 'Criminal Courts and Procedure at Common Law 1550-1800' in J.S. Cockburn (ed.), *Crime in England 1550-1800* (London, 1977), pp. 15-48.

<sup>10</sup>Beattie, *Crime and the Courts*, p. 41.

<sup>11</sup>Beattie, *Crime and the Courts*, p. 309.

<sup>12</sup>Beattie, *Crime and the Courts*, p. 318.

<sup>13</sup>Beattie, *Crime and the Courts*, pp. 335 and 378.

murder charges.<sup>14</sup> Rape accounted for less than one per cent of all indictments from the Home Assize Circuit 1558-1700, although there was a moderate rise in prosecutions in the eighteenth century.<sup>15</sup> In Surrey between 1660 and 1800 there was two and a half times the number of prosecutions for murder than for rape and attempted rape together. Over the same period Surrey grand juries threw out just under forty-five per cent of all cases of rape brought to them, though they endorsed as true bills just over eighty-five per cent of murder cases.<sup>16</sup> There was a low conviction rate for rape in the Surrey quarter sessions and assizes in the same period, at just under fifteen per cent, compared with a conviction rate of twenty-two per cent for murder.<sup>17</sup> By contrast, attempted rape was prosecuted roughly twice as frequently as rape, and the vast majority of bills for attempted rape was endorsed by the grand jury.<sup>18</sup> The conviction rate for attempted rape, a misdemeanour punishable by either imprisonment, fines, whipping, and time in the stocks or the pillory, ran at the relatively high level of just under sixty-four per cent in Surrey between 1660 and 1800.<sup>19</sup> There is therefore a critical question of why juries were so unwilling to try and execute alleged rapists, but grand juries were content to bring cases of attempted rape to trial, which often ended in conviction.

It has been suggested that the legal system of patriarchal early modern society operated to ensure that few men were punished. The men involved in the legal system did not want to execute men for sexual assault, unless the victim was a virgin.<sup>20</sup> We have already seen that this argument is rather over-simplified, but this chapter will

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<sup>14</sup>For a more detailed discussion of the attitudes of the legal writers to the crime of rape, see below, pp. 22-57.

<sup>15</sup>Nazife Bashar, 'Rape in England between 1500 and 1700' in The London Feminist History Group, *The Sexual Dynamics of History* (London, 1983), pp. 34-37.

<sup>16</sup>Beattie, *Crime and the Courts*, p. 402.

<sup>17</sup>Beattie, *Crime and the Courts*, p. 411.

<sup>18</sup>Beattie, *Crime and the Courts*, p. 402.

<sup>19</sup>Beattie, *Crime and the Courts*, p. 411.

<sup>20</sup>Nazife Bashar, 'Rape in England', *passim*; Douglas Hay, 'Prosecution and Power: Malicious Prosecution in the English Courts 1750-1850' in Douglas Hay and F. Snyder (eds.), *Policing and Prosecution in Britain 1750-1850* (Oxford, 1989), pp. 377-8.

show a paradox in action.<sup>21</sup> A general horror of rape was expressed by jurists, but despite these sentiments, writers made it clear that they were rarely convinced that a violent sexual assault had occurred. Jurists reserved a suspicion for rape accusations which they did not express for accusations of any other crime. To make matters worse, there was considerable confusion over many elements of the law of rape, particularly the question of the age of consent and the competence of child witnesses.<sup>22</sup>

### **The development of the law of rape**

Contemporary jurists seem to have found little case law of rape to discuss, and so writers filled their pages on rape with a description of the evolution of the law from Anglo-Saxon law code through common law, to statute. This section will trace this same path, which would be familiar to the early modern lawyer.<sup>23</sup>

The issue of unauthorised intercourse with a woman was dealt with seriously from the very first written laws of Aethelberht in the late sixth and early seventh centuries. Penalties were quite severe for abducting a woman, or intercourse with another man's womanservant. Compensation was payable to the woman's owner in the case of intercourse with a servant, and to the woman's guardian where the crime was abduction, the amount of *wergild* being dependent on his status in both these cases. Nonconsensual sex was first outlawed in the law codes of Alfred, written in the late ninth century. These laws constitute the earliest attempt to gradate sexual assault and define rape in written law. 'If anyone seizes by the breast a young woman' the compensation was to be five shillings; 'if he throws her down but does not lie with her'

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<sup>21</sup>See also pp. 9-11, 139-142.

<sup>22</sup>Simpson, 'Vulnerability', *passim*.

<sup>23</sup>See W. Hawkins, *Pleas of the Crown*, (2 bks. in one, London, 1716, reprinted, London, 1771), bk. I, p. 108; M. Hale, *Historia Placitorum Coronae* (2 vols., London, 1736), vol. I, p. 627; W. Blackstone, *Commentaries on the Laws of England* (4 vols., London, 1765, reprinted London, 1966), vol. IV, p. 211; *Laws Resolutions*, pp. 378-403.



ten shillings compensation was due, and forced penetration merited sixty shillings compensation. The compensation was to be paid directly to the woman, and was to be meted out according to her own status. Penalties were greater in the case of a nun, virgin, or high-born woman, but it is not clear whether intercourse with a slave against her consent was treated as unauthorised, or nonconsensual, intercourse.<sup>24</sup>

Post-conquest common law also treated rape as a serious crime to be prosecuted by the victim, and here too rape of a virgin was regarded as most serious. Bracton called for this crime to be punished by the severe penalty of castration accompanied by blinding. He listed a lower scale of other corporal punishments for cases involving wives, widows, mistresses or whores. Glanvill regarded rape as a capital offence unless the raped woman and the two families concerned agreed she should marry the perpetrator.<sup>25</sup>

From 1275 a number of statutes were passed which established serious penalties for 'rape', and 'ravishment'. Unauthorised sex, including abduction, elopement, adultery and fornication, was dealt with side by side with non-consensual sex, often with confusing results. Edward I's first statute of Westminster, passed in 1275, forbade men to 'ravish and take away by force any maiden within age, neither by her own consent, nor without; nor any wife or maiden of full age, nor any other woman against her will'. The statute punished these crimes with two years in prison and a fine, lesser penalties than those which had been meted out under common law.<sup>26</sup>

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<sup>24</sup>Coleman, 'Rape in Anglo-Saxon England', passim.

<sup>25</sup>F. Pollock and F. Maitland, *History of English Law before Edward I* (2 vols., London, 1968), vol. II, pp. 490-1; Post, 'Ravishment of Women', passim; *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur: The treatise on the lawes and customs of the ealm of England: commonly called Glanvill* (ed.), G.D.G. Hall (London, 1965), pp. 175-176.

<sup>26</sup>*Statutes of the Realm* (London 1963), Statute of Westminster I.3.c.13. Pollock and Maitland have suggested that the reason for this reduction of penalties was the low prosecution level of rape under the common law. Without further research, attitudes to rape cannot be inferred from the degree of punishment laid down by statute. Pollock and Maitland, *History of English Law*, vol. II, pp. 490-1.

The Statute of Westminster II of 1285 advanced rape to the status of a felony, both in the case where a woman did not consent, and where she consented after the assault or abduction: 'It is provided that if a man from henceforth do ravish a woman, married, maid, lady, damosel, or other by force, although she consent after, he shall have such judgement as before is said'.<sup>27</sup> This statute established rape as a capital crime, a situation which continued unchanged until the mid nineteenth century.

The provisions of this statute of 1285 to control unauthorised sexuality were strengthened by a further statute of 1382, probably aimed primarily at elopements, which provided penalties for both husband and wife where the wife consented to marriage 'after such rape'. John Post plausibly argues that this act was passed in direct response to a celebrated case of elopement, that of Eleanor West with Nicholas Clifton, a landless younger son. This statute gave the nearest relative the right to sue, making it easier for families to act against their recalcitrant daughters, but does not seem to have been intended to strengthen the law against sexual assault.<sup>28</sup>

An act of 1576 removed benefit of clergy from offenders in rape and burglary, and stipulated that any act of intercourse with a girl under ten was punishable by death: 'For the repressing of the most wicked and felonious rapes or ravishment of women maids, wives and damsels and of felonious burglaries...[a convict]...shall suffer pains of death and forfeit as in the cases of felony hath been used and accustomed by the common laws of this realm without any allowance of...benefits of clergy'. This act was one of a series of post-Reformation statutes which removed benefit of clergy from serious crimes including murder and theft, and also seems to have been intended to clear up confusion over prosecution for intercourse with children, which will be discussed later in this chapter.<sup>29</sup>

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<sup>27</sup>*Statutes of the Realm*, Statute of Westminster II, c.34.

<sup>28</sup>*Statutes of the Realm*, 6 Richard II, c.1; John Post, 'Sir Thomas West', *passim*.

<sup>29</sup>*Statutes of the Realm*, 18 Elizabeth, c. 7.

By 1576 the essential principles of the law of rape were established, and there was to be no further change in the statute law in either the seventeenth or eighteenth centuries. The next statute covering rape was an act of 1820, which made penetration sufficient proof of rape, without the need to prove ejaculation as well. The same act made intercourse with a girl under twelve, with or without her consent, a misdemeanour punishable by imprisonment, while any such intercourse with a girl under ten remained a felony. In 1840 rape was removed from the list of capital crimes altogether.<sup>30</sup>

It is difficult to create any picture of changing attitudes to rape from the statute law alone. Sexual assault was always punished in law as a serious crime, but from the limited evidence which we have, was relatively rarely prosecuted whether penalties were higher or lower.

Rape was generally viewed by the jurists as an horrific crime against the person of the woman, which merited severe punishment. In 1538, Fitzherbert described rape as the third 'most great offence' after treason and murder, and clearly separated his treatment of sexual assault from his discussion of abduction.<sup>31</sup> Writing in 1628, Coke quoted the story of Lucrece and the biblical tales of Dinah and Tamar, and invited his readers to draw a lesson from the unpleasant fate of the offenders.<sup>32</sup> In a 1586 charge for the quarter sessions after Easter William Lambard called for his fellow countrymen not to 'be afraid to cut off treasons, murders, witchcrafts, rapes, and other felonies that be the highest and top boughs, as it were, of this tree of transgressions (which when we have done others will spring up and flourish in the

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<sup>30</sup>*Statutes of the Realm*, 1 Geo. IV, c. 4. For the nineteenth century law of rape, see Anna Clark, *Men's Silence, Women's Violence* (London, 1987), pp. 59-75.

<sup>31</sup>Anthony Fitzherbert, *The New Book of Justices of the Peace* (London 1538, reprinted Amsterdam 1969), fo. xix.

<sup>32</sup>Edward Coke, *The First Part of the Institutes of the Laws of England, or Coke on Littleton*, 3 vols (London, 1628, reprinted London, 1788), p. 60; *Laws Resolutions*, p. 378 also cites Lucrece in the discussion of rape.

place).<sup>33</sup> Sir Robert Chambers discussed rape as the most serious of his crimes 'of violence to the person not destructive of life'. In certain circumstances rape might even constitute treason, generally regarded as the most serious crime of all. Rape as treason was covered by legislation of Edward III which made it a felony against the king when 'violating his consort, or eldest unmarried daughter, or the wife of his eldest son'.<sup>34</sup> Shaw and Blackstone are among those writers who stated the general orthodoxy that a woman could kill a man who attempted to rape her, and her husband or father could also justify killing him during the attempt.<sup>35</sup> These sentiments are to some extent belied by the obsession of the same jurists with false accusations.

It is clear that seventeenth and eighteenth century legal texts treated rape with a unique concern about false accusation. Hay argues that eighteenth century legal writers tended to be relatively unconcerned about the possibilities of malicious prosecution, except in the case of rape, where the likelihood of false prosecution was axiomatic.<sup>36</sup> Very few successful cases are cited by early modern jurists, and almost all the texts include the customary warnings about the possibility of false accusation, and a list of circumstances which would undermine or strengthen the woman's case. Hale's dictum stressing sceptical treatment of rape was echoed in the work of later seventeenth and eighteenth century jurists, and Geis attempts to lay blame firmly at Hale's door for this scepticism. In an article influenced by the work of Susan Brownmiller, Geis stresses the originality of Hale's cautions and their enduring utility, attributing them to his misogyny. This seems over-stated, though Hale may well have been the victim of an adulterous wife.<sup>37</sup> Geis has extrapolated Hale's attitudes to

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<sup>33</sup>C. Read (ed.), *William Lambarde and Local Government: his 'Ephemeris' and Twenty-nine Charges to Juries and Commissions* (New York, 1962), p. 85.

<sup>34</sup>Sir Robert Chambers, *A course of lectures in the English Law, 1767-1773* (ed.), T.M. Curley (2 vols., Oxford, 1986), vol. I, p. 178; *Statutes of the Realm*, 25 Edw. III, st. 5 c. 2; Theodore Plucknett, *A Concise History of the Common Law* (London, 1940), p. 443; Michael Dalton, *Country Justice* (London, 1661), p. 284; Blackstone, *Commentaries*, vol. IV, p. 81.

<sup>35</sup>J. Shaw, *Practical Justice of Peace* (London, 1751), vol. I, p. 363; Blackstone, *Commentaries*, vol. IV, p. 181; Chambers, *A Course of Lectures*, vol. I, p. 399.

<sup>36</sup>Hay, 'Prosecution and Power', pp. 377-8.

<sup>37</sup>Alan Cromartie, *Sir Matthew Hale 1609-1676: Law, religion and natural philosophy* (Cambridge, 1995), p. 5; Geis, 'Lord Hale', *passim*.

women from his concern with prosecuting witchcraft, on the grounds that a hatred of women was the central element in witchcraft prosecutions.<sup>38</sup> Hale does seem to have been the first jurist who explicitly and systematically addressed the strong possibility of false accusation for rape, but conviction rates for rape were always low.<sup>39</sup> It may well be that Hale articulated a contemporary, though possibly strengthened, idea of false prosecution, but that the conception of rape as a difficult crime to prosecute was centuries old. Geis's portrayal of Hale as uniformly hard-line on questions of rape law is also inaccurate. Hale was less restrictive than many of his contemporaries on many legal issues that will be explored in the following pages, such as his unconventional claim that pregnancy does not prove consent.<sup>40</sup>

Because of the difficulty of proving the case, Hale stressed the need for immediate display of the injuries and pursuit of the offender. He advised speedy prosecution and stated that 'the party ravished may give evidence upon oath, and is in law a competent witness, but the credibility of her testimony, and how far forth she is to be believed, must be left to the jury, and is more or less credible according to the circumstances of fact, that concur in that testimony'. He suggested that the woman should only be believed if she was of good character, she showed her injuries promptly, if the offence had been committed in a remote place, and if the offender fled. Concealment of injuries, if the alleged location for the rape was a busy area, and if she had not shouted for help, 'these and the like are concurring evidences to give greater probability to her testimony, when proved by others as well as herself.' He finished his section on rape by citing two cases of false prosecution, claiming that a

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<sup>38</sup>Levack and others have stressed the need for a nuanced understanding of witchcraft prosecutions in the context of attitudes to women. Brian P. Levack, *The witch-hunt in early modern Europe* (London, 1987), pp. 123-130; Christina Lerner, *Witchcraft and Religion: the Politics of Popular Belief* (Oxford, 1984), pp. 62, 87; J. A. Sharpe, *Instruments of Darkness: witchcraft in England, 1550-1750* (London, 1996), pp. 169-189. See also below, pp. 139-142.

<sup>39</sup>Acquittals in the fourteenth century accounted for almost ninety per cent of all cases, higher than the acquittal rate for murder. B. Hanawalt, *Crime and Conflict in English in English Communities, 1300-1348*, (London, 1979), pp. 59-61.

<sup>40</sup>Hale, *Hist. Plac. Cor.*, vol. I, pp. 632-633; Geis, 'Lord Hale', *passim*.

charge of rape is easy to prosecute and hard to defend: 'some malicious people seeing how easy it was to make out such an accusation, and how difficult it was for the party accused to clear himself...wherein the parties accused with some difficulty escaped.' He warned that conviction was often over-hasty and 'due to 'the confident testimony, sometimes of malicious and false witnesses.'<sup>41</sup>

Succeeding jurists throughout the seventeenth and eighteenth centuries, including Burn and Blackstone, recited Hale, though some added their own extra criteria for disbelief. Burn introduced inaccuracy in the description of the place, or citing an impossible place, such as a room locked at the time. Barlow added that the woman should justify why she went to such a remote place. However, he warned that JPs 'are not to dismiss the accused in every case where upon the like proof they would acquit him were they on the jury: but upon all probable evidence, particularly a positive oath, are bound to put him to answer, and leave him to condemnation or acquittal by his country.'<sup>42</sup> Viner cited cases to show that a woman who wishes to claim rape was not believable if she did not exhibit animosity against the accused after the alleged assault. He added that 'a woman cannot be ravished by one man without some extraordinary circumstances of force'.<sup>43</sup> Chambers suggested that the credibility of a rape victim must always be low in accordance with the Marquis de Beccaria's maxim that: 'the credibility of a witness is the less as the atrociousness of the crime is the greater, from the improbability of its having been committed.' He then cited Hale's comments, and repeated one of his cases of alleged false accusation.<sup>44</sup>

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<sup>41</sup>Hale, *Hist. Plac. Cor.*, vol. I, pp. 633, 635 and 636. See also pp. 632-636.

<sup>42</sup>Hale, *Hist. Plac. Cor.*, vol. I, pp. 632-633; Richard Burn, *The Justice of the Peace and Parish Officer* (4 vols., London, 1755, reprinted London, 1785), IV, pp. 67-72; Blackstone, *Commentaries*, vol. IV, pp. 213-215; Theodore Barlow, *The Justice of the Peace* (London, 1728, reprinted London, 1745), pp. 453-454.

<sup>43</sup>Charles Viner, *A General Abridgement of Law and Equity* (London, 1741-53), vol. 18, p. 155; Jacob's *Law Dictionary* stresses that 'a woman's positive oath of a rape, without concurring circumstances, is seldom credited', and trots out the familiar discrediting circumstances. Giles Jacob, *Law Dictionary* (London, 1729), entry under 'Rape'.

<sup>44</sup>Chambers, *A Course of Lectures*, vol. II, p. 406.

The time taken to report the rape was perhaps the most important of these factors contributing to disbelief, and the *Lawes Resolutions* was unique in stressing that a woman could choose when to bring an appeal of rape, though even this writer added that a reasonable time must not be exceeded. Hawkins gave as 'a strong but not a conclusive presumption against a woman, that she made no complaint in a reasonable time after the fact.'<sup>45</sup> Shaw claimed that women ought to report within forty days, and preferably as soon as possible, because concealment implied consent, as did subsequent pregnancy. Hughes cited a case where a man successfully brought a suit for malicious prosecution of rape, on the grounds that the woman did not report in good time.<sup>46</sup>

The published trial pamphlets show how far actual trials reflected the issues raised by jurists. The majority of cases reported seem to have centred around the questions highlighted by the legal writers. Although the form of the pamphlets frequently makes it very difficult to reconstruct examination by counsel, pamphlets do provide some evidence of how the victims were questioned in court. Children seem to have been pressed quite hard on the question of understanding the oath, although the general style of reported questioning is rather more probing than aggressive. There are exceptions however, such as Susannah Mitchell, a ten year old who was asked 'Did not you consent to his using you in that manner?'<sup>47</sup> It is possible that this impression of reasonable questioning is a misleading one, resulting from the selective paraphrasing of questioning which is used by pamphleteers. The victims in these pamphlets found it difficult to enunciate the physical details of the rape, and so were often admonished or coaxed in varying tones to speak plainly in court. For example, Sarah Pendleham was enjoined to 'speak out, my dear, that those gentlemen may hear

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<sup>45</sup>*Lawes Resolutions*, p. 393; Hawkins, *Pleas*, bk. I, p. 108.

<sup>46</sup>Shaw, *Practical Justice*, p. 363; W. Hughes, *Grand Abridgement of the Law* (London, 1662), p.1615. Most other legal writers lay heavy stress on the importance of timely reporting of an accusation of rape. These include Barlow, *Justice*, p. 453; *Jacob's Law Dictionary*, entry for rape; Burn, *Justice*, IV, p.68; *Viner's*, vol. 18, p. 154; Blackstone, *Commentaries*, vol. IV, pp. 214-215.

<sup>47</sup>*Select Trials 1720-1724* (2 vols., London, 1734), vol. I, p. 280.

you'. In one pamphlet, albeit produced by the alleged offender, we can see that child victims might be treated with consideration by the court. Mr Savill complained that the six year old plaintiff was treated too well, both when she made her initial complaint against him and in court itself. He was scandalised that he was not permitted to cross-question her concerning her initial statement, and that in court she was 'nicely cuddled and soothed over, upon the table in court, by Mr Shipdem, town clerk, and something was put into her hand to please her, and Mr Shipdem answered the words to the court for the child, as Mr Harvey cleverly and ingeniously drew them from her; and she was not permitted to face Savill the whole of the time that Mr Harvey was examining her, as she could not look at him without crying, well knowing that she had been taught by her mother to say what was not true'.<sup>48</sup>

In the *British Trials* series of pamphlets, seven out of the twenty-five trial pamphlets reporting rape cases contain character evidence for the woman. At the Middlesex Sessions in 1739, Sarah Main claimed to have been raped by seven men while she 'screamed out and the fiddler play'd all the time', but she lost the case after a witness testified that 'people give the girl a bad character'.<sup>49</sup> It seems likely that this material was discussed in more trials than the third of the trial reports which feature such evidence would suggest. Possibly, this was just the type of material that the pamphleteer might cut in favour of the salacious details of the alleged assault. A similar proportion of pamphlets contain character evidence for the alleged perpetrator, despite the fact that Hale and the other jurists paid no attention to the relevance of the perpetrator's character in their texts. The only criteria for belief relating to the perpetrator was that he was to be suspected if he fled. The disbelief of rape claims was strong, and the disputed territory of veracity was the character, resistance and reporting of the alleged victim.<sup>50</sup>

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<sup>48</sup>*British Trials 1600-1900, The Microfiche Edition*, units 1-3 (Cambridge, 1993), 268a/XLVI; *Select Trials 1720-1724*, vol. II, p. 381; *The Trial of Mr Savill* (London, 1800), passim.

<sup>49</sup>*British Trials*, 905(b) XXXIII.

<sup>50</sup>Hale, *Hist. Plac. Cor.*, vol. I, pp. 632-633.



The majority of the pamphlets contained the woman's description of crying out and struggling, and in almost all cases the time taken to report was given. Virginity was mentioned slightly more frequently in the pamphlets than in the assize depositions, but it was still extremely rarely mentioned, re-inforcing the impression that virginity is not a particularly vital issue in attitudes to rape. The unanimity in the legal texts on the grounds for scepticism in rape trials seems to have extended to the court trial itself.<sup>51</sup>

A complex exploration of sexual assault was not achieved by the jurists, who tended to frame their work in the assumption that rape prosecutions were often malicious. The jurists confined themselves to outlining the development of the law and its current state as they understood it, and outlined grounds for disbelief, rarely citing convicted cases. If any motivation was suggested, an aetiology of lust was promoted, as in this comment by the anonymous author of *A Lawes Resolutions of Women's Rights* that rape is: 'a hideous hatefull kinde of whoredome in him which committeth it.' Rape is held as worse than abduction by this writer: 'a more detestable villany I thinke...of him which being himselfe overcome with concupiscence, overcommeth a woman hand to hand, by length of breath and strength of his owne sinewes.' In this unique exploration in a legal text of the perceived reality of sexual assault, women are blamed for their 'sensuality, whereby some men have been imboldened to offer force, because they thought it was expected.' This striking phrase hints at an acceptance that sexual violence might be located within courting relationships, and result from sexual signalling on the part of the woman, possibilities that will be taken up in the following two chapters.<sup>52</sup>

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<sup>51</sup>Hale, *Hist. Plac. Cor.*, vol. I, pp. 632-633.

<sup>52</sup>*Lawes Resolutions*, pp. 377, 383, 390, 396-7.

Some issues were not as hotly disputed as others. Few jurists explicitly addressed the question of the age of the perpetrator, but those who did agreed that a boy under the age of fourteen was presumed physically incapable of committing a rape. He might be prosecuted as a principal in the second degree if he were over seven and had 'a mischievous discretion' and so knew the difference between good and evil.<sup>53</sup>

Despite the general agreement on the principles of rape law, on certain key questions jurists were in confusion. Legal texts were not even in complete agreement about who could be raped, except for the axiom that a married woman could not prosecute her husband as principal in the first degree. In the seventeenth century Hale wrote 'the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given herself up in this kind unto her husband which she cannot retract.' The wife could not prosecute her husband for forced intercourse against her will, because the marriage debt constituted a permanent contract of consent. Only if she had not consented to the marriage itself, could she then prosecute her putative husband for rape.<sup>54</sup> There were legal remedies available to a woman suffering sexual cruelty from her husband, but these were difficult to achieve in practice. A woman assaulted by her husband might be able to achieve a separation *a mensa et thoro* in the ecclesiastical courts on the grounds of cruelty, but forced intercourse was not a separate ground for separation in the ecclesiastical law. Another avenue was for a woman to demand the peace against her husband, but she could do so only if 'she be threatened to be killed or outrageously chastised' by him.<sup>55</sup>

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<sup>53</sup>See for example Hale, *Hist. Plac. Cor.*, vol. I, p. 730; Blackstone, *Commentaries*, vol. IV, pp. 23, 212.

<sup>54</sup>Hale, *Hist. Plac. Cor.*, vol. I, p. 629; Barlow, *Justice*, p. 453; W. Lambard, *Eirenarcha, or Of the Office of the Justices of Peace* (London, 1581, London, 1610), pp. 86-88.

<sup>55</sup>Lawrence Stone, *Uncertain Unions & Broken Lives* (Oxford, 1995), p. 44-45.

Lord Castlehaven's case of 1630 created the precedent that a husband might be tried for the felony of rape if he assisted another man to rape his wife, because in rape the accessories were also to be tried as felons, and 'though in marriage she hath given up her body to her husband, she is not to be by him prostituted to another.'<sup>56</sup> The case also established that a wife could testify against her husband in a criminal case on indictment. This created the paradox that a wife could not sue her husband for rape if he physically penetrated her, but only if he assisted another man to force her.<sup>57</sup>

A married woman, sexually assaulted by a man other than her husband, was permitted by law to prosecute him, and in statute this was clearly separate from adultery. The jurists also treated rape of a married woman separately from the crime of adultery, and Coke stated in his section on rape the maxim that 'two may do and yet only one commit adultery'.<sup>58</sup> Interestingly, some canonists held that the rape of a married woman should be considered to be more serious than rape of an unmarried girl, because two sins compounded the offence, though rape was more serious than adultery.<sup>59</sup>

Most jurists, following Bracton, claimed that a woman could not prosecute a man who had been her sexual partner for rape: 'it was anciently said to be no rape to force a man's own concubine'. Despite the consensus, there were dissenting voices among the jurists throughout our period. Hale interpreted Bracton's exception as suggesting that 'because that unlawful cohabitation carried a presumption in law, that it was not against her will.' He stated that Bracton's rule no longer held 'for the woman may forsake that unlawful course of life.' Despite this, Jacob's *Law*

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<sup>56</sup>Accessories tried as principals in rape, see Hawkins, *Pleas*, p. 311; S. Blackerby, *First Part of the Justice of Peace, his companion, begun by S Blackerby, continued by N. Blackerby* (London, 1734), p. 314; *Jacob's*, entry under rape; Barlow, *The Justice*, p. 453. For an account of the Castlehaven trial see Cynthia Herrup, 'The Patriarch at Home: The Trial of The 2nd Earl of Castlehaven for Rape and Sodomy', *History Workshop Journal*, 41 (1996), 1-18.

<sup>57</sup>For the Castlehaven case as precedent, see Blackerby, *First Part of the Justice of Peace*, p. 132; Barlow, *The Justice*, p. 453; Dalton, *Country Justice*, p. 366.

<sup>58</sup>Coke, *Institutes*, p. 60.

<sup>59</sup>Brundage, *Sex, Law and Marriage*, p. 66.

*Dictionary* of 1729 repeated Bracton, and Viner stated that this was a good plea for the defence, while recognising Hale's opinion to the contrary. Blackstone, writing in the eighteenth century, rejected these opinions and followed Hale in the claim that a concubine can be raped because she may have reformed.<sup>60</sup>

There was more general agreement about the assault of a prostitute, who could in law be raped, if she was not prostituting herself at the moment when she was assaulted. Here too there was dissension among some commentators, and though Jacob stated 'she is still under the protection of the law, and may be forced', he added that some accepted the accusation that a woman was 'common whore' as evidence of consent. Viner informed his readers that a woman could only prosecute for rape if she was no longer working as a prostitute at the time of the alleged assault. These legal discussions of the possibility of prosecution by prostitutes and mistresses shows how strongly the jurists believed evidence of past sexual misconduct was a likely indication of consent.<sup>61</sup>

A particularly vexed issue in the legal texts throughout our period, is the question of the relevance of conception in an accusation of rape. Henry Finch stated that 'she cannot conceive unless she consent', and Viner, writing in the eighteenth century agreed.<sup>62</sup> The general consensus of the legal writers was that conception was a bar to prosecution, because it necessarily implied consent, but there were the inevitable exceptions.<sup>63</sup> Hale had written that intercourse was rape where the woman

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<sup>60</sup>Amongst those who stated the orthodoxy that a mistress could not prosecute her lover were Hawking, *Pleas*, bk. I, p. 108; *Laws Resolution*, p. 396; Michael Dalton, *The Complete Justice* (London, 1661), p. 238; Dalton, *Country Justice*, p. 351; Lambard, *Eirenarcha*, pp. 257-8. But see also Hale, *Hist. Plac. Cor.*, vol. I, p. 269; *Jacob's*, entry under Rape; *Viner's*, vol. 18, p. 154; Blackstone, *Commentaries*, vol. IV, p. 213.

<sup>61</sup>There is general agreement in Dalton, *Complete Justice*, p. 238; Dalton, *Country Justice*, p. 351; Hawkins, *Pleas*, bk. I, p. 108; Burn, *Justice*, IV, p.68; Barlow, *Justice*, p. 453; Lambard, *Eirenarcha*, p. 257. But see also *Jacob's*, entry for Rape and *Viner's*, vol. 18, p. 154.

<sup>62</sup>Henry Finch, *Law in Four Books* (London, 1613, reprinted London, 1661), p. 204; *Viner's*, vol. 18, p. 154.

<sup>63</sup>Other writers who agreed that rape could not result in pregnancy were Dalton, *Complete Justice*, p. 238; Dalton, *Country Justice*, p. 351; Lambard, *Eirenarcha*, p. 257; Shepherd, *Abridgement*, p. 131. See also below, pp. 127-8.

consented under threat of death, and therefore pregnancy could be no proof of consent. Most of the jurists conceded that intercourse forced upon fear of death, or duress was still to be considered rape: 'for that consent ought to be voluntary and free'.<sup>64</sup> Hawkins argued against the notion that force followed by pregnancy cannot be rape, because previous violence cannot be extenuated by subsequent consent, and because trials would have to be delayed to see if the woman were pregnant, and also on the grounds that 'the philosophy of this notion may very well be doubted of'.<sup>65</sup> The anonymous author of the *Lawes Resolutions* related how a woman alleging rape, who gave birth to a son, was asked how she could claim that she had not consented. She replied that 'her flesh consented to him, but her soule and conscience did ever abhorre him.' The same situation, and possibly the same case, is reported in *Readings and Moots at the Inns of Court*. The maxim that pregnancy proves consent is stated, but the text continues with the claims of Lady Butler in the reign of Edward IV, 'that although the body consents nevertheless the mind does not; to which the justice said that their authority extended only to the body and not of the mind.' This suggestive case raises more questions than it answers about legal understandings of conception and rape, which were somewhat blurred in the texts of the jurists.<sup>66</sup>

There seems to have been a general, if not complete, agreement with Coke's assertion in his *Institutes*, first published in 1628, of the need for proof of penetration and emission in rape cases. He argued that emission was prima facie evidence of penetration, and this was established as a precedent by Lord Castlehaven's case of 1630.<sup>67</sup> Hale stated in his *Historia Placitorum Coronae* that emission was not essential, because it was penetration that made the rape, but few later legal writers

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<sup>64</sup>Hale, *Hist. Plac. Cor.*, vol. I, p. 731.

<sup>65</sup>Hawkins, *Pleas*, bk. I, p. 108.

<sup>66</sup>*Lawes Resolutions*, p. 400; *Readings and Moots at the Inns of Court* (London, 1989), vol. II, p. 275. Among the jurists who recited Hale on the point that rape through duress still constituted rape are Dalton, *Country Justice*, p. 351; Dalton, *Compleat Justice*, p. 238; Burn, *Justice*, IV, p. 68; Shaw, *Practical Justice*, p. 363; Barlow, *Justice*, p. 453; *Jacob's*, entry under Rape.

<sup>67</sup>Coke, *Institutes*, p. 60. For an account of the Castlehaven trial see Herrup, 'The Patriarch at Home', *passim*.

seem to have picked up his point.<sup>68</sup> The trial pamphlets suggest that proof of ejaculation was probably at issue in most rape trials. Evidence regarding ejaculation was cited in a fifth of the cases in the *British Trials* pamphlets, and such evidence was probably heard in more cases but subject to censorship by many later eighteenth century pamphleteers who curtailed the sexually explicit sections of the trial report with dots, dashes or phrases pleading restrictions of decency.<sup>69</sup>

There was widespread confusion over whether rape was a felony 'newly created', which led to uncertainty over whether breaking into a house with intent to rape could be burglary. The act of breaking in could only be a felony if the intention behind entering was to commit an offence which had been a common law felony. Dalton stated that because Bracton and Glanvill showed rape to have been such a felony in common law, so breaking into a house with the intention of committing a rape constituted the felony of burglary.<sup>70</sup> Many of the legal writers were not as sure of their common law as Dalton. Lambard saw a doubt 'if the intent were to perpetrate a rape, (which was no felony, at the common law...)'. Writing in the eighteenth century, Blackstone agreed with Dalton, but for the reason that the 'statute which makes an offence felony, gives it incidentally all the properties of a felony at common law.'<sup>71</sup> In the surrounding confusion at least one case of attempted rape as the felony of burglary was prosecuted. In Gray's case, tried in 1721, breaking and entering a woman's chamber with intent to commit a rape was ruled as felony, and the defendant was convicted and transported.<sup>72</sup>

Legal writers were sceptical about rape accusations in general, and amid the confusion about the law of rape, the consensus among the legal writers was a fairly

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<sup>68</sup>Hale, *Hist. Plac. Cor.*, vol. I, p. 628. Among other writers who agreed with Coke were Barlow, *Justice*, p. 453; *Jacob's*, entry under Rape; *Viner's*, vol. 18, p. 153; Sheppard, *Abridgement*, p. 131; <sup>69</sup>*British Trials*, passim.

<sup>70</sup>Dalton, *Country Justice*, p. 319.

<sup>71</sup>Lambard, *Eirenarcha*, p. 264; Blackstone, *Commentaries*, vol. IV, pp. 227-8.

<sup>72</sup>*Rex v. Gray*, *English Reports* (Edinburgh, 1909), vol. 93, p. 648. The Gray case is discussed through the trial pamphlets and correspondence in pp. 134-137 below.

restricted view as to what constituted the fact. Even where jurists were most certain as to the desirability of punishing sexual violence, in the case of the rape of children, confusion over what constituted consent, and evidential concerns kept levels of prosecutions low. The following section will chart the origins of a law of 'statutory rape' through an examination of the statute law, legal texts and the procedural content of the trial pamphlets.

### **A law of 'statutory rape'?<sup>73</sup>**

The sexual assault of children was dealt with in the law-codes of Alfred, written in the late ninth century. Unusually for Anglo-Saxon law, which normally stipulated lower penalties for crimes against children, forcible intercourse with a child 'within age' was to merit the same compensation as the rape of an adult of equivalent rank. Rape of a child was evidently viewed as an extremely serious infraction.<sup>74</sup>

The common law punished the rape of a virgin particularly seriously, so in this way the rape of children and younger women was treated more seriously in common law than the rape of an adult.<sup>75</sup>

The first Statute of Westminster included under the heading of rape any intercourse with a girl below the age of consent, which was twelve. Although the second Statute of Westminster upgraded rape to the status of a felony, the act did not explicitly detail provisions relating to girls under twelve. Sexual intercourse *with* the consent of a girl under twelve was not addressed by Westminster II and clearly remained a misdemeanour only. Mortimer Levine has raised questions as to the effect of Westminster II on provisions for the sexual assault of girls under twelve, but it

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<sup>73</sup>See below, pp. 66-7, 98-100 for a discussion of the number of children reporting sexual assault.

<sup>74</sup>Coleman, 'Rape in Anglo-Saxon England', p. 5.

<sup>75</sup>Henry de Bracton, *Bracton on the Laws and Customs of England: Bracton De Legibus et Consuetudinibus Angliae* (ed.) Samuel E. Thorne (4 vols., Cambridge, Mass., 1968), vol. II, pp. 414-5.

seems most likely that contemporaries accepted that the provisions of the act extended to cover the rape without consent of girls below the age of twelve as a felony.<sup>76</sup>

Only a minority of seventeenth and eighteenth rape cases were prosecuted by under-age girls, but it does seem to have been accepted that girls under the age of consent could prosecute for rape as a felony. In a case heard in Middlesex in the mid sixteenth century, John Bearmond pleaded guilty and was permitted his benefit of clergy for the felonious rape of Anne Sellet, an infant of six years old.<sup>77</sup>

Fitzherbert dealt with all women together in his 1538 *New Book of Justices of the Peace*, where he defined rape for the J.P.: 'which is to ravish a woman against her will & therefore ye shall enquire of them that ravish any woman married, maid or other woman where she did not assent before, for though she consent after the act done, yet it is felony'. As this passage suggests, girls below the age of twelve were able to prosecute for the felony of rape under the provisions of Westminster II, but the statute had created an anomaly. A young girl prosecuting for rape had to be able to prove that the intercourse was against her consent, though she was below the age where the law deemed her capable of giving it.<sup>78</sup>

In 1576 an act was passed 'to take away clergy from the offenders in rape and burglary', which stated as its aim 'the repressing of the most wicked and felonious rapes or ravishments of women, maids, wives and damosels'. The similarity of the wording of this statute to that of Westminster II is telling, because this act of 1576 was certainly intended to cover girls within age in its provisions for forced intercourse. The 1576 act stated that: 'for plain declaration of law, be it enacted, that

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<sup>76</sup>*Statutes of the Realm*, Statute of Westminster, I.3.c.13; *Statutes of the Realm*, Statute of Westminster II, c.34; J.B. Post, 'Ravishment of Women', p. 160; Levine, 'More than Ordinary', passim; *Statutes of the Realm*, Westminster II, c.34; Hanawalt, *Crime and Conflict*, p. 104; J. M. Carter, *Rape in Medieval England: An Historical and Sociological Study* (London 1985), p. 40.

<sup>77</sup>J. C. Jeaffreson (ed.), *Middlesex County Records* (Clerkenwell, 1936), vol. I, p. 55.

<sup>78</sup>Anthony Fitzherbert, *The New Book of Justices of the Peace* (London 1538, reprinted Amsterdam 1969), fo. 86. See also Hale, *Hist. Plac. Cor.*, vol. I, p. 627.



if any person shall unlawfully and carnally know and abuse any woman child under the age of ten years every such unlawful and carnall knowledge shall be felony, and the offender thereof being duly convicted shall suffer as a felon without allowance of clergy.' Prosecution for the rape of an under age child had been beset with confusion before 1576, due to concerns over the age at which children could legally withhold their consent or give evidence in court, and some confusion over the physical possibility of the assault of very young girls. These difficult issues were articulated in the 1561 case of W.D., reported by Sir James Dyer, which will be closely read in this chapter as a case study of the legal confusion surrounding rape prosecutions for acts committed on girls under twelve.<sup>79</sup> The legislation of 1576 seems to have been passed to clarify the law relating to the prosecution of rape by under age girls, making any act of intercourse with a girl under ten a felony irrespective of consent. Unfortunately, some confusion persisted, and concerns about the testimony of such young children remained prominent.<sup>80</sup>

'W.D.', a Scotsman, was tried in Queen's Bench in the Michaelmas term of 1561, for the felonious rape of Christine Launde, a seven year-old girl. It is clear that this was a complicated case, which involved two points of law, the first that of the privilege of trial *per medietatem linguae* (by a jury made up half of English jurors and half of Scottish jurors), and the second the question of the rape itself.<sup>81</sup> The record stated that, 'it was presented that...James Dyckson...with force and arms etc. assaulted a certain Christine Launde...then and there being in the peace of God and of the said lady queen, and then and there violently and feloniously raped her the said

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<sup>79</sup>*Statutes of the Realm*, Statute of Westminster, I.3.c.13; *Statutes of the Realm*, Statute of Westminster II, c.34; J.B. Post, 'Ravishment of Women', p. 160; J. H. Baker (ed.), *Reports From the Lost Notebooks of Sir James Dyer* (2 vols., London, 1994), vol. I, pp. 65-6.

<sup>80</sup>*Statutes of the Realm*, 18 Elizabeth, c. 6.

<sup>81</sup>Levine, 'More than Ordinary', *passim*. The accused claimed this privilege of having half the jurors be Scottish, but was refused by the court on the grounds that a Scot was not an alien, the language was English, and that he had already ceded the privilege by requesting it after some members of the common jury had been sworn. Levine suggested that this refusal was connected with the current political climate of the aftermath of the Ridolfi plot, and the need to establish jurisdiction over Mary Queen of Scots to try her for treason. Obviously the chronology makes this unlikely, but the case may still have a political relevance. Unfortunately, such extensive work is beyond the scope of this study.

Christine against her will, and then and there carnally knew her, against the peace of the said lady queen, her crown and dignity etc.' Dyer reported that, 'he was found guilty by the jurors, who were women matrons; and the court doubted of it, since the female was of such tender age, but if she had been nine or more it would have been otherwise.' The short record of this unsuccessful rape case and Dyer's cryptic sentences, is the evidence on which Levine bases his article on the case of W.D.<sup>82</sup>

Mortimer Levine has made great claims for the importance of the case of W.D. in his article, 'A More than Ordinary Act of Rape, 13 and 14 Elizabeth I'. Levine argues that this case had led directly to the change in rape legislation of 1576. Levine's claims hinged on a mistaken chronology of the case, which was misdated as Michaelmas 1571 in *Dyer's Reports*, citing W.D. only five years before the act of Elizabeth.<sup>83</sup> The case has recently been conclusively redated to 1561 in a new edition of *Dyer's Reports* based on contemporary manuscripts, published by J.H. Baker after Levine wrote his article. The redating of W.D. puts the case fifteen years earlier than the act, weakening Levine's claim that the case led directly to the change in the law. It may well be that W.D. was to some extent instrumental in changing the law; Coke stated that the case caused the 1576 act to be made, and this claim was also made by Lambard and the link is implied by many of the other writers.<sup>84</sup> However, there were probably also other influences on the legislation. In Newgate in 1573 a man was tried for the alleged rape of a ten year old girl, and Fletewode, recorder of London, was reported to have pledged that in the next parliament he would draw up a bill to remove benefit of clergy for rape. This bill may have become the act of 1576.<sup>85</sup>

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<sup>82</sup>*Dyer's Reports* (London, 1688), p. 304. In Baker (ed.), *Reports From the Lost Notebooks of Sir James Dyer*, vol. I, pp. 65-6, the 'Translation of the record' puts her at six.

<sup>83</sup>Levine, 'More than Ordinary', *passim*.

<sup>84</sup>Coke, *Institutes*, p. 61; Other texts which shared Coke's view include Lambard, *Eirenarcha*, pp. 256-258; *Laws Resolutions*, p. 401; W. Hawkins, *Pleas of the Crown*, bk. I, p. 108; Jacob's *Law Dictionary*, entry under rape; Viner, *General Abridgement*, vol. II, pp. 534-536.

<sup>85</sup>Baker, (ed.), *Reports From the Lost Notebooks of Sir James Dyer*, editor's note, vol. I, p. 66.

The case of W.D. provides an interesting opportunity to examine the thinking of the judges in a case of child rape, and in particular the seemingly mysterious view of Dyer that matters would have been different had Launde been nine years old. Levine concludes that the justices would have been comfortable prosecuting the rape of a nine year old under Westminster II, having 'misread' the act. He suggests that the justices may have believed rape could not take place 'unless procreation was possible' as a result.<sup>86</sup> These arguments seem inherently unlikely. It would be surprising that the justices would think in these terms (and surely worthy of explicit comment). Instead, it is much more probable that the justices doubted that a child as young as seven was legally capable of withholding her consent, and had an allied concern as to whether it was physically possible for a man to penetrate such a small girl.<sup>87</sup>

In Hughes' *Grand Abridgement*, published 1660-63, Dyer's report of the trial is cited with the caveat that it would have been different had she been nine, for then 'she might be endowed'.<sup>88</sup> Charles Viner and Giles Jacob, writing in the eighteenth century, also stated dower as the reason why the judges would not have doubted that W.D. could rape a *nine-year old* girl. Jacob's *Law Dictionary* stated that despite the stipulation of the age of twelve for marital consent in canon law: 'If a woman be of the age of nine years, at the death of her husband, she shall be endowed, of whatsoever age he is, because after the death of the husband, the marriage is adjudged lawful'. At first sight it is baffling to see dower appearing in a judgement on rape, but the age of nine seems to have been set due to legal reasoning closely connected with the legal issues of a trial for rape of an underage child.<sup>89</sup>

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<sup>86</sup>Levine, 'More than Ordinary', *passim*.

<sup>87</sup>The treatment of pregnancy in the legal texts is discussed below, pp. 38-39.

<sup>88</sup>Hughes, *Grand Abridgement*, pp. 1614-1615. See Bridget Hill., *Women, Work, and Sexual Politics in Eighteenth Century England* (Oxford, 1989), pp. 248-9, 'A widow by common law was entitled to dower. It was normally a third of her husband's estate.'

<sup>89</sup>Viner, *General Abridgement*; Jacob's, entry under 'Dower'.

Swinburne stated in his *Treatise of Spousals*, that spousals of marriage contracted by a child under seven, or by parents on her behalf, were legally null and void because infants lacked the ability to judge on these matters. Infants under the age of seven may be 'fitly compared to them which are asleep...who albeit they speak many things, or do something in their sleep, yet do they not perceive what they say or do, nor sleeping yield their consent thereto'. He questioned the validity which some writers had claimed for a young man of full age marrying an infant, and having intercourse with her before the age of seven. He concluded that 'this marriage is not good for say that the infant was known carnally, (which thing is no less incredible to be spoken than horrible to be heard) yet the infant not having discretion to understand what is the nature of matrimony cannot give her consent to that whereof she is ignorant and consequently the marriage cannot be good: For it is a clear case, that without consent there cannot be any matrimony.'<sup>90</sup>

Having outlined the status of infant spousals, Swinburne turned to the possibility of valid contract of marriage by children, where he felt that the matters for consideration were the understanding of the parties, but also 'the natural ability of their bodies as a thing very necessary in that behalf.' Children who had contracted marriage might dissent when they reached majority, unless they had sexual intercourse, or were near full age and understood their oath spoken in words of present tense, where their marriage was then indissoluble: 'Albeit the man and woman have not as yet accomplished his or her full age of fourteen years and twelve...he of the age of ten years and an half, and she of the age of nine years and an half, or upwards...if during this time...having discretion of mind and ability of body to conceive (the effect of marriage) and to pay the debt thereunto belonging, the marriage is lawful and effectual. And the laws of our realm say that the wife which is of the age of nine years at her husband's death, shall be endowed of the third part of

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<sup>90</sup>Henry Swinburne, *A Treatise of Spousals* (London, 1686), pp. 20, 24, 26, 28, 46-51 and 53.

his lands and tenements.<sup>91</sup> Swinburne defined the physical criterion of marriage as the ability to bear children, and cited cases of conception by a nine year old girl, and copulation by an eight-year old.<sup>92</sup>

These comments on marriage illuminate the central issues at stake in the case of W.D. A child of nine might have the discretion and understanding to give her consent, and therefore to withhold it, where a seven year old did not. Whereas an advanced child of nine might be physically able to engage in sexual intercourse, and even conceive a child, Swinburne considered it unlikely, and indeed revolting, that a child of seven could have intercourse, and believed that she would not be sufficiently physically mature to bear children. The intellectual and physical capabilities of the nine year-old girl were recognised in the proviso that she might retain dower if her husband died, albeit that the marriage could be considered 'inchoate and imperfect', as Coke outlined.<sup>93</sup>

Dyer reported that W.D. was found guilty by the jury of matrons which examined Launde, but the record stated that their verdict was doubted, and the words of Swinburne raise this allied issue of the relative physical impossibility of penetration of so young a child. A case tried at the Hertfordshire eyre of 1287 for the alleged rape of a girl under twelve provoked these comments: 'Hugo was not able to rape the said Agnes since she was a virgin of seven years of age at the time. For that reason he could not penetrate her.' This doubt is not articulated in the contemporary commentary on W.D., but may well have contributed to the judges' unwillingness to

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<sup>91</sup>Swinburne, *A Treatise of Spousals*, pp. 20, 24, 26, 28, 46-51 and 53; R. H. Helmholz, *Marriage Litigation in Medieval England* (Cambridge, 1974), p. 98. Helmholz confirms this as a general understanding that a girl still in her minority might be physically mature enough to be allowed to make a valid marriage.

<sup>92</sup>Swinburne, *A Treatise of Spousals*, pp. 20, 24, 26, 28, 46-51 and 53.

<sup>93</sup>Swinburne, *A Treatise of Spousals*, pp. 20, 24, 26, 28, 46-51 and 53; Edward Coke, *The First Part of the Institutes of the Laws of England, or Coke on Littleton* (3 vols, London, 1628, reprinted London, 1788), p. 33; Levine, 'More than Ordinary', p. 163.

convict for the rape of a child under nine whom they saw as unlikely to be physically capable of coitus.<sup>94</sup>

Connected to the concern that a seven year old did not have sufficient discretion to withhold consent, was the further issue of the child's competence as a witness, which may also have affected W.D.'s case. The generally accepted threshold for child witnesses swearing an oath in the seventeenth and eighteenth centuries seems to have been nine, as will be discussed later in the chapter. This seems unlikely to be coincidental, and may well have been an added reason for the reluctance of the judges to convict W.D. for the rape of Christine Launde.<sup>95</sup>

The legislation of 1576 enshrined in law the possibility of penetration of young girls and made the question of the consent of girls under ten irrelevant. After 1576 it was also no longer possible for convicted rapists to be permitted benefit of clergy, but unfortunately, doubt about criminal prosecutions for rape involving young girls seems to have persisted. There was still confusion about the status of consensual intercourse with a girl over ten and under twelve, and some occasional vestiges of confusion continued to surround the issue of the physical penetration of very young girls. Concern about the testimony of such young children also remained strong.

The act of 1576 had left a logical problem. Westminster I made intercourse with a girl under the common law age of consent of twelve a trespass, but Elizabeth's act had enshrined the lower age of ten as the age of consent for the felony. This change in the law was in keeping with the conception of the age of sexual maturity, attitudes to child witnesses, and ability to understand the marriage contract. However, later legal texts such as Coke's *Institutes* do not state a remedy for intercourse with a twelve year old with her consent, which could still have been prosecuted as the

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<sup>94</sup>Carter, *Rape in Medieval England*, pp. 147-148 and 150, note 16. See also *British Trials*, 501/XII.

<sup>95</sup>See below, pp. 51-53.

misdemeanour under Westminster I.<sup>96</sup> No jurist seems to have noted this, though Hale, writing in the seventeenth century, departed from the orthodoxy by saying that intercourse with a twelve year old was rape and felony, even if she consented, as the age of consent is twelve, and because this was the age of consent meant in Westminster I.<sup>97</sup> Only Blackstone, writing in the later eighteenth century, picked up on Hale's assertion, and countered it, stating that this part of the law had generally been held to apply only to infants under ten.<sup>98</sup> This trend can be seen in the limited case law. In *Lad's Case*, 1773, it was alleged that William Lad had murdered Frances Peed, a nine-year old girl, who had died as the result of injuries she received when he raped her. According to the definition of murder in the *Country Justice*, published in 1661, death caused by rape came under the provisions for murder: 'if a man intend to do any unlawful act, and in doing thereof another hurt ensueth not intended, but by chance, clean beyond all expectations or desire, yea shall he be said the author of that act not intended (and so happening by chance) that did intend the first act.' In the case of Frances Peed some of the judges felt that the indictment should have stated that she was aged under ten, for had she been over ten her death could not legally constitute murder if she had consented to the intercourse that caused it. In clarifying the law by stating that intercourse with girls under the age of ten was covered in the rape legislation, the act of Elizabeth had removed protection from girls over ten and under twelve, if intercourse took place with their consent. In the eighteenth century prosecutions were extremely rare for intercourse with the consent of girls under twelve but over ten, which were technically possible in accordance with the provisions of the first statute of Westminster.<sup>99</sup> This reduction of the age of consent had created a conflict with the legislation on ravishment which provided that an under-age girl

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<sup>96</sup>Levine, 'More Than Ordinary', p. 164; Coke, *Institutes*, p. 60.

<sup>97</sup>Hale, *Hist. Plac. Cor.*, vol I, p. 628.

<sup>98</sup>Blackstone, *Commentaries*, vol. IV, p. 212.

<sup>99</sup>King v. Lad, *English Reports*, vol. 168, p. 150; Dalton, *Country Justice*, p. 303. Many other legal writers, including Burn, simply stated the statute law. Burn, *Justice*, IV, pp. 67-72. Prosecutions were extremely rarely brought on behalf of girls over ten and under twelve for the misdemeanour where the intercourse had been consensual. Simpson, 'Vulnerability and the age of female consent', p. 186.

who consented after her abduction would not lose her lands. Hawkins commented that it was an established point that 'the consent of a woman of that age is looked upon as given by one incapable of discretion, and therefore is not regarded by the Law'.<sup>100</sup>

Statute had clearly enacted legal recognition of rape as an act which could be committed against even the youngest children. This change in the statute law was generally accepted by contemporary jurists, none of whom expressed explicit doubt about the physical possibility of rape of a very young child. Despite this, several legal writers paid lip-service to the legislation, but then proceeded to undermine it by citing cases where the rape prosecutions floundered because the court decided that no penetration had taken place. Shaw mentioned the doubt created in the case of W.D. about the rape of a child of seven, but that if she had been nine there would have been no such doubt. He stated the orthodoxy that intercourse with a child under ten was against the law whether she consented or not, but then implied the possibility of physical doubt. He bolstered this by citing a case from the time of Charles I, where the defendant was acquitted of intercourse with a ten year old 'because it was not proved he entered the Body of the child.' The defendant, Martin Page, was then indicted for the lesser charge of battery, fined, and placed in the stocks.<sup>101</sup> In a trial pamphlet case involving Elizabeth Hopkins, aged eight, an apothecary on the jury refused to convict, on the grounds that such a young child could not be raped. The judge sent the jury back with the instruction that they must find the prisoner guilty, which they eventually did. It is worth noting that no deposition in the Ely or Northern Circuit assize depositions alleged the rape of a girl under nine, and only one girl under the age of nine alleged an attempted rape.<sup>102</sup>

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<sup>100</sup>W. Hawkins, *Pleas of the Crown*, bk. II, p. 174.

<sup>101</sup>J. Shaw, *Practical Justice*, pp. 362-3.

<sup>102</sup>*British Trials*, 501/XII. Though see below, pp. 67-101 for a discussion of the number of child victims reporting sexual assault.



Two seventeenth century writers, Hughes and Sheppard, misled their readers as to the actual provisions of statute. Hughes' *Abridgement*, published in 1660-3, stated the doubt raised in W.D. about the prosecution of rape by girls aged under nine without mentioning the statute of Elizabeth, passed almost a century before. Sheppard's *Abridgement*, enlarged in 1675 from his 1656 *Epitome*, commented: 'It is conceived it cannot be, in the Act done to one under nine years old'. He then proceeded to outline the statute of Elizabeth, against the carnal knowledge of a child under ten, but only mentions 'any maid of value'. In other words, although it may be possible by statute to be punished for rape for having the carnal knowledge of a girl under ten, a girl under nine cannot be *raped*. This would seem to imply that a girl cannot be raped under nine, because she cannot withhold her consent, but the statute had explicitly extended this protection to girls under ten. Further, the statute covered 'any woman child', not just those of 'value', by which Sheppard probably meant property or future inheritance.<sup>103</sup>

Jurists seem to have seen this new offence of unlawful 'carnal knowledge' of a child under ten as something clearly other than 'rape'. Rape must necessarily involve force, whereas this crime need not, and yet they tended to include intercourse with children under the heading of rape. In *The Justice of the Peace*, Barlow conceded that 'the genuine notion of Rape is such knowledge...without consent but in the later species (ibid) is introduced by Stat. 18.El.c.7 and in this case it is not material whether she was forced or not.'<sup>104</sup> Coke stated that rape was a common law felony enacted in statute, which was defined as 'the unlawful carnal knowledge and abuse of any woman above the age of ten years against her will, or of a woman-child under the age of ten years with her will, or against her will'. Hawkins defined rape as intercourse 'by force

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<sup>103</sup>Hughes, *Abridgement*, pp. 1614-1615; W. Sheppard, *A Grand Abridgement of the Common and Statute Law of England* (London, 1675), p. 131.

<sup>104</sup>Barlow, *The Justice of the Peace*, pp. 453-454.

and against her will', but then placed the crime against children separately within the section on rape, as did Burn.<sup>105</sup>

The confusion over children's ability to speak on oath, or without oath, further obstructed the conviction of those who raped children. Legal writers seem to have agreed that children under twelve might give evidence on oath if they understood it, but there was no clear consensus on minimum age, and disagreement as to whether children could speak without oath, which is also evident in the case law. The 1661 edition of Dalton cited cases of children of nine and fourteen giving evidence on oath.<sup>106</sup> In *Historia Placitorum Coronae*, Hale allowed that children under twelve could give evidence on oath, provided always that they understood the oath, and recited Dalton's cases. Blackstone warned that the unsupported testimony of a child alone could not support a conviction, but felt that 'infants of the most tender years often give the clearest and truest testimony'. He reasoned that children under twelve prosecuting for rape might give evidence on oath if they understood it, or without the oath if they did not.<sup>107</sup>

In 1785, Burn stated that no child had ever been allowed to be a witness under nine, and children under twelve should not be allowed to give evidence without oath. He cited the case law to this effect, beginning with a case of 1698, in which a child under ten was admitted as a witness after the child gave a good account of the nature of an oath. In Powell's Case, tried before Justice Gould at the York Assize of the year 1775, the seven-year old victim of an alleged rape was not sworn, on the grounds that she was incapable of understanding the oath. Her evidence was taken without oath, and the accused was convicted, but then pardoned, because the judge felt such evidence was inadmissible, though no express opinion was given. The majority of the

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<sup>105</sup>Coke, *Institutes*, p. 60; Hawkins, *Pleas*, Bk. I, p. 108; Burn, *Practical Justice*, p.68.

<sup>106</sup>Michael Dalton, *Country Justice* (London, 1618, reprinted London 1661), p. 366.

<sup>107</sup>Hale, *Hist. Plac. Cor.*, vol. I, p. 634; Blackstone, *Commentaries*, vol. IV, pp. 214-215.

judges decided that no evidence could be given in court except upon oath.<sup>108</sup> Despite these established precedents, in *Brasier's Case* of 1779, the defendant had been convicted by the evidence of a child's mother and another witness of what the child had told them, though the evidence of the alleged rape victim, who was under seven, was not produced in court. His judgement was respited on the grounds that, though all evidence must be given on oath, a child under seven might be sworn if she understood the oath. The case law demonstrates the continued disagreement over whether a child could give evidence in court without oath, and the age from which this was suitable, though the general consensus that children over nine could testify on oath if they understood it seems to have been upheld.<sup>109</sup>

In the trial pamphlets, which provide at least some guide to court-room practice, the age of nine seems to have been the generally accepted threshold for witness competence. In the twenty-five *British Trials* pamphlets, five children between the ages of nine and thirteen were sworn, and they were questioned as to their understanding of the oath. The following exchange between the judge and a ten-year old is typical of these: 'You are going to swear upon the Bible; do you know what is the consequence of taking an oath if you speak falsely? Skinner: I shall go to the naughty Man. Q: What do you mean by the naughty man? Skinner: Going to the Devil. Q: Suppose you should speak the truth? Skinner: I shall go to God Almighty. Q: Then you know it is a sin to swear falsely? Skinner: Yes...[sworn]...Court: The conclusion of which oath is so help you God. You see God is to help you if you speak the truth: but if you do not speak the truth God will not help you'.<sup>110</sup> Courts were scrupulous about child witnesses, and the pamphlets reported some cases where children failed to answer the judge's questions adequately and so were not sworn and an acquittal followed. A pamphlet produced by Mr. Savill in an attempt to clear

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<sup>108</sup>This is a brief summary of Burn's discussion of the issue of child witnesses. See Burn, *Justice*, IV, pp. 68-71.

<sup>109</sup>T. Leach, *Cases in Crown Law* (London, 1789), p. 114.

<sup>110</sup>*British Trials*, 920.

himself, claimed that his six year old accuser was allowed to take the oath. Whether this actually occurred or not, it was obviously thought that the general public would find this outrageous, because this was part of Savill's claim that his trial was misconducted. One pamphlet recorded that a seven-year old was 'not sworn on account of her tender age', and another noted that a child just ten was not sworn for the same reasons.<sup>111</sup> In a very interesting pamphlet case the child, aged between nine and ten, gave evidence unsworn, and the jury refused to convict until the judge had her sworn. It was by no means easy for a child's parents to secure conviction of someone whom they believed had assaulted her.<sup>112</sup>

It seems that the question of the age at which a child might give evidence was a moot point throughout our period. Consequently, despite the change in legislation under Elizabeth, the prosecution of men for sex with under age girls remained a vexed question. In the rape trial pamphlets, three seven years olds alleged rape in two cases, but the defendant was acquitted in both cases, and in one case he was only found guilty of the lesser charge of assault. One man was found guilty of rape on a girl of three years and 10 months, and another for the rape of Ann Milton aged five, but he was only convicted after the judge directed the jury to convict when one jurymen argued that the prisoner had not forced the girl. Cases involving fifteen girls under ten in total were reported in the trial pamphlets. For three of these girls no age is specified, but only seven girls are said to be under nine, and two of these cases involved only a charge of attempted rape.<sup>113</sup>

A statute of 1820, like that of Elizabeth some two hundred and fifty years earlier, seems to have attempted to clarify the age of consent in the law of rape. The act provided that any person convicted of rape was to suffer death as a felon, and

<sup>111</sup>*The Trial of Mr Savill, Linen-Draper* (London, 1800), passim.

<sup>112</sup>Blackstone, *Commentaries*, vol. IV, pp. 214-221; *British Trials*, 920; *Select Trials 1720-1724*, vol. I, p. 97; *The Trial of Mr Savill, Linen-Draper*, passim; *Remarkable Trials* (2 vols., London, 1765), vol. I, p. 315; Cockburn, *Introduction*, p. 14.

<sup>113</sup>*British Trials*, 781, 914/XL, 914/XI; *Select Trials 1720-24*, vol. I, pp. 12, 179.

intercourse with a girl under twelve with or without her consent was made a misdemeanour punishable by imprisonment, while any such intercourse with a girl under ten remained a felony. The same statute also removed the need to prove emission in rape cases, and made conviction dependent on 'proof of penetration only' because offenders in rape, buggery and the carnal knowledge of young children 'frequently escape by reason of the difficulty of the proof that has been required of the completion of those several crimes'.<sup>114</sup>

There was an apparent consensus that the sexual assault of young children was unacceptable. It is doubtless no coincidence that the statutes of Elizabeth which made penalties for rape more severe by removing benefit of clergy, and that of George IV, which made the evidence requirements for rape less strict, were both passed in the context of changes in the law which related to children. Despite this, there remained grave difficulties associated with conviction, and these trials were over-shadowed by the general suspicion surrounding rape trials.

Jurists in this period had a genuine desire to prosecute rape, and some of them acknowledged the difficulties of prosecution in their writing. Consequently, some legal writers allowed that victims under twelve could give evidence in cases of rape, because they understood that rape was often a crime without witnesses except the woman herself. Despite this real concern to convict ravishers, jurists believed that true rapes rarely occurred, and that false accusations were prevalent. Legal writers felt that the balance was heavily weighted towards the accusing woman, and so laid down in their legal texts a hard-line interpretation of the law of rapes. The confusion in rape law does not seem to have been apparent to contemporaries. This lack of clarity in contemporary legal writing on rape is probably a symptom of rare prosecution, but also of the paradoxical desire to punish the true rapist, and acquit most men, whom they believed to be falsely accused. Though legal writers did not explicitly state a

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<sup>114</sup>*Statutes of the Realm*, 9 Geo 4, c.31 s.17.

particular keenness to prosecute men who raped children and young girls, more horror is expressed about these crimes in the eighteenth century pamphlet material, and the higher levels of convictions for rapes committed on girls under eighteen speak for themselves.<sup>115</sup> Despite an undoubted wish to punish such men, jurists' concern over the competence of child witnesses and suspicion about accusations in general meant that even in these cases the rate of convictions was not high. The work of these jurists was shot through with the common perception that women were rarely raped, and that most of those who reported rape were lying. It was difficult to follow an unsuccessful rape case with a prosecution for the misdemeanour, because the facts required to prove these cases were incompatible, and as a result this happened only in a minority of cases. After the mid eighteenth century it became increasingly less likely that defendants would be arraigned on multiple charges, and after 1787 this was enshrined in statute.<sup>116</sup>

We began this chapter with J. M. Beattie's figures from the Surrey assize records, to which we may now return. Beattie himself offered a valid part-explanation for the higher rate of prosecution for attempted rape; attempted rape was prosecuted at the quarter sessions, where prosecutions were less costly for the women, and it was often more convenient for her to attend the court sessions. Cross examination was likely to be less searching, and the woman was not subject to the full scrutiny of her personal life and morals which a rape accusation necessarily entailed. To this explanation of why women preferred to prosecute for the misdemeanour we may add the markedly increased likelihood of conviction. Bills of attempted rape were endorsed with remarkable frequency by the grand jury, and the accused men then fairly frequently convicted of attempted rape by the assize court, in a time when only a little under fifteen per cent of alleged rapists were convicted. This suggests that these women had strong rape cases, which they pragmatically prosecuted as the

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<sup>115</sup>Bashar, 'Rape in England', p. 37.

<sup>116</sup>Simpson, 'Vulnerability', pp. 190-1.

misdemeanour in order to secure conviction. The words of the legal writers were suffused with suspicion, and the later chapters of this dissertation will show how far this suspicion of the rape victim was ingrained into the contemporary psyche, resulting in few convictions in rape cases which came to the courts.<sup>117</sup>

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<sup>117</sup>Beattie, *Crime and the Courts*, p. 130.

## Chapter Two: Narratives of Rape

'[Statistics are] nothing more than the symptoms produced by the historian himself, and they can be interpreted in wildly different ways... cultural objects are not manufactured by historian himself but by the people he studies. They give off meaning. They need to be read not counted.'<sup>1</sup>

The 'narrative' approach to historical documents has become increasingly fashionable in recent years, and has been pioneered by the work of gender historian Natalie Davis. Davis analyses French royal letters of pardon and remission for their most commonly used narrative techniques and devices, a process of both reading and counting. These letters were designed to win a pardon from the King for those who had been found guilty of homicide. Davis traces the production of these legal documents, and despite acknowledging the extent to which the letters were collaborative, she suggests that these documents substantially recorded a narrative as it was dictated by the pardon-seeker to his notary. The supplicant himself had to make his personal plea to the king, and would face questioning on his story, so although the document would be translated into French and into the third person, most of the original would remain. Her analysis of the narrative techniques of the writers has considerable validity because the dictation of the pardon letter invited the culprit to create a story, and the finished letter was usually primarily his own.<sup>2</sup>

Historians have recently begun to call for elements of Davis's approach to be applied to a wider range of documentary evidence of early modern England. In their introduction to *Chronicling Poverty*, editors Tim Hitchcock, Peter King, and Pamela

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<sup>1</sup>Roger Chartier, 'Intellectual History or Sociocultural History?: The French Trajectories' in Dominick LaCapra and Steven L. Kaplan (eds.), *Modern European Intellectual History: Reappraisals and New Perspectives* (Ithaca, 1982), p. 30, cited in Malcolm Gaskill, 'Attitudes to Crime in early modern England', Ph.D. thesis, University of Cambridge (1994), pp. 18-19, n. 54.

<sup>2</sup>Natalie Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth Century France* (Stanford, 1987), passim.



Sharpe assert the need for historians to pay more attention to individual voices. They highlight the potential usefulness of a wide range of documents, including pauper petitions, criminal biographies and depositions, to create a more inclusive, and more subtle, historical record. The writers stress the need to look carefully at the precise social location of the creation of the source, but assert that the documents can be read for the 'words of the poor', revealing attitudes and strategies. Yet, if this introduction calls for an emphasis on a 'narrative' approach to reading these series of historical documents, then the essays presented in the volume show how far the contributors recognise the need for counting as some measure of typicality. These essays in 'narrative' are not so very different from the work of many other social historians, but for the rather longer quotations.<sup>3</sup> Gowing has also produced a persuasive analysis of the narrative properties of the ecclesiastical court depositions of sexual defamation, which tend to be relatively long and detailed. Her work is closer to that of Davis than many of the writers in *Chronicling Poverty* and she too recognised the need for counting alongside attention to the cultural paradigms of each document.<sup>4</sup>

Davis herself suggested that court depositions would not benefit so clearly from treatment as narratives, for although they provide important evidence for the way people told of past events, witnesses had to restrict themselves to evidence relevant to the crime in question, and these documents are often not stories with a clear beginning and end.<sup>5</sup> Despite these general caveats, depositions made by the alleged victims of rape provide a fascinating opportunity to look at which stories these women chose to tell. This chapter will assess the extent to which it is valid to treat these documents as 'narratives' and will provide an alternative set of methods and conclusions to those suggested by Miranda Chaytor in a recent article in *Gender and*

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<sup>3</sup>T. Hitchcock, P. King and P. Sharpe (eds.), *Chronicling Poverty: The Voices and Strategies of the English Poor, 1640-1840* (Basingstoke, 1997), pp. 1, 3, 5.

<sup>4</sup>Laura Gowing, *Domestic Dangers: women, words and sex in early modern London* (Oxford, 1996), passim.

<sup>5</sup>Natalie Davis, *Fiction in the Archives*, pp. 5-6.

*History*.<sup>6</sup> It will be necessary to establish how these documents were created, where we hear a woman's own voice and language in this material, and where we detect the questions of the J.P. and the language of the lawyer. This chapter will examine how these women shape their stories in particular ways using certain settings and explanations to portray themselves as innocent victims of violent sexual assault; a process of reading and counting in conjunction. The fifty-two Ely and Northern Assize Circuit depositions, dating between 1640 and 1750, will be compared with twenty-nine depositions of accusing women from the Northern Assizes which date between 1780 and 1800.<sup>7</sup>

These documents were created in accordance with the provisions of statute and the advice of legal text-books. The first step in a prosecution for rape or attempted rape was for the woman concerned to complain to the local J.P., who would usually be a member of the lesser gentry. In cases of misdemeanours, including attempted rape, magistrates may very often have settled matters out of court, and surviving J.P.'s notebooks record a few of these cases.<sup>8</sup> These out of court settlements form part of the 'dark figure' of cases of sexual assault which never reached court. Despite this, it is possible that attempted rape was less regularly settled out of court by JPs than other misdemeanours, because it was perceived as a particularly serious charge. In 1722 the Middlesex Quarter Sessions instructed JPs not to compound in the case of the serious offences of assault with intent to ravish and receiving stolen goods.<sup>9</sup> Where the woman charged the accused with the felony of rape, statutes of 1554 and 1555 required the magistrate to take written depositions of the victim and his witnesses, and a written examination of the accused. The accused

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<sup>6</sup>Miranda Chaytor, 'Husband(ry): Narratives of Rape in the Seventeenth Century', *Gender and History*, 7:3 (November, 1995), 378-407. See also above, pp. 12-13.

<sup>7</sup>A sample deposition is provided in Appendix B.

<sup>8</sup>E. Crittal (ed.), *The Justicing Notebook of William Hunt 1744-1749* (Devizes, 1982), p. 32. See also EDR E40 Ann Levett, PRO ASSI 45/4/2/68, PRO ASSI 45/4/3/77 and PRO ASSI 45/5/3/124.

<sup>9</sup>Robert Shoemaker, *Prosecution and Punishment: petty crime and the law in London and rural Middlesex c1660-1725* (Cambridge, 1991), p. 138.

would then either be bailed, or committed to jail, and was not be offered the possibility of financial settlement.<sup>10</sup>

In the seventeenth and earlier eighteenth century the legal texts taught that the role of the magistrate's examination was as a gatherer of evidence for the crown, though he could record information in a defendant's favour. He was to commit the accused for trial even if he himself thought him innocent. The accused man was not present when the other depositions were taken and was not told exactly what the evidence was against him. After 1750 it came to be thought that the accused should be present when the depositions were taken, and that the magistrate should make some attempt to assess the validity of the accusation. By the end of the eighteenth century the magistrate's examination had evolved into a not entirely private preliminary pre-trial hearing, where people who were not personally involved in the case might be present.<sup>11</sup>

The magistrate had to ensure the validity of the deposition as a legal document, and was expected to record the details necessary to prove the charge and to commit the deposition to writing while it was still relatively fresh in his mind. Dalton instructed the justice to 'put into writing such examination and informations, or so much thereof as shall be material to prove the felony'. Lambard also expected the magistrate to record what was necessary, and stated that the justice should 'put the same...in writing within two days after'.<sup>12</sup> If the rape charge went to trial, the woman had to repeat the evidence stated in her deposition in open court and face cross examination. In the seventeenth century depositions were read in court by the clerk to prompt a witness for the crown who suffered a memory lapse. If the examination of

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<sup>10</sup>J.M. Beattie, *Crime and the Courts in England 1660-1800* (Princeton, 1986), pp. 268-281; Shoemaker, *Prosecution and Punishment*, p. 24; Keith Wrightson, *English Society 1580-1680* (London, 1982), p. 26.

<sup>11</sup>Beattie, *Crime*, pp. 268-281.

<sup>12</sup>Michael Dalton, *Country Justice* (London, 1618), p. 39; W. Lambard, *Eirenarcha, or Of the Office of the Justices of Peace* (London, 1581, reprinted 1610), p. 205.

the accused contained evidence for the crown, then that too might be read out by the clerk. In the eighteenth century, depositions do not seem to have been introduced as evidence unless a witness had died since the deposition was taken, her evidence materially contradicted the original deposition, or if an accused man had confessed in his deposition. The deposition would only be admitted if the magistrate who had heard it, or the clerk who had written it, were present to testify to its authenticity. The use of confessions and depositions by deceased witnesses came under increasing suspicion and were less likely to be used.<sup>13</sup>

The internal evidence of the depositions indicates that they are narratives created by the dialogue between the magistrate and the woman herself. They found expression from the pen of the clerk, and bear the imprint of the clerk's language and construction, as well as traces of the language of the woman and the magistrate. The experience of forced intercourse is translated by the woman in the terms of her own culture into an experience of rape, and is shaped into the character of the legal document by the justice and his clerk. The deposition had to be close in content to the woman's statement to the J.P., because she had to repeat her evidence in open court and face questioning on her testimony, but it was transferred to the written record by legal men with an eye on their tables of statutes and their law-books. Most of these documents are probably the record of actions which the woman herself interpreted as rape or attempted rape, for where conviction rates for rape were so low, women had little to gain from false accusation. This surely suggests that very few rape depositions are fictitious in the sense of deliberately constructed false accusations. If some of these sampled documents were deliberately concocted stories, then these too bear analysis for how women chose to tell stories of rape, and how magistrates and clerks framed them.<sup>14</sup>

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<sup>13</sup>Beattie, *Crime*, pp. 268-281.

<sup>14</sup>Beattie, *Crime*, pp. 268-281. For an alternative exposition see Chaytor, 'Husband(ry)', *passim*.

The depositions vary significantly in length, and any study must be sensitive to the consequent variations in the narrative quality of the document. Some of the Ely and Northern Circuit depositions are much too short to bear examination as a narrative. What, for example, is one to make of this cursory deposition of Anne Rawson in 1745: 'Who saith that on Tuesday last the 16th of this instant Robert Waddington of Earl Keswick aforesaid did in the night time ravish this informant by making a forcible entry into her body and further she saith not.' Another tiny minority of cases are unsuitable for narrative treatment because part of the deposition is missing, or obliterated, making it impossible to develop an idea of the document as a whole.<sup>15</sup>

Other depositions are not so drastically short, but bear the hallmarks of extensive summarising, with little evidence of the voice of the woman. Most of the depositions are unemotional and matter of fact, expressing little background detail about the man involved, and rarely explaining how he came to know the whereabouts of his alleged victim. Little distress or trauma is explicitly expressed. Phrases are inserted to indicate elision, such as 'and she saith', and certain conventions appear to apply. After the description of the struggle, the act of intercourse itself is almost exclusively described in the words: 'had the carnal knowledge of the body of her the said...against her will and without her consent'.<sup>16</sup> Most do contain snatches of what sound very much like quotations of a woman's own language. Anne Curtis said that 'she cried her heart out', and Elizabeth Frith said that she had told the man who asked for sex that she had 'no need of it for she had a husband of her own'. Frances Mountaine described her miscarriage after an attempted rape as being due to the 'pinches' the would-be rapist had given her.<sup>17</sup>

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<sup>15</sup>Public Record Office ASSI 45/23/1/86. Damaged depositions include that of Isabell Ambler, PRO ASSI 45/5/2.

<sup>16</sup>Laura Gowing found exactly the same conventional formula used in the ecclesiastical court records to describe sexual intercourse. Gowing, *Domestic Dangers*, p. 46.

<sup>17</sup>Ely Diocesan Registry, E12 Anne Curtis; PRO ASSI 45/4/3/78; PRO ASSI 45/9/3/42.

In some depositions the magistrate is the dominant narrator. In the deposition of Jane Dagleish, who accused the master of her house of correction of attempted rape, it was noted that 'his dealings were so strange and wonderful that she being an infant is not able to express the same'. The author of this comment was almost certainly the magistrate who heard Dagleish's deposition.<sup>18</sup>

Several depositions proceed in chronological order and are then followed by various details out of chronological sequence, which suggests that when these depositions were taken, the woman generally began by telling her story to the justice, who followed it up with questions where necessary. The deposition of Grace Suttcliffe told the story of her abduction and rape in chronological order until she reached her rescue, when she explained that she could not report earlier due to her injuries, and then filled in more detail of her story, probably in response to the questions of the JP.<sup>19</sup>

Some depositions which were recorded in chronological order end with out-of-sequence statements in the negative, and I would suggest that these usually indicate responses to questions. These questions tend to concern themselves with the time taken to report, or evidence of crying out, vital evidence for a successful prosecution, as we have seen.<sup>20</sup> At the end of her deposition Barbary Robinson deposed 'that she did not cry out when either of those facts were committed'.<sup>21</sup> Margaret Clark reported a rape to Henry Ferone, an Isle of Ely JP, in July 1658. Her deposition told the story of the rape, but then stated 'and this examinant did not prostrate herself...upon the ground and saith that she do not know whether she be with child by the said Gibson or no and further saith upon her oath that no other person ever had the carnal

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<sup>18</sup>PRO ASSI 45/12/12/1.

<sup>19</sup>PRO ASSI 45/22/4/95.

<sup>20</sup>See above, pp. 31-34.

<sup>21</sup>See above, pp. 31-34 for a discussion of contemporary legal scepticism and Hale's criteria for successful cases. PRO ASSI 45/24/1/88c.

knowledge of her body at any time save only the said Gibson'.<sup>22</sup> Katherine Ingram accused a man of rape before Tristram Dymond on the twentieth of June 1656. After she had told her story she was asked questions by Dymond and: 'being demanded why she did not cry out she answereth that she did so but that none was so near as to hear her especially...her mouth being...full of blood'.<sup>23</sup>

Sometimes the magistrate took down the answers to his questions in a second deposition at a later date. On the thirteenth of December 1732 Sarah Grogson made a deposition before a magistrate, James Dodsworth, which briefly reported an account of her rape in chronological order. A second deposition from the eighteenth of December reads like the answers to Dodsworth's questions: 'but saith that the said Remmyson did not stop her mouth, nor had this informant any mark of violence about her body given by the said Remmyson and the reason this informant did not make a more early application for justice was her father advised her to make it up...'<sup>24</sup>

Some of the depositions are long and detailed enough to have given the woman greater opportunity to shape her story, and the proportion of these longer depositions is greater in the later eighteenth century material. A few of the early depositions, and more of the later ones, are so extensively detailed in description of the location, clothes of the alleged attacker and words used, that they must have been recorded as they were said. The words were then transferred into the third person, slightly summarised, and legal formulae were inserted. Rebecca Russell told the magistrate, a Mr Jones, that George Musson, the gaoler who had tried to rape her, had 'very much abused both this deponent and her husband...calling her a bitch, a scrubby bitch, and her said husband a ram-headed dog and a cuckold,...her said husband threatened to complain of him to Mr. Jones, he replied, who is master, Mr.

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<sup>22</sup>EDR E19 Margaret Clark.

<sup>23</sup>EDR E17 Katherine Ingram.

<sup>24</sup>PRO ASSI 45/19/3/36B.

Jones or I'.<sup>25</sup> The more detailed depositions are often extremely evocative of elements of the experience of these individual women, as they expressed their determination to report, original attempts at obtaining restitution from their attackers, and their fear of telling relatives and facing blame for the attack. Despite occasional rich description in this minority of the depositions, the general tone of the depositions is sober, with little emotionally coloured language or hyperbole. However, these depositions do allow us to hear the voices and strategies of individual women, and they must be collated to build up a picture of the characteristics and contexts of the assaults which were reported. The small number of depositions means that we must be wary of placing too much weight on the statistical significance of the figures, but tables have been included for the sake of ease of reference to display clearly the consistent patterns in these reported assaults.<sup>26</sup>

The women assaulted tended to be of the middling sort in terms of their social status. Several of the women had husbands or fathers who were husbandmen, and some of the other occupations pursued by husbands or fathers were those of joiner, coalminer, woolcomber and cordwainer. Eleven of the fifty women for whom there was some evidence of status were servants. The case of Elizabeth Frollbit, a single servant from York, was typical. In 1737 Frollbitt claimed to have been raped by William Hunt 'a soldier in Major Churchill's regiment of dragoons quartering in and about this said city'. She had been milking a cow in the late afternoon in a stable, when Hunt 'came to this informant, and turned her said master's cow out of the said stable and assaulted this informant in a violent manner and threw this informant on the ground and had carnal knowledge of this informant's body and ravished this informant'.<sup>27</sup>

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<sup>25</sup>EDR E35 Rebecca Russell.

<sup>26</sup>My undergraduate dissertation includes a quantitative analysis of the material contained in the Northern Circuit depositions. Rather than rehearsing this material here, the conclusions are tabulated as Appendix A to this dissertation. See R.F.King, 'Rape in England 1640-1770', Undergraduate Dissertation, University of Cambridge (1996), *passim*.

<sup>27</sup>PRO Assi 45/21/2/44B.



Like Elizabeth Frollbitt, these women tended to be single, with only about a third of the women alleging rape or attempted rape being married.<sup>28</sup> These women ranged in age between five and a half, and somewhere in the forties, but a two-thirds majority were between the ages of ten and twenty-five years of age.<sup>29</sup>

The question of the moral reputation of the reporting women is less easily settled. These women include those of seemingly 'respectable' moral status, such as Elizabeth Beuton, described by a friend as having 'always the character of an honest woman'.<sup>30</sup> A tiny minority of these women are clearly not quite so respectable, including Rebecca Crabb, the mother of a seventeen year old illegitimate son, who alleged attempted rape in 1738.<sup>31</sup> There are surprisingly few witness depositions giving character evidence for the women. Such documents exist for only two of sixty-four accusing women, and both witnesses are primarily deposing about the case itself.<sup>32</sup> In only one case does the accused claim immorality in the accusing woman, and even here the emphasis is on defending himself from the charge of rape by claiming that they had a pre-existing consensual sexual relationship: 'he several times hath had carnal knowledge of her by her own free consent'.<sup>33</sup> It seems likely that most of the reporting women had an unremarkable moral reputation, and that character became an issue when cases went to trial as a matter of routine, where the trial pamphlets suggest that it was discussed in at least a third of trials.<sup>34</sup>

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<sup>28</sup>PRO Assi 45/21/2/44B.

<sup>29</sup>See below, pp. 99-100 for a discussion of the possible regional differences in the age of rape victims, informed by Antony Simpson, 'Vulnerability and the age of female consent: legal innovation and its effect on prosecutions for rape in eighteenth century London' in G. S. Rousseau and Roy Porter (eds.), *Sexual underworlds of the Enlightenment* (Chapel Hill, 1988), pp. 181-205.

<sup>30</sup>PRO ASSI 45/18/2/46.

<sup>31</sup>EDR E40 Rebecca Crabb.

<sup>32</sup>PRO ASSI 45/2/1/181.

<sup>33</sup>PRO ASSI 45/11/1/39.

<sup>34</sup>See above, pp. 33-34 for a discussion of the conduct of rape trials.

The men's depositions have tended to survive less well than the women's depositions; of sixty-two accused men in Ely and the Northern Circuit between 1640 and 1770, the depositions of twenty-seven men are missing. These examinations are usually shorter than the informations of the alleged victims, and the men tend to confine themselves to a denial of the rape. A typical deposition is that of John Wallace, minister of Grasmere in Westmorland, who was examined by J.P. Thomas Brathwaite in 1655. His maidservant, Clara Barrow had accused him of rape. The deposition recorded only that: 'The said examinant being asked whether ever he asked Clara Barrow whether she would give him her maidenhead or no, he denieth that ever he used any such words to her, and likewise denied that ever he had carnall knowledge of her body, or that he did ever struggle or strive with her when she was making his bed in his bedchamber, or at any other time, and denieth that ever he urged her to stay, or promised her to give her any satisfaction for any wronge he had done her'.<sup>35</sup> Most men chose simply to deny these encounters rather than claiming that consensual intercourse had occurred. The depositions examined from the Northern Circuit dating between 1780 and 1800 showed that the examinations remained constant in this form, albeit that there was a slight increase in the number of men who agreed that consensual intercourse had occurred, this remained a tiny minority of depositions.

Susan Amussen has argued that early modern men chose to deny any sexual encounter in order to distance themselves from rape and from any extra-marital sexual misbehaviour.<sup>36</sup> There was perhaps some element of this behaviour in these depositions, but Laura Gowing has discovered in London defamation cases that men were confident enough of the double standard to call a woman 'my whore' as a public insult. She also found that a fifth of women used premarital intercourse as evidence of

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<sup>35</sup>PRO Assi 45/5/3/125.

<sup>36</sup>Susan Dwyer Amussen, "The part of a Christian man": the cultural politics of manhood in early modern England' in Susan Dwyer Amussen and Mark A. Kishlansky (eds.), *Political culture and cultural politics in early modern England: Essays presented to David Underdown* (Manchester, 1995), pp. 213-233. See above, pp. 15-16 for a discussion of this and opposing opinions.

marriage contract, but the men whom they named as their partners denied the connection, though they often testified that sexual intercourse had indeed occurred.<sup>37</sup> Polly Morris found that in the later eighteenth century the men involved in defamation cases at the Somerset ecclesiastical courts had become increasingly likely to use words of defamation which acknowledged that they had been involved in illicit sexual behaviour.<sup>38</sup> The slight increase in the number of men willing to admit to intercourse in the depositions from the last two decades of the eighteenth century probably reflects this gradual change in contemporary mores, though this involved only a handful of depositions. Throughout the period, convictions for rape were so low that it would have been an unnecessary strategy to admit that intercourse had occurred. The contemporary image of the false rape accusation was probably sufficiently strong that these men felt that a plain denial was the obvious story. There was no necessity to provide explanations or alibis.

The men accused of these assaults tended to be of the same middling social status as the women they assaulted, although it was less likely for any indication of the man's status to be discernible from the depositions. The marital status and age of the accused man was even more rarely indicated in these documents, but among the tiny numbers for whom age and marital status were recorded there were equal numbers of married and unmarried men and an even spread of ages. The legal texts stated that boys under fourteen could not be accused of rape, and only one of the defendants among these depositions was listed as a minor. The oldest man accused was at least in his late thirties because he had a daughter who was probably at least ten.

These assaults were equally distributed throughout the year, and evenly spread across the week, and do not seem to have a seasonal pattern or to be recreation related. Most of the assaults involved a single incident, one assailant and a lone

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<sup>37</sup>Laura Gowing, *Domestic Dangers*, pp. 164-175, 272.

<sup>38</sup>Polly Morris, 'Defamation and Sexual Reputation in Somerset 1733-1850', Ph.D. thesis, University of Warwick (1985), pp. 291-2.

woman. The attack reported in July 1739 by Grace Daniel of Little Ouseburn in the West Riding of Yorkshire is typical of most of these depositions. Grace Daniel, spinster, described how she had been 'looking or weeding the green corn within the town field of Whisley in the said Riding [and] Daniel Macane...came to her this informant and offered her a silver ring and half a crown in silver if she would suffer him to have carnal knowledge of her body'. She refused, and Macane then attempted to rape her, struggling with her until she managed to fight him off. Her fellow workers in the fields, who had been engaged in making hay or weeding the corn, chased Macane and captured him at Thorp Underwood in the West Riding.<sup>39</sup>

These reported rapes and attempted rapes mostly occurred during the day while the women were carrying out their usual daily work. Anne Curtis, the daughter of a cordwainer, accused John Burton of attempted rape in May 1642 in the Isle of Ely. Her deposition read that 'this inform[ant] saith that upon Tuesday being the third day of May last passed she was burning nettles in Saffron. And as she was burning of them one John Burton came to her in a violent manner'.<sup>40</sup> This deposition is typical of the majority of the other Northern Assize and Ely depositions in that the assault seems to have been an opportunistic attack on a lone woman by a male acquaintance. The location of the assault is clear for fifty-seven victims out of the sixty-four women: fourteen took place in the woman's own house, and eight in the alleged perpetrator's house. A slender majority of these women were assaulted outside, either on the road or on paths, or on open ground.

The man was usually known to the woman reporting the assault, and in sixteen of the forty-eight cases where the relationship between the accused and his victim was discernible, the women were attacked by someone who was a neighbour. In only nine cases was the alleged perpetrator clearly a stranger to the woman alleging sexual

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<sup>39</sup>PRO Assi 45/21/3/99.

<sup>40</sup>EDR E12 Anne Curtis.

assault. Several women were attacked by a man who had either lent them money, owed them money, or who had asked them for a loan. These depositions do not comment on the relationship between the monetary transaction and the rape, but women borrowing money may well have been placed in a vulnerable position, facing expectations that sexual favours would be offered in lieu of payment. Women visiting men to demand repayment of a loan may also have been vulnerable if the man disagreed about repayment, and an argument could then potentially end in sexual assault.<sup>41</sup> Four of the women were attacked by a member of their family, and other woman alleging assault included five girls assaulted by the master of the house of correction where they were at school. There is a surprisingly small number of servant women reporting rape by a master; only four in this sample, plus another servant girl who alleged that a fellow servant had raped her. In only one further case is there evidence of a pre-existing sexual relationship with the assaulted woman.<sup>42</sup>

Of the total of fifty-eight cases, only nine involved an assault predated by a history of sexual approaches and attempted sexual assaults. Several of these cases involved the abuse of children, but the majority of these depositions were made by adult women pursued by a man who at first attempted seduction and then turned to attempted rape when thwarted. In these cases the prosecution seems to have been triggered by an incident which was more extreme than the man's previous behaviour. In 1644 Elizabeth Linton lived as a servant with Miles Read and his wife, who had noted Elizabeth's pregnancy, and said to her: 'I fear thou art with child. Her servant answered again if I be God feared it will.' Stephen Maultas, who was probably the

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<sup>41</sup>Macfarlane has described how in the economic climate of the sixteenth and seventeenth centuries the refusal of loans or favours might be seen as breaking with the traditions of neighbourliness. A substantial number of the disputes between neighbours which led to witchcraft prosecutions in late sixteenth century Essex had involved money. Alan Macfarlane, *Witchcraft in Tudor and Stuart England* (London, 1970), pp. 174-5. Such transactions clearly aroused strong feelings at all times, and could potentially result in a power imbalance between lender and borrower. Sexual assaults might occur in the same way that other violent behaviours are located in the context of such disagreements; Beattie cites a case of murder which is committed after a young man and his mother argue over money. Beattie, *Crime*, p. 102.

<sup>42</sup>EDR E39 Elizabeth Haddow and Hannah Robinson. But see below pp. 121-142 for a discussion of the selectivity of reporting.

father of the child, later appeared at the house and threatened that 'I will be thy midwife'. Shortly after, Maultas met with her 'on the backside of the town' and beat her severely, announcing his intent to make her miscarry and 'spew it out of her mouth'. Elizabeth Linton 'was delivered of two children' before going 'threescore yards', but the deposition does not relate whether the babies survived. It seems that no attempt was made to report the assault to the authorities. The following Christmas Maultas dragged Elizabeth by her hair into a pond, and attempted to drown her, and at this stage a warrant was sought, but Stephen Maultas evaded it by fleeing. In July 1647 Elizabeth Linton was sent out at night by her master to search for a calf, but after failing to find the animal, was making her way back to her master's house alone. Stephen Maultas met her on her way, and 'said that he would gladly speak with her and so came unto her and took her by the hand and kissed her and said unto her thou and I have been kind and why could we not be so still. The said Elizabeth answered again that we have been too kind.' Stephen Maultas then attempted to rape her, and beat her very badly, but fled when she screamed. Linton managed to make her way to the constable to report the attempted rape.<sup>43</sup> It seems likely that these women finally reporting after a series of assaults were often motivated by a desire for protection, when the man's behaviour had become so threatening that concerns of safety outweighed reluctance to make a public accusation of rape.

The rapes rarely occurred in the context of robbery, though several women raped on the road did have their goods stolen. Similarly, alcohol is similarly rarely mentioned in these depositions. Most of these rapes seem to have been an opportunistic assault on a female acquaintance who happened to be alone with a man who felt he had a right to intercourse with her. In several cases the woman claimed that the man had first offered her a bribe in exchange for intercourse, and the women often reported the arrogant words with which these men articulated these feelings. Thomas Burchall came to Grace Moseley's house while her parents were away and

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<sup>43</sup>PRO ASSI 45/2/1/181.

she was alone in the house. After she struggled with him to try to prevent him stealing cheeses he sexually assaulted her, saying that 'he would have the use of her whether she would or not'. Moseley managed to struggle free, and he rode away from the house on his horse, taking the cheeses with him.<sup>44</sup> The women rarely express an opinion on the motivation of the attack, but their usual recitation of the aggressive sexual language used by the alleged perpetrator suggests a general acceptance of the belief that rape was primarily motivated by sexual desire.<sup>45</sup>

The depositions of the women themselves and also of the other witnesses show that rape was viewed as a very serious event. Almost all the women described their attempts at escaping, struggling and shouting for help, and seem in no doubt that the rape or sexual assault was an illegal act. Several women were rescued by men who appeared on the scene due to good fortune, or who were alerted by cries for help, and in some cases women who had been attacked went to the nearest people for assistance to catch the rapist. There is no case in any of these depositions where an assaulted woman is refused help by passers-by. There were very few expressions of any sense of shame in these depositions, and in only one deposition did a woman trouble to deny having been at fault, and the structure of this deposition suggests that she was replying to the question of a J.P.

The depositions conform to a general pattern in structure and content, which remains surprisingly constant through to the end of the eighteenth century. Towards the close of the eighteenth century small changes begin to be seen, raising questions about the cultural diffusion of new views on women and female sexuality. In the last two decades of the century, a very few depositions include the claim of insensibility at the time the rape took place. This was rare but not unknown in earlier stories of rape, and seems unlikely to be merely co-incidental. Many of the later depositions show that

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<sup>44</sup>EDR E12 Grace Moseley.

<sup>45</sup>A similar aetiology of lust was ascribed to rape in literature. See below , pp. 88-105.

the accused was present when the woman made her deposition, in accordance with general patterns of change in the way that these depositions were recorded.<sup>46</sup> Otherwise, the story of the assault is recorded in the same chronological progression throughout the period, beginning with the deponent going about her ordinary, everyday business, often outside the house. The story then escalates through the assault, often beginning with a request for intercourse, the woman's resistance and threats, and ends with a climax of escape or successful forced intercourse. The depositions commonly stress the woman's resistance, and crying out for help, or how she was gagged, and include goods lost and injury resulting from the rape. A deposition obviously had to include the date, time and place, fact committed and the name of the accused. In addition, contemporary lawbooks stated the necessity in cases of rape of proving firstly penetration, then also resistance, crying out or gagging. Lawbooks stressed the general legal suspicion of accusations of rape and some suggested that a previous consensual relationship ruled out a charge of rape.<sup>47</sup> The documental continuity of the depositions is partly dictated by the conventions of the rape deposition as a legal document. However, these conventions do not account for the surprising dominance of the one story of an ordinary single woman surprised by rape as she goes about her everyday blameless routines.

The study of the deposition material contained within this chapter has shown how these depositions may be used to look at the quantifiable contexts of assault: the protagonists involved, timing, location, and other factors. But depositions are not simple statements of the facts required by law to secure a conviction, and have also been used here to produce some account of how these individual women perceived the rape and the attitudes of alleged attackers. A rather less cautious approach to these documents has been used as the basis for a recent article by Miranda Chaytor on the 'narratives' of rape; how rape was represented by these women, and what meaning

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<sup>46</sup>Beattie, *Crime*, pp. 268-281.

<sup>47</sup>See above, pp. 30-33, 37.



rape had for their perceptions of self. Since this article has been widely cited, it is worth looking critically at the hypothesis it presents, which contains significant weaknesses of argument and inadequacies in the use of the evidence.<sup>48</sup>

Chaytor employs the term 'narrative' in a rather different sense from the one used in this thesis. She suggests that depositions were a selective commentary by the woman on her experience, which can bear close examination for content, language and form. She claims that the internal evidence of the depositions suggests that the clerk wrote the deposition out in full, only changing first to third person, and adding legalistic phrases. This chapter has already shown that depositions cannot be read as one might read an autobiography, which is constructed independently by the author, committed to paper by the woman herself, and consists of her own grammar and syntax. The deposition is not this type of monologue, and Chaytor runs the risk of misleading the reader in transferring the documents into the first person in citations.<sup>49</sup>

A close study of one of the depositions used by Chaytor illustrates the importance of the careful use of these documents. Chaytor ends her article with the rape allegation of Isabel Moorhouse against John Wood, a rape which Chaytor claims never occurred. She comments that he is one of the few men to deny the rape *and* to have a witness to his alibi, Hester Speck: 'I believe him, and believe Hester Speck.' Chaytor suggests that Isabel, 'had noticed John Wood. She had caught him going into the mill, and not knowing who he was, had mistakenly assumed he must be a miller. But after that glimpse, she had started to daydream about him - about how as she walked home in the dark from the evening's milking he would meet her in the churchyard, and would kiss her, and they would begin to make love'. In Isabel's information Wood was identified as 'baker' with 'miller' crossed out beside it, but there is no evidence that Isabel saw Wood come from the mill on the day of the rape, she

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<sup>48</sup>See below, Appendices A and B. See also Chaytor, 'Husband(ry)', *passim*.

<sup>49</sup>Chaytor, 'Husband(ry)', *passim*.

merely said 'formerly', and she did not express any love for Wood. Chaytor, however, continues by quoting the deposition up to the words "secret parts" in line eight of the deposition. She then comments: 'And all the time they were kissing not a drop from the bucket of milk she still had on her head was spilled? For then and only then, 'he took the skeel from my head'. It is a reverie of very great tenderness - Isabel's tenderness, for it was she who imagined it. There is a slow, sensual dreamlike quality to this kiss, to the man bending over her, one hand cradling the nape of her neck, the other moving to her secret parts. And when she belatedly remembers the milk she was carrying, the tenderness remains: John Wood carefully lifted the skeel from her head and set it down on the ground. There was no tearing of her clothes, no damage to her possessions, no theft. Her labour was treated with care.' The deposition cited in here in Appendix B in the original third person does not seem sympathetic to such an interpretation of love. Kissing is, after all, not necessarily a two-way activity. He 'kissed her' states the deposition. It has been suggested that kissing in greeting was extremely prevalent in early modern England.<sup>50</sup> Moorhouse framed her account as a violent assault: 'he threw her down and by force did ravish her'. There is no conclusive evidence that Isabel Moorhouse was not part of a courting couple, or that she falsely accused Wood. One might equally plausibly read the deposition and suggest that Hester Speck was paid to lie to the magistrate, or that she took Wood's side believing Moorhouse to be a whore, a reaction shared by other women in contemporary trial pamphlets. All these assertions are equally lacking in evidence.<sup>51</sup>

Miranda Chaytor's general argument is problematic. She argues that the women's depositions reveal that they distanced themselves from the rape by conceiving of themselves as stolen goods. She claims that this form of words was sought as protection from a pain which would surely not have been felt had women

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<sup>50</sup>Lawrence Stone, *The family, sex and marriage in England 1500-1800* (Harmondsworth, 1979), p. 520.

<sup>51</sup>Chaytor, 'Husband(ry)', *passim*. See also PRO ASSI 45/4/3/112. This deposition is transcribed as Appendix B.

truly conceived of themselves as the 'goods' in a rape-as-theft. Chaytor contends that rape would naturally result in unbearable pain for the victim: 'she had no words for the rape's reality - the tearing and bruising, the bleeding, the pain and no words for the desolation it brought. She had been reduced to what the rapist had made her, how he had seen her; as flesh to be used and discarded'. Chaytor assumes that rape would produce tremendous distress, reads no mention of such pain in the depositions, and invokes a 'rape-husbandry' metaphor to explain this absence.<sup>52</sup> In fact, depositions occasionally make this distress entirely explicit: In 1655 Elizabeth Frith told a J.P. how after she had been raped by Walter Partaricke she returned 'with much feare of him' along the same road.<sup>53</sup> The absence of an abundance of emotional language in the depositions seems rather more likely to indicate how far most of these documents have been summarised from the woman's dialogue with the J.P.

By at least the late sixteenth century, rape was described by the jurists as a crime against the person of the woman who was raped. Parents were no longer using the provision of the laws of rape to seek redress from abduction and forced marriage, and John Carter's work on rape in fourteenth century England suggests that the majority of victims accusing men in the 1348 Berkshire eyre were from the servile class. The seventeenth and eighteenth century depositions studied in this thesis were made by ordinary women; daughters of woolcombers and husbandmen.<sup>54</sup> Chaytor does not explicitly state what is being stolen or laid waste. If anything sexual was perceived as being stolen, then one might expect virginity to figure largely in rape depositions, especially those of parents in the case of a young single girl-child. Instead, virginity is hardly ever mentioned in the rape depositions. What of sexual services or sexual honour? There is no evidence in the depositions that rape of itself was perceived as a loss of sexual honour. Expressions of guilt were very rare in these

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<sup>52</sup>Chaytor, 'Husband(ry)', *passim*.

<sup>53</sup>PRO ASSI 45/4/3/78.

<sup>54</sup>For patterns of prosecution in fourteenth century England see J. M. Carter, *Rape in Medieval England: An Historical and Sociological Study* (London, 1985), pp. 54-55. See also above, p. 66.

depositions.<sup>55</sup> Chaytor further assumes that all the women in her depositions have a master figure. The young single female servant, perhaps with both parents dead, and highly mobile from employer to employer, did not have any master figure from whom her virginity or her sexual honour could be stolen.<sup>56</sup> Rape does not seem to have been viewed as theft by contemporaries, despite literary discussions of rape as the theft of virginity. Women often seemed to report rape completely independently, as did Ann Levett, whose master had offered 'anything she liked' to keep silent.<sup>57</sup>

The depositions in which Chaytor sees an absence of her 'rape-husbandry' metaphor seem to be constructed in exactly the same way as the others. She argues, apparently without supporting evidence, that Katherine Ireish was fatherless, economically marginal, and hence constituted herself as that which is stolen. Despite the fact that her deposition told of her disrupted working day and the loss of her lantern, Chaytor decides that this document does not fit her model, because the lost item has moved to the end of the deposition. If Katherine told her story in chronological order, then this is where we would expect to see it mentioned, after the assault.<sup>58</sup> Finally, in a deposition cited by Chaytor as a good example of 'husbandry' metaphor, Hester Burton told of having her boxes and things for market as well as her husband's good riding coat stolen when she was raped. The deposition is twenty-five lines long, and the first mention of these items is in line seventeen.

Chaytor's account of the chronological shift in the way in which rape was perceived is highly questionable. Her article argues that in the second half of the seventeenth century rape came to be seen as a crime against the individual, turning on

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<sup>55</sup>The conclusion to this dissertation will further explore the connection between under-reporting of rape and the contemporary importance of sexual reputation to women, most particularly married women. See below, pp. 121-142.

<sup>56</sup>Chaytor, 'Husband(ry)', passim. For the mobility of servants see Keith Wrightson, *English Society*, p. 42; Stone has suggested that the lower the status of a young man the more freedom he had to choose his own spouse. See Lawrence Stone, *Uncertain Unions and Broken Lives* (Oxford, 1995), p. 15.

<sup>57</sup>Chaytor, 'Husband(ry)', passim.

<sup>58</sup>Chaytor, 'Husband(ry)', passim; PRO ASSI 45/7/1.

legal questions of consent. Chaytor claims that women then became more likely to feel guilty, and the narrative changed to reflect this shift, becoming tales of resistance, struggle and crying for help. But these reactions were reported in many of the earlier depositions too. In 1642 the clerk or justice writing Anne Curtis's deposition wrote that, '...this informer saith that the said Burton did strive with her, and stopped her mouth with his hands that she could not cry out & pulling up her clothes about her hands, often swearing by God he would carnally use her body and this informer also saith that the said Burton did draw his yard at her...and further the said Burton swore by God that he would lay her on her back although she cried her heart out, and this informer further saith...that she was wet through her clothes were striving with him.' Anne Burton, like almost all of these women reporting rape or sexual assault, expressed no sense of shame about the assault.<sup>59</sup>

Chaytor further claims that the mid seventeenth century onwards saw 'the gradual withdrawal of upper and middle class women from household production and the sexualisation of their entire mental and physical lives'. After the mid seventeenth century, she suggests, such women could no longer bring rape cases to court because they were no longer involved in the household economy. Aristocratic women probably never laboured in a meaningful sense at any time in history, and it is difficult to envisage aristocratic women ever deriving personal validation from 'husbandry' in this sense. Middling sort women are better covered by her hypothesis, as it has been argued that there was a shift in the work patterns of these women in the later seventeenth and eighteenth centuries. In the seventeenth century these women could work outside their households, or for their husbands' business, but would be less likely to do so in the later eighteenth and nineteenth centuries.<sup>60</sup> However, where does the

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<sup>59</sup>EDR E12 Anne Curtis.

<sup>60</sup>Chaytor, 'Husband(ry)', *passim*. Other historians have agreed that women increasingly withdrew from productive labour, see for example, Susan Amussen, *An Ordered Society; Gender and Class in Early Modern England* (Oxford, New York, 1988), p. 183 and Hill has highlighted the increasingly restrictive nature of women's work in the eighteenth century. Bridget Hill, *Women, Work and Sexual Politics in Eighteenth-Century England* (Oxford, 1989), pp. 259-267. Davidoff and Hall have argued that this process continued on into the nineteenth century as part of gendered class formation, where

Victorian woman's endless household embroidery and linen-sewing fit into Chaytor's model? Surely this industriousness was an important part of such a woman's self-image. If 'husbandry' had ever been a source of validation for any such women then why should it now cease to be so?<sup>61</sup> Furthermore, aristocratic and gentry women did not bring accusations of rape to court in significant numbers in any part of the seventeenth century, or even perhaps in medieval England.<sup>62</sup>

Depositions cannot be read as monologues crafted by the individual woman, but they do reveal a commonly told tale of rape, just as Natalie Davis's pardon-tales betrayed a series of culturally accepted explanations for murder. Men and women in early modern France appealed to different (gendered) narratives to explain away their crimes.<sup>63</sup> The depositions studied for this thesis contain stories of early modern rapes, and reveal a master-narrative of reported rape which must be interrogated. These reported cases speak of the unmarried middling sort woman, attacked without warning in the course of her everyday work by a man of her own social status, despite her resistance. It may well be that many actual sexual assaults followed this scenario, but it is also clear that nonconsensual sexual intercourse also occurred in a variety of other contexts, including sexual exploitation by a master, the assault of married women, assaults that resulted in pregnancy and the assault of better-off women, but that these cases rarely came to court.<sup>64</sup>

The low numbers of early modern reported rapes in general cannot be taken at face value, because the depositions themselves suggest reasons why many other cases

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domesticity became women's role in a middle class ideology of separate spheres. See Leonore Davidoff and Catherine Hall, *Family fortunes: Men and women of the English middle class* (London, 1987), passim. However, see below, note 61.

<sup>61</sup>Amanda Vickery has suggested that the term separate spheres is an unhelpful tool for historians, because it conceals the reality of later eighteenth century women's lives. She argues that most of these women continued to exercise agency, including work in the household. See Amanda Vickery, 'Golden Age to Separate Spheres? A review of the categories and chronology of English women's history', *Historical Journal*, 36:2 (1993), 383-414.

<sup>62</sup>See Carter, *Rape in Medieval England*, pp. 54-55.

<sup>63</sup>Davis, *Fiction in the Archives*, passim.

<sup>64</sup>These points are further explored in the conclusion. See below, pp. 121-142.

may not have been reported. Many of these women reported the threats made by the alleged rapist to prevent them from reporting, which were often quite successful in the short term. Mary Hedding, a fifteen-year old servant was left alone with a fellow servant to work in the fields. She claimed that he had made advances to her, and then raped her and afterwards 'used this oppression to her, I am sure you will not tell and I will not, and here is no body near to hear.' When Mary Hedding's master and mistress enquired about the cause of her distress, he effectively silenced her by saying 'did I not tell you'. Mary Hedding was only able to tell the truth when she was alone with her master and mistress later in the same day.<sup>65</sup> Other women reported being threatened with financial harm, physical assault or murder should they report the sexual assault.<sup>66</sup> It seems likely that these threats may often have been successful in cases which never came before a justice.

Many cases of rape must have fallen by the wayside due to the mediating attempts of the alleged rapist, his family, the woman's family, or the intervention of the Justice himself to settle attempted rape cases out of court. Ann Levett reported that her master raped her when her mistress was away, but the following morning he 'offered to give her whatever she liked if she would not speak of it'.<sup>67</sup> There were other similar cases and some women explained how they themselves had asked the accused man for compensation after being raped.<sup>68</sup> Justices probably chose to arbitrate some cases of attempted rape themselves and set suitable damages. William Hunt's justicing notebook, which contains entries dating from between 1744 and 1749, shows that he dealt with three cases of attempted rape in that time. He obviously liked to settle such cases informally wherever possible, because he resolved two of these three cases by asking the men to pay compensation to the women

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<sup>65</sup>EDR E22 Mary Hedding.

<sup>66</sup>See for example, EDR E35 Rebecca Russell. See also PRO ASSI 45/5/2/12, PRO ASSI 45/10/2/31, PRO ASSI 45/12/2/1, PRO ASSI 45/20/2/92, PRO ASSI 45/22/4/48C.

<sup>67</sup>EDR E40 Ann Levett.

<sup>68</sup>PRO ASSI 45/19/3/36B6B.

assaulted.<sup>69</sup> Evidence of attempts at restitution or apology occur in a third of the trial pamphlets.<sup>70</sup> It seems that any attempts on behalf of the rape victim to settle out of court in return for money were seen as indicative of false accusation for monetary gain.<sup>71</sup> One pamphlet cites this evidence of an alleged attempt to reach an out of court settlement: 'In July last year Mrs Boccock employ'd me against the prisoners for assaulting her Daughter...but she made no mention of a Rape at that Time...A Meeting was appointed to accommodate the difference, but they came to no agreement for she demanded 50L for Damages. The girl came to me afterwards, and said her mother would have me indict them for a Rape...[They failed to get the composition and then asked him to indict for street-robbery.] I finding by this that they were a pair of wicked contentious creatures, I told them I would have no more to do in the affair...The Jury acquitted the prisoners.'<sup>72</sup>

It is clear that these reasons for general under-reporting cannot account for the uniformity of the reported rape cases, and the selective under-reporting which this implies. The next chapter will investigate the image of rape in contemporary literature, and show how a woman had good reason to fear stigma if she reported rape because such an accusation was inevitably equated with consensuality, and conspiracy to prosecute. Those women who felt their reputations were particularly vulnerable realised that they had little to gain by launching a costly and time-consuming prosecution. Rape was rarely prosecuted, and woman evidently only reported sexual assault if the safest story was open to them; the rape-narrative outlined in this chapter.

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<sup>69</sup>Crittall (ed.), *Justicing Notebook of William Hunt*, p. 32.

<sup>70</sup>*British Trials 1600-1900, The Microfiche Edition*, units 1-3 (Cambridge, 1993), *passim*.

<sup>71</sup>The construction of a myth of false accusation in the pamphlet material is discussed below on pp. 101-2

<sup>72</sup>*Select Trials 1720-1724* (2 vols, London, 1734), vol. II, p. 261.



### Chapter Three: The Public Cultures of Non-Consensual Sex<sup>1</sup>

'Well! first or last all women must be won.

It is their fault, and cannot be withstood'<sup>2</sup>

In this chapter, representations of rape and coercive sex in contemporary literature are explored for an understanding of the attitudes to rape which lay beyond the words and actions of the deponents. Such discourses of sexual violence may lie submerged and unspoken in the official documents of legal process.<sup>3</sup> Tim Hitchcock has recently presented an innovative and challenging view of the changes in 'English sexualities' in his book of that title. With particular attention to the discourses of sexuality he argues that the eighteenth century in England was the scene for a 'sexual revolution...creating a phallogentric and increasingly mandatory heterosexual culture'. Hitchcock envisages this 'revolution' both as a change in the Foucauldian public culture of sex and as an attendant transition in private sexual behaviour among courting couples towards more emphasis on penetrative sex.<sup>4</sup> Eighteenth century literature of all kinds redefined the sexuality of the woman into a passive ideal, and redefined men as naturally sexually aggressive. Medical literature and pornography emphasised male aggression and arousal, and male orgasm in penetrative intercourse rather than masturbation. Trial pamphlets and advice literature increasingly stereotyped the sodomite and the lesbian woman into a separate sexual identity. Hitchcock did not attempt a systematic exploration of attitudes to sexual violence,

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<sup>1</sup>See Tim Hitchcock, *English Sexualities, 1700-1800* (Basingstoke, 1997), pp. 8-23 for 'Chapter 2, The Public Cultures of Sex'.

<sup>2</sup>Earl of Rochester, *Poems on Several Occasions with Valentinian; A Tragedy* (London, 1710), p. 112.

<sup>3</sup>In her excellent article on rape in the American South, Diane Sommerville's qualitative study of the post bellum newspapers reveals the genesis of an enduring stereotype. She uses the newspaper columns to chart the emergence of contemporary myths of mass rape of white Southern women by black men, precisely located after the Civil War, due to the instability generated by emancipation. Diane Sommerville, 'The Rape Myth in the Old South Reconsidered', *Journal of Southern History*, 61 (1995), 481-518.

<sup>4</sup>M. Foucault, *The History of Sexuality: An Introduction* (Harmondsworth, 1990), see, for example, pp. 7-9.

which must surely be central to any discussion of phallogentrism, but the important insight of his book is his appreciation of the relevance of tracing discourse for an understanding of the meanings of sexuality in early modern culture.<sup>5</sup> This chapter will trace the representations of rape and coercive intercourse in contemporary literatures, focusing on the close study of the seventeenth century ballads in the Roxburghe and Pepys collections, and late seventeenth century and eighteenth century trial pamphlets in the *British Trials* collection and Durham University Library Special Collections. The conclusion will proceed to a discussion of the impact on reporting and conviction of the discourses surrounding rape.

The part that the media plays in shaping social attitudes of all kinds has received the attention of contemporary sociologists, particularly since the 1970s. The effect of the media on popular attitudes to rape, and attitudes to women has received particular comment. Smart and Smart claimed in 1978 that 'the general form and content of rape reporting have served to further confound a rational understanding of rape as well as to indirectly conspire to perpetuate women's social and sexual subordination by producing rape reports which serve both as a form of sexual titillation and as a veiled 'warning' to non-conforming 'independent' women, that is to say as an implicit form of social control.'<sup>6</sup> The reporting of rape, as with the reporting of all crime by the media, remains highly selective to this day, affecting popular understanding of sexual assault.<sup>7</sup>

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<sup>5</sup>Tim Hitchcock, *English Sexualities*, p. 2, 70-86; Tim Hitchcock, 'Unlawfully begotten on her body: illegitimacy and the parish poor in St. Luke's, Chelsea' in Tim Hitchcock, P. King and P. Sharpe (eds.), *Chronicling Poverty* (London, 1997), passim; Tim Hitchcock, 'Redefining Sex in Eighteenth Century England', *History Workshop Journal*, 41 (Spring 1996), 73-90.

<sup>6</sup>Smart and Smart, 'Accounting for Rape: Reality and Myth in press reporting' in C. Smart and B. Smart (eds.), *Women, Sexuality and Social Control* (London, 1978), pp. 89-103.

<sup>7</sup>This work on the media forms an important part of the Griffin-Brownmiller argument wherein rape as an act and a potentiality functions as an instrument for social control of the female. These authors commented that the 1970s press focused on the prevailing cultural stereotype of the rapist as a sexual psychopath suffering from uncontrollable sexual desire, attacking a woman who has been innocent or stupid enough to risk attack by being in a geographically and socially exposed position at night. Hence Susan Brownmiller noted that the 1970s New York Police statistics showed black women to be more numerous among those reporting rape than white women, and that these women ranged in age from young children to 75. Conversely, the most common rape reported in the *New York Daily News*

It would be facile to equate the twentieth century media with the seventeenth or even the eighteenth century publishing industry, but the work of Margaret Spufford and Tessa Watt shows that contemporary print culture was a truly large-scale operation. Watt and Spufford chart the tremendous volume of seventeenth century cheap print distributed to almost all areas of England to be read by those of modest means and the better-off. By the 1660s as many as 400,000 almanacs alone were being produced, and Bunyan commented despairingly that in his youth he enjoyed 'a Ballad, a News-book ... but for the Holy Scriptures, I cared not. And as it was with me then, so it is with my brethren now.'<sup>1</sup> Bunyan was from a relatively modest background, his father holding a mere cottage and nine acres in Bedfordshire. Even a boy from such a background might receive a year or two's education which enabled him at least to read and sometimes to write. His sister might sometimes be able to read. There was a well developed distributive network which ensured that cheap print, including crime pamphlets, was available all over the country. Tessa Watt calculates that many of these pamphlets could be purchased for the price of two quarts of strong beer at the alehouse. Those who could not read could have a pamphlet read aloud to them by others, or hear the ballad sung.<sup>8</sup>

Hitchcock claims a 'revolution' in attitudes to sexuality for the eighteenth century, but has neglected the seventeenth century material. There is substantial evidence to suggest that elements of what Hitchcock has styled as a newly phallogocentric eighteenth century sexual culture existed throughout the seventeenth century, as the ballad evidence shows. Ballads were sung and heard by people from a

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was that of the cultural stereotype: the young, pretty, white, middle-class victim. Smart and Smart, 'Accounting for Rape', pp. 89-103, particularly 96-7.

<sup>8</sup>Margaret Spufford, *Small Books and Pleasant Histories: Popular Fiction and its Readership in Seventeenth-Century England* (London, 1981), pp. 2, 6-7, 36 and 45; Tessa Watt, *Cheap Print and Popular Piety 1550-1640* (Cambridge, 1991), passim; *British Trials 1600-1900, The Microfiche Edition*, units 1-3 (Cambridge, 1993), 561; Frances Dolan, *Dangerous Familiars: Representations of Domestic Crime in England 1550-1700* (London, 1994), p. 7; *Select Trials 1720-1724* (2 vols., London, 1734), vol. I, pp. 80-84.

wide social spectrum, and contemporaries commented on the ubiquitous ballad singing of popular culture. Ballad singing did not rely exclusively on literacy skills, and so could touch the illiterate or pragmatically literate directly.<sup>9</sup> A survey of extant ballads (probably mostly seventeenth century) demonstrates condemnation of rape, and a profound ambivalence towards forceful intercourse.<sup>10</sup>

Early modern popular ballads feature women's agency in the opposite roles of voracious viragos seeking sexual satisfaction, and as virtuous virgins outwitting would-be rapists and forcible seducers. Many ballads such as *Buxum Kate's Merry Intreague* show the sexually voracious and domineering woman so beloved of early modern culture. The ballad shows 'how she serv'd Robin, the faint-hearted miller, who was afraid to encounter with her maiden-head'. Buxum Kate fears that Robin 'has no precious Nutmegs to please a young Bride,...I first mean to try him and if bad's his Gear, I'd not have him, if he had Ten thousand a Year'. When Robin refuses Kate intercourse for fear that she will become pregnant, she throws him down the stairs and out of the house.<sup>11</sup>

On the other hand, *The Witty Lass of Lime Stree*', a gentleman's maid, is willing to protect her virginity by physical means, throwing an amorous lawyer's clerk into a pond in St. James's Park for calling her 'his dear'. Pepys also collected at least three songs about *The Baffled Knight*, who was tricked by 'the wonderful sharp and witty' lady who was lucky enough also to be beautiful. He announces 'Yet now, before you further go,/ I must and will enjoy thee'. She is afraid and wishes to 'guard my Maiden-head', and defeats him by such ingenious stratagems as locking him out of her

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<sup>9</sup>Sharpe has made imaginative use of ballads to discuss marital relations. J.A. Sharpe, 'Plebian marriage in Stuart England: some evidence from popular literature', *Transactions of the Royal Historical Society*, 38 (1986), 69-90.

<sup>10</sup>Hitchcock, *Sexualities*, passim; Hitchcock, 'Unlawfully begotten', passim; Hitchcock, 'Redefining Sex', passim; Elizabeth Foyster, 'The Concept of Male Honour in Seventeenth Century England', Ph.D. thesis, University of Durham (1996), pp. 21-24.

<sup>11</sup>R. Latham (ed.), *Pepys Library Catalogue* (5 vols., Bury St. Edmunds, 1987), vol. V, p. 161.

father's moated house, pushing him into a deep river, and tricking him into being trapped in fetters.<sup>12</sup>

Some ballads feature rape in an unambiguously negative light, often set in a political or historical context. There are several extant ballads based on the story of Titus Andronicus, including two versions of the same ballad in the Pepys collection. In *The Lamentable History of Titus Andronicus...with his Revenge upon their Cruel and Inhumane Act*, Lavinia's rape is portrayed as the worst of Titus's many misfortunes: 'But now behold what wounded most my mind/The Empresses two Sons of Tygers kind/My Daughter ravished without remorse, And took away her honour quite perforce.' Once again rape is seen as dishonouring, and Lavinia ends up dead at the hands of her father, who also stabs himself, having revenged her rape by killing her ravishers and feeding them to their own mother in a pie.<sup>13</sup>

Another story features rape as part of a tale of horrific wickedness: *A Lamentable Ballad of the tragical end of a Gallant Lord and a Vertuous Lady*. In this ballad a nobleman marries a beautiful and celebrated virgin, who is raped by a revenge-seeking and lustful 'Blackamoor' hunting servant. The servant then kills their children and forces the Lord to cut off his nose to save his wife's life. He breaks his

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<sup>12</sup>Another young woman willing and able to defend herself is *The Beautiful Barkshire Damsel That was Courted by a Gallant Young Squire*, 'Giving an Account how he deluded her into the Fields, thinking there by Force, to have obtained his Will, Shewing likewise how she overcame him, and stuck him into the ground with his own Sword.' See Latham (ed.), *Pepys*, vol. V, pp. 169-1, 239.

<sup>13</sup>Latham (ed.), *Pepys*, vol. I, p. 86,184; W.M. Chappell (ed.), *The Roxburghe Ballads* (3 vols., London, 1871), vol. III, p. 544. There are various surviving atrocity pamphlets describing rapes committed by Irish Catholics against Protestant women, but there is surprisingly little extant material complaining of rape in the Civil War in England. Rape is forbidden in most contemporary articles and codes of war, and these prohibitions seem generally to have succeeded. I have found only a few surviving propaganda pamphlets, and several scattered references to cases of assault, and in the absence of more detailed research I am inclined to agree with Carlton that sexual assault was not a significant feature in the Civil War years. See Charles Carlton, *Going to the Wars - the Experience of the British Civil Wars 1638-1651* (London and New York, 1992), pp. 259-60 and 296-8. 'A Warning to Youth' describes the riotous life of a merchant man, who rapes a virtuous girl who withstands his seduction attempts. Interestingly, the intercourse is described as ravishment, despite the fact that the girl becomes pregnant as a result. Chappell (ed.), *Roxburghe*, vol. III, pp. 37-41.

bargain, throwing her off the tower, and then jumps off to kill himself, upon which the Lord dies of grief: 'And thus doth end as sad a tale,/ as ever man did hear.'<sup>14</sup>

In these unequivocal portrayals of *rape*, the rapists are all painted as particularly evil. Where the sexual assaults are described they are extremely physically violent, and all result in the eventual death of the woman assaulted. The women are beautiful and virtuous, often of high social status, and afflicted with a sense of dishonour after the rape. These are the uncomplicated circumstances in which contemporaries found it easy to sympathise with a raped woman. The ballads sometimes present a slightly more complex aetiology of lust than that found in the trial pamphlets, which will be considered later in this chapter. The ballads mix lust with the occasional added ingredients of political revenge, personal revenge and anger. Despite this variety, most of the ballads confirm lust as the most powerful motivation to rape. These are caricatured fables of rape crafted to evoke ultimate pathos from those who sang and heard them, but none of these rapes depict a situation which could in any way be related to the everyday experiences of the ordinary people singing or listening to them.

Despite ballads featuring rapes as a tragic fable, and portrayals of women with agency, many contemporary ballads feature a marked ambivalence to *coercive* intercourse, which we might now view as rape. In *The Sporting Couple, or, Love in the Grass*, 'a spritely Lad and Lass' are sitting together 'like lovers indeed' near London. The maid asks him not to plead for sex: 'what? will you Ruine me?/Oh! no, it shall not be.' She seeks to leave, archly fearing pregnancy and abandonment, but the young man holds her fast, offering her presents, and persisting in a fairly coercive manner, with the girl asking to be released 'She cried let me go', until she is convinced:

'Yet he press'd her so,

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<sup>14</sup>Chappell (ed.), *Roxburghe*, vol. III, p. 49.

Ere he let her go  
 That at the length quoth she  
 Sir How you tickle me  
 What do you mean to do?

He laid her down beneath a Tree  
 But what he did was unknown to me  
 But I heard her say  
 As she went away,  
 Making a low Courchey,  
 Thank ye kind Sir quoth she  
 When shall we meet again,<sup>15</sup>

The clear message of these ballads is that enjoyment of foreplay or intercourse can convert a 'no' to a 'yes'. In *A New Song, called, The Happy Young Man, or the Virgin Betrayed*, the young man admires 'a pritty Maid bathing in a stream, and his poor heart is set on fire'. She is such a powerful temptation that he undresses, leaps into the water and pulls her out: 'She Cry'd Good Sir my hounour/ I Swore I the Joys would Tast,/ and down I fell upon her.' The woman's reaction is 'betwixt a smile and frown,/not vext nor pleas'd at my embraces, Modestly put on her Gown,/and hid her Charming graces.' She suggests that they 'Joyn our hearts together', and he agrees that 'we'll never part'. *The Swimming Lady* is another ballad with an identical plot, but with a more brutal physical description of the sexual encounter. The woman is clearly distressed afterwards: 'with watry eyes she pants and crys,/I am utterly undone;' Luckily for the young woman, the man promises to marry her. Even in this Oxford swimming encounter, which features quite blatant use of force despite the woman's struggling, the assault is described in terms reminiscent of consensual sexual intercourse, using ambivalent words such as 'shrieks' or 'pants'. These ballads are

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<sup>15</sup>Latham (ed.), *Pepys*, vol. V, p. 181.

clearly intended to have positive outcomes, but the songs tell tales of a deep-rooted ambivalence about coercive intercourse.<sup>16</sup>

Rape appears very seldom in drama before the Restoration, and Howe found a mere four plays in which rape actually occurred in texts dating between 1594 and 1612. One such rare representation of rape on the Renaissance stage is Heywood's 1638 version of *Lucrece*. In this text, a serious presentation of the rape of Lucrece runs alongside a humorous representation in a comic song of the appeal of the coy mistress who engages in the token resistance expected of virtuous women. This ditty is sung just before Lucrece's first entrance:

Diana double cloth'd offends;  
 So Venus naked quite.  
 The last begets a surfet and  
 The other no delight.  
 That crafty Girle shall please me best  
 That No, for Yea can say,  
 And every wanton willing kisse  
 Can season with a Nay."<sup>17</sup>

Partridge recorded several Shakespearean words for intercourse which have connotations of violence, including 'strike', 'throw down', 'hit' and 'thump'. A dual positive and negative meaning was attributed to the verb 'to ravish', which after 1613 could be used equally in the older sense of rape, and the newer sense of delighted rapture.<sup>18</sup> These linguistic clues, and the coercive intercourse enjoyed by the couples in the ballads and in Heywood's *Lucrece*, are indications that Hitchcock

<sup>16</sup>Latham (ed.), *Pepys*, vol. II, p. 184; Latham (ed.), *Pepys*, vol. I, p. 86.

<sup>17</sup>Elizabeth Howe, *The First English Actresses: Women and Drama 1600-1700* (Cambridge, 1992), p. 43; Thomas Heywood, *The Rape of Lucrece. A True Roman Tragedy* (London, 1638), p. 195.

<sup>18</sup>E. Partridge, *Shakespeare's Bawdy* (London, 1968); J.A.H. Murray (ed.), *The Oxford English Dictionary* (13 vols., Oxford, 1933), vol. VIII, pp. 149-150, 179-180.



underestimates the pro-penetrative and forceful aspects of the seventeenth century discourses of sex. Despite this, the celebration of coercion was only one element in a seventeenth century public culture of sex in which the ideal was predominantly consensual, and women were understood as sexually voracious creatures unable to withstand the promptings of the flesh. In *The Sporting Couple*, cited earlier as an example of coercive intercourse, the desired end result is clearly a mutually pleasurable sexual encounter: 'quoth she/Sir How you tickle me/ What do you mean to do?'<sup>19</sup> By contrast, the later seventeenth and eighteenth centuries saw a proliferation of discourses of sexual violence, in Restoration drama, trial pamphlets, novels, the emergent national periodicals, and local newspapers. Readers, playgoers, and their friends were clearly exposed to representations of rape to an unprecedented extent.

At the same time that polite and ordinary people were singing about rape in the ballads, a similarly varied audience had access to Restoration drama. Aristocrats and professional men and their wives formed the larger part of the late seventeenth century theatre-going public, but servants, apprentices and journey-men also attended.<sup>20</sup> Playwrights exploited the arrival of the female actress by using rape as a regular plot strand in tragedy. Anne Bracegirdle, one of the two highest earning female actresses of her time, specialised in portraying honourable virgins violently robbed of their virginity.<sup>21</sup> The actual rape always occurred off-stage, but the female body was first passively exposed in sleep or resting on-stage, often in semi-undress. The actress would then be seized on stage, 'raped' away from the eyes of the audience, and return erotically dishevelled, bemoaning her ravishment. Her sad story usually ended in suicide to escape the shame of the rape. The ravisher was often a tyrannous ruler, and the rape equated with political despotism, as in Dryden's *Amboyna*, where the son of the governor rapes Isabinda, a beautiful and virtuous girl betrothed to

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<sup>19</sup>Anthony Fletcher, *Gender, Sex and Subordination in England 1500-1800* (London, 1995), pp. 5-7, 13; Latham (ed.), *Pepys*, vol. V, p. 181.

<sup>20</sup>Howe, *English Actresses*, p. 6.

<sup>21</sup>Howe, *English Actresses*, p. 43.

Toweson. Toweson revenges Isabinda by killing her rapist, and in most of these plays, though not in *Amboyna*, the revenge for the rape leads to the creation of a new and just government.<sup>22</sup>

In *The Rape*, published in 1692, and attributed to Nicholas Brady, Eurione is raped by Gensalaric from the double motivation of lust: 'I must enjoy Eurione or die', and desire to frame his enemy, the prince. The dramatic tension is heightened as the conspirators hatch their plot on stage: 'Methinks I see already/Her dying looks, her seeming faint resistance/And feel the mighty transports of hot love!' Eurione then comes on-stage and sits in an arbour, singing of her hopes for her forthcoming marriage. Merinda, the serving-maid, returning with the lute she has been sent for, finds Eurione in the arbour gagged, bound to a tree, 'hair dishevelled as newly ravished', with the prince's dagger lying beside her. In the following scenes Eurione remains dishevelled, weeping and singing of her anguish. Despairing of her honour, she survives long enough to identify Gensalaric as the real rapist, before she stabs herself as the dramatic climax: 'Stain'd and polluted as it is, 'tis fit/ To mingle with no other.' Some raped women are depicted as innocent, but the suggestion of the stain of the act is more usual. Like Eurione in *The Rape*, these women become unmarriageable.<sup>23</sup>

Restoration dramatists adapting Renaissance texts added rapes to the original drama. Tate's 1681 adaptation of *King Lear* had Cordelia about to be raped, before being rescued by Edgar. Restoration representations of rape in tragedy, such as

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<sup>22</sup>Howe, *English Actresses*, pp. 43-55; Jacqueline Pearson, *Prostituted Muse: Images of Women and Women Dramatists 1642-1737* (New York, 1988), pp. 95-99; Dryden, *Amboyna* (London, 1673), passim.

<sup>23</sup>N. Brady, *The Rape* (London, 1692); Howe, *English Actresses*, pp. 6, 43-55; Pearson, *Prostituted Muse*, pp. 95-99; Aphra Behn, *The Rover* (London, 1664, reprinted Harmondsworth, 1992), passim.

Rochester's adaptation of Fletcher's *Valentinian*, tended to emphasise the passivity and attractiveness of the heroine to the forceful villain.<sup>24</sup>

In Restoration tragedy, the idealised virgin's rape was eroticised and presented as entertainment, and the treatment of rape in contemporary comedy trivialised sexual coercion even further. The woman crying rape was presented as comic, and coercive intercourse was identified with humour.<sup>25</sup> In this poem by Southerne, Congreve is depicted as well-fitted to gently ravish Reputation who 'Flies, like a Mistress, but to be pursued':

'Oh Congreve! boldy follow on the Chase;  
 She looks behind, and wants thy strong Embrace:  
 She yields, she yields, surrenders all her Charms,  
 Do you but force her gently to your Arms:  
 Such Nerves, such Graces, in your Lines appear,  
 As you were made to be her Ravisher.'<sup>26</sup>

Women in these plays refuse intercourse without a corresponding disinclination, and will enjoy it if they are forced. Fielding's Mrs Squeezum is so smitten by Ramble that 'if he had even ravished me, on my conscience I should have forgiven him'. The Epilogue to the same play claims that the ladies frown because 'we have no rape at all'. Modern ladies would wish their beaux to be more high spirited, and will not react like Lucrece: 'So zealous from self-murder we refrain,/we live,

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<sup>24</sup>Howe, *English Actresses*, pp. 6, 43-55; Pearson, *Prostituted Muse*, pp. 95-99; Rochester, *Valentinian*, passim; Nahum Tate, *The History of King Lear* (ed.), James Black (London, 1681, reprinted Whitstable, 1975), passim.

<sup>25</sup>William Congreve, *Old Batchelour* (ed.), M. Summers, *Complete Works of William Congreve* (London 1693, reprinted Soho, 1973), pp. 162-225; William Congreve, *The Double Dealer* in Summers (ed.), *Complete Works of William Congreve*, pp. 61-76. John Dryden, *King Arthur* in Walter Scott (ed), *The Works of John Dryden* (London, 1691, reprinted, London, 1808), vol. III, pp. 106-179.

<sup>26</sup>Congreve, *The Old Batchelour*, p. 163.

though sure of ravishing again.<sup>127</sup> Forced intercourse is of little consequence in these plays. Isabella, in Sedley's *Bellamira*, is raped by the man she had fallen in love with in Spain. Her ravisher confidently asserts that: 'No woman ever heartily fell out with a man about that Business.' In the world of *Bellamira*, he seems to be right, because after the pair marry Isabella forgives him with the words: 'You seiz'd the rest somewhat too rudely here:/ But I am your wife and now am all obedience.'<sup>128</sup>

These plays re-inforce the idea that women make false claims about rape to hide their own sexual misdemeanours, and that these claims are dangerous because stupid men believe them. In *The Double Dealer*, published in 1693, Congreve created the ridiculous Lady Touchwood, secretly in love with her resistant nephew Mellefont. When her husband disturbs her rendezvous with Mellefont, Lady Touchwood counterfeits attempted rape to protect herself from the anger of her husband and to revenge herself upon Mellefont for scorning her advances. Lord Touchwood is totally convinced by her and prepares to fight Mellefont, restrained only by his wife's pleadings. In *The Old Bachelour*, the ridiculously voracious Laetitia attempts to prevent discovery of her adultery by crying rape: 'Your back was no sooner turn'd, but like a Lion, he came open-mouth'd upon me, and would have ravished a kiss from me by main force.' Fondlewife, her husband, believes her claims despite his discovery of Bellmour in her chamber.<sup>29</sup>

### **The trial pamphlets 1675-1800**

Trial pamphlets are vital sources for the study of rape, firstly because the editorial comments and the types of material selected for inclusion are valuable indices

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<sup>27</sup>Henry Fielding, *Rape Upon Rape, Or The Coffee-House Politician* in W.E. Henley (ed.), *The Writings of Henry Fielding* (London, 1730, reprinted, London, 1903), vol. IX, p.105.

<sup>28</sup>Pearson, *Prostituted Muse*, pp. 56, 68; Charles Sedley, *Bellamira, Or The Mistress* in *The Poetical and Dramatic Works of Sir Charles Sedley* (London, 1687, reprinted, London, 1928), vol. II, pp. 56, 94.

<sup>29</sup>Congreve, *Double-Dealer*, passim; Congreve, *The Old Batchelour*, pp. 209-210.

of the attitudes of the pamphleteers towards the crime. Secondly, it is probable that both ordinary people and the better off would derive much of their understanding of rape as an event and as a legal category from these pamphlets, unless informed by personal experience. These pamphlets may well have played a large part in constituting and confirming attitudes to sexual assault, as the media has done in this century.<sup>30</sup>

Before turning to the trial pamphlets themselves, questions of chronology must be addressed. The earliest pamphlet considered here dates from 1675, and only ten pamphlets in total date from the seventeenth century. All but three of the other pamphlets used in the main study date from before 1770, and the last pamphlet dates from 1786. Fifty-three pamphlets in total were used in this study, of which twenty-five came from the *British Trials* series.

The pamphlets were often reasonably cheap, and were probably read by a broad range of literate customers and the stories told to the illiterate. However, some of these rape pamphlets would appeal particularly to the better-off, such as *The Trial of Lord Baltimore*, a lavish production with seventy-four pages of close type, including a three quarter length portrait of the alleged victim, and miniature of the infamous Lord himself. This pamphlet was available to those who could afford the princely sum of 16 shillings, and was obviously thought to be of interest to the reader of the *Gentleman's Magazine* because it was reviewed in the magazine's 'List of Books ... With Remarks' section for 1768. Some of the pamphlets were clearly aimed at an educated audience, for they contain scraps of Latin such as 'vide Conversation between Saint and Sinner' in *Reflections of the evidence of S..... W....* The case of

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<sup>30</sup>The role of the media in constructing myths about crime is discussed in Smart and Smart, 'Accounting for rape', pp. 91, 89-103.

Griselda Murray, discussed in the following chapter, reveals that pamphlets were read in the highest circles.<sup>31</sup>

An analysis of these pamphlets is important, because though they themselves reflect social stereotypes, they must also have shaped and confirmed contemporary attitudes towards rape. The work of twentieth century sociologists is a pertinent reminder that these pamphlets do not simply portray real rapes or even real trials. Unlike legal documents, rape trial pamphlets cannot primarily be used to understand individual crimes. An examination of the motivations of the writers, their accuracy, and the representativeness of the pamphlet crimes will reinforce this point.

Several pamphleteers and compilers of the pamphlets stated that they wrote as a duty to warn potential victims or their relatives. Hence, 'The Wolf in Sheep's Cloathing', claimed to be 'well worth the serious perusal of Parents of every denomination; but more especially those who place their female children either in public or private seminaries for their learning.'<sup>32</sup> There was an element of self-conscious moralising, but we need to treat such claims with caution. These pamphlets were reports of the most scandalous crimes, selected and recounted primarily to shock and titillate the general reader. They are not official legal records, and some were produced by the alleged offender himself to proclaim his innocence.

It is unclear how accurately the trial pamphlets depict what occurred in court as they are the only detailed source for the progress of the rape trial in the court room. Cockburn conducts a comparison between several trial pamphlets depicting Home Counties trials, and the legal trial documents. His findings indicate a substantial

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<sup>31</sup>For the audience for printed texts see Spufford, *Small Books*, pp. 2, 6, 7, 36 & 45; Watt, *Cheap Print and Popular Piety*, passim; *The Gentleman's Magazine*, 38 (1798), 180-187; *British Trials*, 561; Dolan, *Dangerous Familiars*, p. 7; *Observations on the evidence of S. W.* (London, 1772), passim.

<sup>32</sup>*British Trials*, 20.

proportion of careless error, inaccurate embellishment and deliberate invention.<sup>33</sup> They were selective both in their choice of subject and in what evidence was quoted at length. The most commonly indicted crime in this period (then as now) was property crime, but only a minority of pamphlet material deals with property crime, and this focuses on theft of valuable goods. Sharpe claims that pamphlets are close enough to the official records in reported details to contain valuable detail on the processes of criminal justice, but we must be wary of taking the pamphlets at face value, and rather use them in conjunction with deposition, (and other) evidence.<sup>34</sup> A close analysis of trial pamphlets has enriched the work of Dolan and Sharpe on domestic violence, Lake on murder and Faller on representations of crime.<sup>35</sup> In this study of rape, the pamphlets will primarily be read as representations, and will be supported by a study of depositions, popular literature, legal texts, midwifery handbooks, servants' advice literature, newspapers and periodicals. What aetiology of 'rape' is presented by these pamphlets?

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<sup>33</sup>James Cockburn, *Calendar of Assize Records: Home Circuit Indictments: Elizabeth I and James I: Introduction* (London, 1985), pp. 14, 97-100. One pamphlet reported the jury's deliberation over the guilt of a woman accused of witchcraft, where the court records showed she had actually confessed, and was never convicted by jury; Alan Macfarlane's use of Essex witchcraft pamphlets for background information about the context of witchcraft accusations seems naive in the light of Cockburn's findings. Macfarlane comments that pamphlets reveal seemingly mild prosecutions had 'a web of suspicions behind this one formal accusation.' It may be that the balance of accuracy lies with the indictments rather than the (no doubt highly sensationalised) pamphlet. He also claimed that the indictments and pamphlets rarely contradicted each other. Alan Macfarlane, *Witchcraft in Tudor and Stuart England* (London, 1970), pp. 81-93. See also Randolph Trumbach, 'Sodomitical Assaults, Gender Role and Sexual Development in Eighteenth Century London', *Journal of Homosexuality*, 16 1-2 (1988), 407-429, for an insufficiently cautious use of trial pamphlets to discuss the realities of sodomitical assaults.

<sup>34</sup>See the discussion in Dolan, *Dangerous Familiars*, p. 2. See also J.A. Sharpe, *Crime in Early Modern England 1550-1750* (London, 1984), p. 117.

<sup>35</sup>Dolan, *Dangerous Familiars*, p. 2; J. A. Sharpe, 'Domestic Homicide in Early Modern England', *Historical Journal*, 24 (1981), 29-48; J. A. Sharpe, 'Last Dying Speeches: Religion, Ideology and Public Execution in Seventeenth Century England', *Past and Present*, 107 (May, 1987), 144-167; L. B. Faller, *Turned to account: The forms and functions of criminal biography in late seventeenth- and early eighteenth-century England* (Cambridge, 1987), pp. ix-xiii; Peter Lake, 'Puritanism, Arminianism and a Shropshire Axe-Murder', *Midland History*, XV (1990), 36-65; Peter Lake, 'Deeds Against Nature: Cheap Print, Protestantism and Murder in Early Seventeenth Century England' in K. Sharpe and Peter Lake (eds.), *Culture and Politics in Early Stuart England* (Basingstoke, 1994), pp. 257-280.

The rapes portrayed are firstly limited in that they could only be selected from amongst those coming to trial, which were not representative of sexual assaults actually occurring.<sup>36</sup> The pamphleteers were also particularly likely to report the causes célèbres of the day. The trials of Lord Audley in 1630, Francis Charteris in 1730 and Lord Baltimore in 1768, are extant in various versions. These trials are unrepresentative of the usual reported rapes in the deposition material, not least because of the exalted social status of the alleged offenders. The trial pamphlets also contained proportionately more cases brought by the richer women who were conspicuously absent from the depositions. As the case of Griselda Murray will show, these were thought to be particularly horrifying and therefore likely to be popular with readers.<sup>37</sup>

Proportionately more cases involving children are reported in these pamphlets, probably because these rape cases were thought to be more shocking and newsworthy than trials involving adult women.<sup>38</sup> Of the pamphlets in the *British Trials* series, approximately one third of the pamphlets described trials involving girls under ten,

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<sup>36</sup>See the conclusion for further discussion of this. See below, pp. 121-142.

<sup>37</sup>Cynthia Herrup has already produced an admirable close reading of the Audley trial, and I have therefore excluded the Lord Audley trial pamphlets from this study. C. Herrup, 'The Patriarch at Home: The Trial of the 2nd Earl of Castlehaven for Rape and Sodomy', *History Workshop Journal*, 42 (1996), 1-18. For Francis Charteris see *Select Trials 1720-24*, vol. II, pp. 339-352. For Lord Baltimore, see *British Trials*, 561. Various Audley pamphlets are extant including the *History of the Most Remarkable Trials in Capital Cases* (2 vols., London, 1716), vol. II, pp. 321-369; *The Case of Sodomy in the Trial of Mervin Lord Audley* (London, 1710), passim; *A Complete Collection of State Trials* (11 vols., London, 1776-81), vol. I, pp. 387-399. Versions of the trial of Arthur Gray include *Celebrated Trials to 1825*, vol. III, pp. 391-395 and *Select Trials 1720-24*, vol. I, pp. 80-84. See below, pp. 134-137 for a further discussion of the Gray case.

<sup>38</sup>Nazife Bashar, 'Rape in England between 1500 and 1700' in The London Feminist History Group, *The Sexual Dynamics of History* (London, 1983), pp. 36-37. I found little reference in the secondary literature to attitudes to children's sexuality. Swinburne, writing in the seventeenth century, found the idea of intercourse with a young child abhorrent. Ariès has argued that pre-pubertal children in the seventeenth century were thought to be unaware of and indifferent to sex. Henry Swinburne, *A Treatise of Spousals* (London, 1686), pp. 20, 24, 26, 28, 46-51 and 53; P. Ariès *Centuries of Childhood, A social history of family life* (New York, 1962), p. 106. At any time in this period, courtship, and therefore sexual intercourse, were probably viewed as normal only for women in their twenties. See Wrightson, *English Society*, p. 68. This was probably what made prosecutions for intercourse with children and for sexual assaults on girls in their teens more likely to succeed. There were fewer confusing questions of consent. It must be noted that these pamphlets mostly date from the eighteenth century, and it has been argued that a new concept of childhood innocence developed in this century. Linda Pollock, *Forgotten Children* (Cambridge, 1983), p. 107. However, rape and sexual assault of young children was probably always seen as more shocking than rape of adults.



and a further third described prosecutions of the alleged rapists of girls aged between ten and twenty-one. Two pamphlets did not specify an age, but called the accusing woman a 'girl'. Of the three victims over twenty-one, one woman was aged twenty-nine, another was eighty and the third was aged twenty-four or five. Another woman was married and so probably aged over twenty-five. In two further pamphlets, the age of the victim was not given. In the Ely and Northern Circuit depositions girls under ten formed a considerably smaller proportion of prosecutions than this, and one third of the victims were women over the age of twenty-five. Because the age profile of the victims in the pamphlets was younger than that of the depositions, the significant minority of married women making complaints of rape in the Ely and Northern Circuit Assizes was not represented. The pamphleteers chose these cases involving young girls because they were thought to be more shocking due to the tender age of the victims, in a culture characterised by a widely-diffused ambivalence to coercive intercourse with adult women, and a strong belief that women lied about rape.<sup>39</sup> It is also worth noting here that Bashar's study of home counties indictments and Simpson's work on the Old Bailey found a considerably larger proportion of children under ten than I found in my work on Ely and the Northern Assizes. Simpson has suggested that child molestation in the eighteenth century was a product of the belief that venereal disease might be cured by intercourse with a virgin. But he provides little evidence in this article to show that this was a widespread belief, and there is a worrying tendency to conflate servants with children.<sup>40</sup> There is also some doubt as to the validity of Simpson's use of the Old Bailey Sessions Papers pamphlets as evidence,<sup>41</sup> and the figures he presents are often unclear or miscalculated.<sup>42</sup> Some of

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<sup>39</sup>See above pp. 30-33 for legal scepticism about rape, and above, pp. 88-91 for the ambivalence expressed in the ballads towards coercive intercourse.

<sup>40</sup>Bashar, 'Rape in England', p. 37. She includes all girls under eighteen as children in her figures, though she does give separate totals for those under ten. See also Antony Simpson, 'Vulnerability and the age of female consent: legal innovation and its effect on prosecutions for rape in eighteenth-century London' in Rousseau and Porter (eds.), *Sexual underworlds*, pp. 181-205. Sharpe notes that he found among the Colchester depositions large number of rape cases which had resulted from sexual play which had become abusive. I found few such cases among the depositions I studied. J.A. Sharpe, *Crime in seventeenth-century England: A county study* (Cambridge, 1983), pp. 64-5.

<sup>41</sup>See Cockburn, *Calendar of Assize Records*, pp. 14, 97-100; Langbein has compared the Old Bailey Sessions Papers with Dudley Ryder's papers. He found that although there were omissions from the

the pamphlets studied for this chapter are drawn from the Home Circuit, and many were reporting rapes or assaults committed in urban London heard at the Old Bailey. It may well be that the pamphleteers were reporting on courts in geographical areas where child victims were slightly more prevalent. Even in the reports of the Old Bailey Sessions Papers, however, child victims never constituted the majority of those bringing cases of rape. Pamphleteers were clearly being selective in choosing to report cases involving children.

The majority of these pamphlets, as in the depositions, described a scenario where ordinary women and girls were assaulted by someone they knew. Proportionately more of the assaults described in these pamphlet cases than in the depositions described a series of assaults and abuse which had occurred over the long term, perhaps because so many of these assaults involved children, sexually exploited by an adult man over the long term. The assaults in the pamphlets were overwhelmingly carried out indoors, whereas a slender majority of the assaults recorded in the Ely and Northern Circuit depositions occurred outdoors. Therefore, more of the assaults recorded in the pamphlets occurred at night, whereas most of those recorded in the depositions occurred during the day. The likely reasons for this difference include the different age profile of these women, and the urban context of many of the assaults. Anna Clark's comparison of eighteenth century London

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pamphlets, the pamphlets never lied, but Ryder's reported cases did not include a rape case. See J.H. Langbein, 'The Criminal Trial before the Lawyers', *The University of Chicago Law Review* 45:2 (1978), 263-316. See also J.H. Langbein, 'Shaping the Eighteenth-Century Criminal Trial: A View From the Ryder Sources', *University of Chicago Law Review*, 50 (1983), 1-136.

<sup>42</sup>See Antony Simpson, 'Vulnerability and the Age of Female Consent', p. 188. In Table 1 'Prosecutions for rape in the Old Bailey, 1730-1830', Simpson provides a percentage total of victims under ten in the total of those prosecuting for rape. For the years 1825-29, column 2 states a total figure of twenty-four rape prosecutions. Column seven gives the number of victims under ten as three, and yet column eight gives the percentage of victims under ten as sixty per cent of the total. This should read twelve and a half per cent. See also Simpson, 'Vulnerability and the Age of Female Consent', p. 198. Simpson states that he is using 294 cases of rape and eighty-one cases of attempted rape, and miscalculates this to a total of 372, where it should read 375.



depositions with those from the Northern Assizes found a similar bias towards the indoor locations of assaults in London.<sup>43</sup>

A consideration of the structure of the pamphlets is vital to understanding their effect. The reports of rape vary in length from six lines to seventy-four pages, depending on whether the trial material was summarised or evidence was given verbatim. Despite these variations in detail, priority in terms of space was always given to the evidence of the woman concerned, for it was for this story that the reader purchased the pamphlet. In many pamphlets judiciously placed dots and dashes protected (and titillated) the tender reader. By the end of the eighteenth century, little physical detail was reported, but the pamphlets continued to be titillatingly sensationalist in tone.<sup>44</sup>

These pamphlets were surprisingly short on editorial comment and moralising. Only occasionally was there any comment as to the justice of the verdict or the reasons for acquittal or conviction, though in several cases explicit approval was given for the acquittal, as in this comment: 'they had by plain proofs only laid this design to get a piece of money of him'. In other pamphlets the acquittals were tacitly supported by the absence of comment to the contrary. Occasionally the pamphleteers seem to support the accusing woman, despite the not guilty verdict. Thus in the *Trial of Lord Baltimore*, Sarah Woodcock's portrait was entitled 'The Modern Lucretia', sitting rather at odds with the acquittal of the accused.<sup>45</sup> A vast majority of the trials

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<sup>43</sup>Anna Clark, *Women's Silence, Men's Violence: sexual assault in England, 1770-1845* (London, 1987), pp. 25-28.

<sup>44</sup>In the 1768 pamphlet reporting the *Trial of Lord Baltimore*, a quite full account of the physical detail is given: 'he turned upon me with all the force he could and forced himself between me, and said he would get into me: with that he lay upon me with all the weight he could and strove to push himself into me with all his might and I cried and struggled all I could, but he held my mouth together with his fingers that I might not cry and strove to lie over me so much as to smother me. When he had been sometime in me I felt something come from him; and then he turned off from me...' *British Trials*, 561. In some other cases, no physical detail is given at all, as in the case of Elizabeth Moreton, published in 1740, where the pamphleteer recounts how she was thrown down, and then states 'our regard to decency obliges us to veil it.' *British Trials*, 920.

<sup>45</sup>*British Trials*, 772; *Select Trials 1720-24*, vol. II. p. 372 includes the use of dots to preclude physical details; *British Trials*, 561.

published in these pamphlets did end in acquittal, and this was an accurate reflection of the very low rates of conviction.<sup>46</sup> Where an explicit explanation was offered, it was that women of bad character make false accusations for money. Implicitly, the acquittal was justified by printing the character evidence against the woman, and then simply adding the acquittal verdict. These pamphlets must have played a part in reinforcing a stereotype of false accusation, accepted by the pamphleteers, jurists, literary men, and probably by the general public.

Because the pamphlets were low on convictions, they rarely offered an explicit explanation for rape. These pamphlets overwhelmingly presented stories of rapes which the legal system deemed not to have occurred. Where motivations were discussed, pamphleteers tended to present a simple picture of lust as the cause of rape.<sup>47</sup> This explanation of lust is implicit in many of these pamphlets, including those describing acquittals where this motivation was reported in the words of counsel or witnesses. More complex motivations for rape were portrayed in contemporary literature of other kinds, but in only one pamphlet was a more complicated scenario presented, where the defendant claimed to have raped small girls in the belief that this would rid him of the venereal disease he had contracted from his cousin. The pamphleteer commented that he remained unconvinced that lust was not to blame, and suggested that the story about venereal disease was a mere excuse. In the few instances where the pamphlets detailed the lives of convicted men, they implicitly criticised the vicious lifestyle which we are told ended in rape. In six cases, including those of Charteris and Baltimore, the men were portrayed as sliding into rape from a range of vices, lewdness in all cases, and often also either gambling or drinking, nine pamphlet cases in all mention alcohol. This impression of rape as a result of lust was present in the comments of counsel, or of witnesses such as the mother-in-law of John Simmons who, she claimed, had 'no occasion to ravish anybody for my daughter, tho'

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<sup>46</sup>See above, pp. 9-10 for the rates of conviction.

<sup>47</sup>Lake, 'Puritanism, Arminianism', *passim*; Lake, 'Deeds Against Nature', *passim*.

I say it, is as likely a woman as any in the parish, and has wherewithal to have his turn at any time'.<sup>48</sup>

Some of these pamphlets clearly present the crime of rape as a very serious matter. The pamphleteer in the case of Reverend Russen expressed his horror that the 'disorders' caused by Russen's assaults would prevent his former pupils from bearing children. The reader is expected to be appalled by these assaults on young children. However, some of the language and explicit detail included in this pamphlet itself and in other pamphlets is clearly sensationalist and could titillate the reader in a semi-erotic, voyeuristic manner, as Peter Wagner has suggested.<sup>49</sup> These pamphlets presented a horrific picture of rape where proven on a young child or virtuous woman, but despite the righteous indignation readers were expected to feel in these cases, they could still enjoy reading the gruesome details. The general ambivalence towards coercive intercourse depicted in the ballads and other literature meant that rapes reported by older women or women (and even girls) of dubious character were presented in this material rather thinly veiled as straightforward entertainment. Why else were so many pamphlet accounts of these acquittals printed? The lengthy evidence of Sarah 'Pogey' Main, an older poor girl, alleged to have a bad character, makes horrifying reading: 'He overtook me by the pump in the New Change, and tore my Gown out of the Gathers, and beat me with a Stick; then wanted to be impudent with me there... he abused me three times in the Space of half an hour... I cry'd out murder but the other men laughed, and cry'd beat the B..ch, beat the B..ch..'. The pamphleteer followed her testimony with a string of evidence from local men and women painting her as a whore and saying that she seemed to have enjoyed this treatment.<sup>50</sup>

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<sup>48</sup>*Select Trials 1720-24*, vol. II, pp. 339-352; *Select Trials 1720-24*, vol. I, pp. 179-181.

<sup>49</sup>Peter Wagner, *Eros Revived: Erotica of the Enlightenment in England and America* (London, 1990), p. 116.

<sup>50</sup>*British Trials*, 20; Peter Wagner, *Eros Revived*, p.116; *British Trials*, 905 (b) XXXIII.

Cockburn's comparison of pamphlets with court records and Sharpe's study of domestic homicide stress the great difference between crimes as represented in the court records, and the image of crimes created by the pamphleteer. Pamphlet representations of rape clearly fit this pattern of pamphleteers' selection, and the use of distorting stereotypes. The pamphlets vary in length and in the degree of physical detail given, and were not uniformly either supportive or condemnatory of the defendant. However, the producers of the pamphlets selected the most shocking cases involving children, better-off women or famous men, and sought to sell the rape victim's story to make themselves a profit. These pamphlets probably served to perpetuate the contemporary view that rape of children was a more serious and menacing issue. It should be underlined that substantial numbers of these pamphlet cases did not end in conviction. Adult and married women were thus under-represented as potential victims of rape in this print-culture, probably both reflecting and re-inforcing the prejudice against these women as rape litigants. The pamphlets' high rates of acquittals and sensationalist treatment of rape trivialised the crime, assigned to it an over simplistic aetiology of lust, and re-inforced contemporary beliefs about false accusations apparent from the works of the Restoration dramatists, and later works including Lennox's *Arabella*.<sup>51</sup>

Fielding's comic play *The Coffee-House Politician, Or Rape Upon Rape*, portrayed rape as being far too easy to prosecute, a belief Fielding may have subscribed to in his role as a magistrate as well as man of letters.<sup>52</sup> Hilaret cries rape against Ramble after he propositions her in the street and threatens to ravish her, thinking her to be a prostitute. Justice Squeezum is keen to encourage her to prosecute: 'I'll make her swear enough for my purpose'. He is pleased that (as he

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<sup>51</sup>Sharpe argues that pamphlet accounts of domestic murder focused only on killings between spouses, and contained stereotyped accounts of motivation. Execution pamphlets also follow patterns of content. Cockburn, *Calendar*, p. 99; Sharpe, 'Domestic Homicide', p. 41; Sharpe, 'Last Dying', p. 148; Charlotte Lennox, *The Female Quixote or The Adventures of Arabella* (Oxford, 1970), *passim*.

<sup>52</sup>Clark commented that Fielding styled as false accusations half of the few rapes recorded in his Covent Garden Journal. Anna Clark, *Women's Silence, Men's Violence*, pp. 52-53.

thinks) she is a whore for 'a modest woman is as shy of swearing a rape, as a gentleman is of swearing a battery - We will make her swear enough to frighten him into a composition, a small part of which will satisfy the woman.' Several women in the play make mistaken or knowingly false accusations of rape and the whole judicial process in a rape case is characterised as farcical. The formulaic attack on Hilaret's character is proceeded with the words: 'Now sir, we shall proceed to blacken a little the character of this woman.'<sup>53</sup>

The early novels of the eighteenth century also presented a dual comic and tragic view of rape. The comic novels of the period represented rape in the same light as the Restoration dramatists; rape was something feared by stupid women, believed by stupid men, whereas *ravishment* in the sense of coercive sex was the role of the wooing man, and enjoyed by most women. Charlotte Lennox's *Arabella* is beautiful, sweet-tempered and well-intentioned, but extremely naive and over-fond of ridiculous romantic fiction from which she frequently quotes. She constantly cries rape in ridiculous scenarios due to her extreme romanticism and fear. She suspects men of attempting to ravish her when she meets them out riding with her servants, and even fears the machinations of the under-gardener. Her fears are made to seem ridiculously out of proportion, and when visited by a beau she cries out: 'think not that cruel violence shall procure thee what thy submissions could not obtain...', 'never hope any Thing but the most bitter Reproaches from me'. This work by a woman echoed entirely the beliefs of the male writers that women cry rape at the least provocation.<sup>54</sup>

Fielding's women in *Tom Jones* cynically invoke rape to avoid accusations of adultery, or from stupid and ill-founded fear. When Mrs Waters is discovered in bed with Tom and cries rape, her husband explains: 'Rape...these words of exclamation are used by Ladies in a fright as Fa, la, la, ra, da & etc are in Music, only as the Vehicles

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<sup>53</sup>Fielding, *Rape Upon Rape*, pp. 95-99, 112, 132, 146.

<sup>54</sup>Lennox, *Arabella*, p. 300.

of Sound, and without any fixed ideas.' She does not cry out later when a strange man bursts into her chamber, and Fielding tells us: 'So much more tenderly do women value their Reputation than their Persons'. Eighteenth century writers ridiculed women's fears of rape by using bathetic language of ravishment to describe the seizure of a kiss or an inconsequential favour, such as Belinda's lock in the *Rape of the Lock*. In *Tom Jones*, the modest Sophia endures such a parody of attempted rape. Sophia and her aunt are horrified by the 'ravishment' of a kiss and the disarrangement of her clothing, parodied in high-flown language by Fielding. Physically forcing a woman was thought to be extremely difficult, and De la Motte's *Midwifery*, translated into English in 1746, testified to this generally accepted truth. In a discussion about the ease with which women can fake virginity by showing menstrual blood as a sign of virginity, De la Motte included some comments on rape. He criticised the story of a girl alleged to have been raped by several soldiers, and praised another girl who fought off a would-be rapist. Women can always resist one or even several men, explained de la Motte, and intercourse is impossible without consent. Similarly, *Aristotle's Masterpiece* included the story of a case where a woman pretends rape when an offer of marriage is withdrawn on the grounds of her lack of virginity. Fanny Hill, in Cleland's *Fanny Hill*, was able to protect her virginity from her first customer by the simple expedient of holding her legs together, which contrasts with the half-resistance offered by Fanny's maid to her master, which Fanny condemns. Fielding's *Shamela* parodied Richardson's *Pamela* with her display of sexual fakery, confirming the widespread literary convention that women pretend to be forced, but rarely are.<sup>55</sup>

*Fanny Hill*, by John Cleland, published in 1749, demonstrates the contemporary ambivalence to coercive intercourse, and the assumption that women

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<sup>55</sup>Henry Fielding, *Tom Jones* (ed.), R.P.C. Mutter (London, 1749, reprinted London, 1966), pp. 496-552, 593. For a discussion of the rape metaphor in Alexander Pope's *Rape of the Lock*, see Wagner, *Eros Revived*, pp. 304-7; G. M. De la Motte, *A General Treatise of Midwifery* (London, 1746, reprinted New York, 1985), p. 34; *Aristotle's Masterpiece* (reprinted London, 1986), p. 89; John Cleland, *Fanny Hill, or Memoirs of a Woman of Pleasure* (London, 1749, reprinted London, 1963), p. 56; Henry Fielding *An Apology for the Life of Mrs. Shamela Anderson* (ed.), Douglas Brooks (London, 1741, reprinted Oxford, 1970), passim.



could enjoy sex which was physically forced. Cleland's titillatingly-styled tales of the first sexual experiences of the beautiful Harriet and Emily suggested that these women enjoyed their forced sexual encounters. Emily lovingly retells the fairly forceful loss of her virginity to a young male travelling companion, and Harriet, daughter of a miller, recounts how she mistakenly tried to rescue a diving man whom she feared to be drowning. She fainted, to be 'roused out of it by a sense of pain that pierced me to the vitals...he had actually completed his entrance into me so far, that weakened as I was by preceding conflicts of mind I had suffer'd and struck dumb by the violence of my surprise, I had neither the power to cry out, nor the strength to disengage myself from his strenuous embraces before, urging his point, he had forced his way and completely triumphed over my virginity.' The young gentleman who has raped Harriet is now stricken with guilt at the sight of her blood and distress, begs her forgiveness and supports her financially. She allows him to kiss her, falls in love with him, the rape 'scarce regretted', and they go on to have a long term relationship which almost ends in marriage. Richardson's fifteen-year old 'Pamela' falls in love with her master Mr. B. despite his prolonged rough seduction. His interest in Pamela leads to her abduction, what she fears is attempted rape, considerable threats, and moderate physical violence. Despite this treatment, Pamela is able to fall in love with him, and agrees to marry him, righteously grateful that he has stooped below his status to marry her. Throughout his seduction attempts Pamela is horrified that he could demean himself in attraction to a servant, and feels that she would be to blame if he succeeded in raping her.<sup>56</sup>

A belief in token resistance was explicitly articulated in much of this eighteenth century material. In *Satan's Harvest Home*, published in 1749, the author wryly asserts that all women pretend 'a great show of Resistance...and this the Sex would palm upon the World for a kind of innate Modesty'. Women achieve most physical

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<sup>56</sup>Cleland, *Fanny Hill*, pp. 116-133; Samuel Richardson, *Pamela, or Virtue Rewarded* (London, 1740, reprinted London, 1792), pp. 124-5.

pleasure in struggling, and so 'most women refuse to *surrender* upon treaty and delight in being stormed'. Not only were most women expected to find forceful sex erotic, but men were also thought to find coercive intercourse enjoyable. The forcing of the virginal young Harriet and Emily were included in *Fanny Hill* because the male reader was expected to find the scenes erotic, much as the stupid customer at Mrs. Cole's brothel is willing to pay dearly for the privilege of divesting Fanny of her (faked) virginity. In this incident, when she is already an experienced prostitute, the brothel-keeper Mrs Cole encourages Fanny to pretend unwillingness and struggle with her client: 'he scarce obtained a kiss but what he ravished...he threw himself upon me, and sought to make himself father way.'<sup>57</sup>

### The Libertine Strategy

The tragic stories of rape presented in the serious novels and several pamphlets often cast the rapist in the role of a libertine rapist. In this 'libertine' model of plotted rape, the gentleman took great pains, and often employed the help of women, to entice an innocent and beautiful young woman (often of lower status) into his clutches. He proceeds to drug her or intoxicate her, and then rape her. Lovelace, in *Clarissa*, is, of course, the epitome of rapacious rake: 'For a rape thou knowest to us rakes is far from being an undesirable thing. Nothing but the law stands in our way upon that account; and the opinion of what a modest woman will suffer rather than become a viva voce accuser, lessens much an honest fellow's apprehensions on that score'. Lovelace suggests that his behaviour is common: 'how many men are there, who, as well as I, have sought, by intoxicating liquors, first to inebriate, then to subdue'. He suggests that there would not have been so much anger over Lucretia's rape if she had not chosen to die: 'Is death the natural consequence of a rape?'<sup>58</sup> Such

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<sup>57</sup> Cleland, *Fanny Hill*, p. 154; *Satan's Harvest Home* (London, 1749, reprinted New York, 1985), pp. 8, 44.

<sup>58</sup> Samuel Richardson, *Clarissa* (ed.), Angus Ross (London 1740, reprinted London, 1985), pp. 1143, 1437.

cases very rarely appeared in the assize courts, where most of the men accused were of the same ordinary status as their alleged victims, perhaps for precisely this reason. The treatment meted out by the contemporary press to Griselda Murray will be discussed in the conclusion. Although the publicity her case received was unwelcome, and not always sympathetic, she achieved a conviction against the alleged rapist, a footman. The press treatment of milliner Sarah Woodcock, who accused Lord Baltimore of rape, was much more savage. The notorious rape trials of self-styled libertines Lord Baltimore and Colonel Charteris demonstrate that some men at least were behaving in this self-consciously rapacious libertine manner, in the frequently correct assumption that they could get away with it.<sup>59</sup>

This type of attempted rape was an important part of the plot of Fielding's *Amelia*, published in 1751, where the heroine only escapes being drugged and raped by an aristocrat because one of his previous victims writes her an anonymous note. Mrs Bennet was given presents and enticed by one of 'My Lord's' female accomplices to a masquerade at Ranelagh. There she drank a drugged punch which 'involved me in the most dreadful Ruin; a Ruin, to which, I can truly say, I never consented; and of which I was scarce conscious, when the villainous man avowed it to my face in the morning'. Her husband discovers that she has had intercourse with another man when he finds himself infected with venereal disease. He rants at her furiously about her betrayal as a 'false monster' and attacks her, in a fairly absurd manner.<sup>60</sup> Despite the comedy of the novel, Mrs Bennet is presented as a sympathetic character, and Fielding permits her a happy ending in a blissful conjugal relationship with the foster-brother of the heroine. The aristocrat, portrayed as a unprincipled man preying on innocent women and threatening marriages, also gets his just deserts, dying of the venereal disease contacted in his amorous adventures.<sup>61</sup>

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<sup>59</sup>*British Trials*, 561. For Francis Charteris see *Select Trials 1720-24*, vol. II, pp. 339-352. Versions of the trial of Arthur Gray include *Celebrated Trials to 1825*, vol. III, pp. 391-395 and *Select Trials 1720-24*, vol I, pp. 80-84.

<sup>60</sup>Fielding, *Amelia* (London, 1751, reprinted Oxford, 1983), pp. 290-300.

<sup>61</sup>Fielding, *Amelia*, pp. 290-300.

In Richardson's *Clarissa*, first published in 1740, Clarissa is a respectable young woman saddled with an unpleasant and avaricious family. She initially falls in love with Lovelace, but his womanising soon decides her against marriage to him.<sup>62</sup> When the family attempt to force her into a ceremony of marriage with the unpleasant Roger Solmes, Clarissa flees the house. She then falls into the clutches of Lovelace as a result of his carefully hatched plot. He is depicted as fascinated by Clarissa and determined to have his own way: 'woe be to the fair one, if ever she be driven into my power',<sup>63</sup> 'Oh there's music in the name'. The smitten Lovelace conducts a bizarre seduction test of her virtue; he will marry her if she can be the first to withstand his charms. Lovelace rapes due to his frustrated perverse love, and his lust and desire to possess her.<sup>64</sup>

Rape is often presented as a matter of female virtue in this literature, as in *Moll Flanders*, first published in 1722, where a man promises Moll 'that he would as sacredly preserve my virtue, as he would defend it if I was assaulted by a Ravisher'. Despite these protestations, they have consensual intercourse, which she later regrets greatly.<sup>65</sup> Similarly, Belford pleads with his friend Lovelace not to rob the angelic Clarissa of the purity which is so important to her. Richardson posed Lovelace and Clarissa in the opposing positions of Libertinism and virtue, where Lovelace shares the contemporary comic novelist's perception of ravishment as an act that meant little.<sup>66</sup>

The plot of Richardson's *Pamela* is also one of an attempted forcible seduction by a rich man. When her mistress dies Pamela is increasingly subjected to rough seduction attempts by Mr B, now master of the house. He subjects her to what she

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<sup>62</sup>Richardson, *Clarissa*, p. 37.

<sup>63</sup>Richardson, *Clarissa*, p. 146.

<sup>64</sup>Richardson, *Clarissa*, p. 144.

<sup>65</sup>Daniel Defoe, *Moll Flanders* (London, 1722, reprinted Oxford, 1981), p. 114.

<sup>66</sup>Richardson, *Clarissa*, pp. 713, 885, 144; Wagner, *Eros Revived*, pp. 304, 307.

believes is an attempted rape, hiding in the closet of the room where she sleeps, which Richardson describes in an erotic manner reminiscent of descriptions of consensual intercourse. He abducts her and imprisons her in another house, causing her terrific distress, but eventually admits that he has fallen in love with her, and asks her to marry him. The beautiful Pamela has fallen in love with him too, despite the way in which he has treated her, and behaves with the most amazing virtue throughout.<sup>67</sup>

The women in these stories of attempted and successful forcible seduction were painted as morally strong, but physically weak. The ravishers or would-be ravishers were styled as sexually voracious rakes using these seduction techniques primarily to satisfy their lusts. These stories were intended to evoke a voyeuristic, sympathetic, but erotic response in the reader. Richardson's novels and the novels of Fielding seem to have provided a cultural model for the anti-heroic rapist represented in the pamphlet material. However, the trials of Frederick Calvert and Francis Charteris show that the response of the courts and the press to ordinary female litigants could be far from sympathetic.<sup>68</sup>

The trial of Colonel Charteris was one of the most notorious rape trials of the eighteenth century. On Thursday the 26th of February in 1730, Francis Charteris stood trial at the Old Bailey for raping his servant-maid, Anne Bond at his house in George Street near Hanover Square on the 10th of November 1729. Anne Bond claimed that she had accepted a strange woman's offer of a place with a man introduced to her as 'Colonel Harvey, a very honourable Gentleman, and a good Master'. Bond complained that the Colonel had been over-familiar with her, and offered her excessive amounts of linen and a present of a fine snuff box, all of which

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<sup>67</sup>Wagner, *Eros Revived*, pp. 307-9; Richardson, *Pamela*, passim.

<sup>68</sup>*British Trials*, 561. For Francis Charteris see *Select Trials 1720-24*, vol. II, pp. 339-352 and *British Trials*, 686. Versions of the trial of Arthur Gray include *Celebrated Trials to 1825*, vol. III, pp. 391-395 and *Select Trials 1720-24*, vol. I, pp. 80-84.

she refused to accept. Charteris called the housekeeper into bed with him, and then summoned Bond to lie in bed with them both 'that I may lye in state'. She refused and said that she then was cursed and forced to sleep on the Kitchen floor 'in the Cold as a Punishment of her Obstinacy'. Charteris proceeded with his efforts by trying to bribe her with offers of money, clothes, a house and a husband, but upon her continual refusal he ordered the other servants to lock her in the house. On the day of the alleged assault, she claimed that Charteris rang for her to come to his chamber, and raped her. She cried out for help, but 'none of the Servants came to her Assistance, for that they were so under his command and so frequently addicted to his Pleasures that they durst not interpose'. Charteris then tried to bribe her again, but finding her utterly obdurate he horse-whipped her, and accusing her of robbing him, turned her out without her possessions. Mary Parsons, a friend of Ann Bond's, deposed that Bond came to her house in a distressing state. Other witnesses for Bond attested to her injuries, and to her good character as an honest and well-behaved servant.

Charteris constructed the defence that Ann Bond had granted him favours and sent him letters, and produced some of these in court, and brought witnesses to the delivery of the letters. Another witness swore the hand-writing to be hers, and various servants swore that she was in bed with the Colonel willingly. Charteris was found guilty, but was then pardoned.<sup>69</sup> The *Select Trials* pamphlet is similar to the *British Trials* version outlined above, but is a longer and more detailed version, including physical detail, and a more explicit condemnation of the crime itself. This pamphlet includes extracts of articles from newspapers including the *Courant*, the *Post-Boy* and the *London Evening Post*. These numerous sensationalised articles reported how Anne Bond had supposedly been paid 800 livres by 'a Gentleman of St Margaret's at Westminster'. Another paper reports her married and desiring to set up a Tavern with 'a well painted Head of Colonel Charteris as their Sign'. His death of February 1732 is reported, after which 'the following Epitaph was published in several

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<sup>69</sup>*British Trials*, 686.

Publick Papers'. This unpleasant piece claimed that Charteris, described as a man of 'Exorbitant wealth', did not in fact commit the rape on Bond:

'And who, having done, every Day of his Life,  
 Something worthy of a Gibbet  
 Was once condemn'd to One  
 For what he had not done'<sup>70</sup>

As this epitaph states, Charteris was a notorious and scandalous figure long before he was accused of rape by Anne Bond. Charteris had entered the army at an early age, but was drummed out of his regiment while an ensign for cheating at cards, and also later expelled from a Dutch regiment of foot for stealing. In 1711 a House of Commons committee found him guilty of taking large sums from tradesmen to enlist them in his company, saving them from arrest. Various critical pamphlets were produced by his accusers in this scandal, as well as pamphlets produced by him, answering the accusations. He then became a notorious gambler, and went on to appear in the poetry of Pope, was featured in the first plate of Hogarth's *Rake's Progress*, and received the epitaph quoted above from Dr. Arbuthnot.<sup>71</sup>

Pamphlet biographies of Charteris constitute a suspiciously impressive curriculum vitae of scandalous activity by a man with a 'depraved Nature'. He begins

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<sup>70</sup>The words of the Council for the Prosecutor are cited: '...Facts of this Nature were nowadays made little Account of by too many Persons of Levity, yet they had always been, by all civilis'd Nations; nay, even by many barbarous ones, rank'd among Crimes of the most heinous Nature.' *Select Trials 1720-24*, vol. II, pp. 339-352.

<sup>71</sup>Leslie Stephen (ed.), *The Dictionary of National Biography* (63 vols., London, 1886), vol. 10, pp.135-136; *The Case of Several of the Persons from whom Lieutenant Colonel Charteris Extorted Money* (Scotland, 1710?); *Demonstrative Proofs the Lieutenant Colonel Charteris hath by False Musters and other Unwarrantable Practises, defrauded the Queen and Public* (Scotland, 1710?); *The Case of Lieutenant Colonel Charteris* (Scotland 1710?); *Fresh Proofs Against Colonel Charteris* (Scotland 1710?); *An Answer to a False and Scandalous Libel* (Scotland 1710); *An Answer to Colonel Charteris's Second Libel* (Scotland 1710?); *An Answer to the Affidavits Lately Procur'd by Lieutenant Colonel Charteris about False Musters* (Scotland 1710?); *The Advantageous Ways of Gaming* (Scotland 1713); *The Life of Colonel Don Francisco* (1730); *Some authentick memoirs of the life of Colonel Ch-----s* (London, 1730).

with monetary dishonesty, proceeds to impregnation, infection, rape and abandonment of country girls, and cheats at dice. His house is described as a notorious seraglio, 'where, like a great and mighty Sultan, he riots in bliss and surfeits in the arms of his female servants.' He is finally convicted for the rape by the virtuous Anne Bond, (unnamed here) whose character is unimpeachable in court despite his attempts to discredit her.<sup>72</sup>

The other famous rape case of the age involving a man reputed as a Libertine rapist was the trial of Frederick Calvert, heard in 1768. Calvert, seventh Lord Baltimore, was born in 1731. He published various works, including *Tour to the East in the years 1763 and 1764, with Remarks on the City of Constantinople and the Turks*. This travel book described the route to the East, the dress and habits of the locals and intriguingly discussed the comparative beauty of the women and the local customs of temporary marriage and polygamy. Calvert also produced *Select Pieces of Oriental Wit, Poetry, and Wisdom*, which seems to have had a mixed reception. Lord Orford at least was unimpressed by this, claiming it 'no more deserved to be published than his bills on the road for post horses'. After his trial he went on to publish *Gaudia Poetica Latina, Anglica et Ballica Lingua Composita* in 1769, and *Caelestes et inferi* was published in Venice in 1771.<sup>73</sup>

In 1768 Calvert was tried at Kingston in Surrey with two female accessories, Elizabeth Griffinburg and Ann Harvey, for the rape of Sarah Woodcock. The

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<sup>72</sup>*British Trials*, 686; *Select Trials 1720-24*, vol. II, pp. 339-352; *The Dictionary of National Biography*, vol. 10, pp. 135-6; *The New and Complete Newgate Calendar* (London, 1794), vol. 2, pp. 209-218; *The Case of Several of the Persons from whom Lieutenant Colonel Charteris Extorted Money; Demonstrative Proofs the Lieutenant Colonel Charteris hath by False Musters and other Unwarrantable Practises, defrauded the Queen and Public; The Case of Lieutenant Colonel Charteris; Fresh Proofs Against Colonel Charteris; An Answer to a False and Scandalous Libel; An Answer to Colonel Charteris's Second Libel; An Answer to the Affidavits Lately Procurr'd by Lieutenant Colonel Charteris about False Musters; The Advantageous Ways of Gaming; The Life of Colonel Don Francisco; Some authentick memoirs of the life of Colonel Ch-----s*.

<sup>73</sup>*The Dictionary of National Biography*, vol. 8, p. 268; Frederick Calvert, *Tour to the East in the years 1763 and 1764, with Remarks on the City of Constantinople and the Turks Also Select Pieces of Oriental Wit, Poetry, and Wisdom* (London, 1767), passim.



pamphlet report of this trial is the longest and most detailed account of a rape trial considered in this thesis, and also one of the most lavish, including portraits of the accused and accuser. The pamphlet was pro-Woodcock, despite the acquittal verdict, titling her picture 'the Modern Lucretia'. Woodcock, speaking so quietly that the council for the crown had to ask her to raise her voice, told the story of how Calvert came as a customer to her milliner's shop in King-Street, Tower-Hill. Calvert entered the shop several times, without revealing his identity, and asked her to accompany him to a play, which she refused. Baltimore then sent one of his female staff to the shop to engage her services at a lady's house. When she arrived there she was given tea (of which she would only drink one dish) and gifts which she refused, and was then made a prisoner despite her distress and pleading. Baltimore's true identity was finally revealed, he having initially pretended to be a servant in the house. Woodcock claimed that she refused to eat, and continually tried to escape, experiencing great fear at his attempts to rape her. She was then taken by coach to his house in the country. This house, in Woodcote near Epsom, merits a description by Celia Fiennes as one of 'several good houses in or about Epsom'. There she continued to be held prisoner, and was raped by Calvert. She was then taken back to London, where her fiancé saw her inside Lord Baltimore's house. She was taken before a judge, having convinced Calvert that she would agree to stay with him voluntarily. She explained at her trial that she eventually told the story when she was positive that the judge had the power to release her.<sup>74</sup>

Calvert's defence was based on Woodcock's initial failure to tell her story to the judge. One by one, numerous servants took the stand and swore that Woodcock seemed happy in the company of Calvert, as in this testimony of Robert Walter, a carpenter at the Woodcote house: 'my Lord followed her: she appeared very agreeable and loving ... [later] she appeared very gay; she was arm in arm with Mrs Griffenburg

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<sup>74</sup>Christopher Morris (ed.), *The Journeys of Celia Fiennes* (London, 1947), p. 341; *British Trials*, 561.

... she seemed to be at liberty to go wherever she pleased'. Calvert and the two women were acquitted.<sup>75</sup>

The comments on the trial by a commentator writing in the *Gentleman's Magazine* are revealing. The writer accepted that Baltimore abducted the girl and imprisoned her, and made a series of 'attempts that she resisted, and solicitations that she refused. From her resistance till the last night, it may easily be concluded that on that night she did also resist; and though Lord B in his defence, pretends that as a man of pleasure he abhorred force, there is a fallacy in that pretence which ought to be detected. It is generally supposed, that the first violation of chastity, however effected, makes a repetition of the same act with the same person comparatively easy; as a man of pleasure, he might give the first night of pleasure for those that were to come, and pay the forced enjoyment as a kind of tax to secure an agreeable possession for the future'. He proceeded to suggest that Woodcock initially feared abandonment by friends and family due to her loss of reputation, and so agreed to stay with Baltimore, until re-assured she was still welcome to return home.<sup>76</sup>

Much of the coverage of the trial was savage towards Sarah Woodcock. A particularly vicious piece is *Observations on Sarah Woodcock's Own Evidence*, which took her testimony at the trial and examined it piece by piece. Most of the comment was highly personal, such as this comment upon her evidence that Baltimore put his tongue into her mouth: 'her mouth is in too bad a condition for such a kiss'. Her comment that 'I was in such a tremble' is questioned with 'might not she tremble with eagerness and desire?' The pamphleteer accused her of using peculiar expressions, unbelievable stupidity, deliberate lying and prevarication.<sup>77</sup>

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<sup>75</sup>*British Trials*, 561.

<sup>76</sup>*Gentleman's Magazine*, 38 (1768), pp. 180-187.

<sup>77</sup>*Observations on S. W.'s Own Evidence*, passim; *British Trials*, 561.

These rakish portraits of Charteris and Calvert could have come directly from a novelist's telling of Libertine rape. These loose-living (and married) men are both depicted sliding from a vicious and lascivious life-style into the libertine model rape of a virtuous young woman of lower social status. They are accused of using deception, disguise, imprisonment, the assistance of female accomplices, and in the case of Calvert, drugs and alcohol. These cases both became notorious causes célèbres of their times, eliciting a great deal of largely negative comment which was simultaneously accompanied by a significant suspicion that both women were lying. This image of rape as a libertine seduction strategy, commonly used to accustom a reluctant young woman to sexual immorality seems to have been a widely understood literary stereotype. Libertinism as a self-consciously practised lifestyle was probably a relatively small-scale phenomenon, as Hitchcock has suggested. Actual strategic and libertine-styled rapes were doubtless also comparatively rare, but the popularity of the stereotype probably reflected and encouraged a widespread belief in the reality of sexual exploitation of ordinary young women by unprincipled men of higher social status. Despite the Libertine stereotype in novels and pamphlets, and the depictions of rape by tyrannous princes in Restoration tragedy, few men of higher social status were tried for rape, a surprising and intriguing absence. The conclusion will discuss this and other under-reported types of assault.<sup>78</sup>

The local newspapers and national periodicals of the day covered alleged incidents of rape, rape trials and the rare executions for rape with the other writing on crime. In the sampled decades of the eighteenth century, the 1710s and the 1760s, the *Newcastle Courant* and *Newcastle Gazette* included very little detail in their reports, and almost no analysis. The coverage tended to be confined to a short reference in the list of local assize trials, which meant that the most often reported rape story was that of an acquittal of a man accused of rape, which occurred several times a year. This

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<sup>78</sup>Hitchcock, *English Sexualities*, pp. 21-22.

added to the contemporary visibility of accusations of rape, and tended to re-enforce contemporary stereotypes that true rapes rarely occurred.<sup>79</sup>

The indexed issues of the *Gentleman's Magazine*, 1731-1786 and the *Annual Register*, 1758-1800 mentioned rape every few years in their section dealing with the events of the year. The *Gentleman's Magazine* was unusual in that most of the quoted reports were of convictions, and so the readers were often exposed to criticism of the crime as the 'most detestable act of cruelty'.<sup>80</sup> The reports in the *Annual Register* were similar in style to those in the trial pamphlets, including self-righteous horror at the convictions as well as validation of acquittals. The 1778 *Annual Register* characterised one woman's evidence as flawed by 'palpable contradictions', whereas the volume for 1774 had condemned the man who raped a woman who later died of her injuries for his 'cruel rape'.<sup>81</sup>

The late seventeenth and eighteenth centuries witnessed a louder re-affirmation of understandings of rape which had prevailed from at least the early seventeenth century, in a wide variety of media. Throughout the early modern period the brutal violation of a helpless girl horrified men of letters, and their readers, but these writers conceived of forced intercourse as *rape* only in very particular circumstances of great force and female virtue. From the comedy of the later seventeenth century, the threat of rape, and sometimes the reality of sexual violence was displayed for the amusement of theatre audiences and readers. In tragedy, ravishment was caricatured in the eroticised new stereotypes of the despotic rape of virgins by princes, and later into the person of the anti-heroic Libertine rapist. Much of this fiction of rape was understood by contemporaries as stylised fictional device,

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<sup>79</sup>*Newcastle Gazette or Courant* 1710; *Newcastle Gazette or Northern Courant* 1710-12; *Newcastle Courant* 1711-14; *Newcastle Courant* 1759-1768, and 1769-1779.

<sup>80</sup>*Gentleman's Magazine* (London, indexed years 1731-1786); *Gentleman's Magazine*, 36 (1763), 612.

<sup>81</sup>*Gentleman's Magazine; Annual Register* (London, indexed years 1758-1800); *Annual Register*, vol. 17 (1774), 144; *Annual Register*, vol. 21 (1778), p. 200.

and consequently was not incorporated wholesale into the reporting on rape in the pamphlets and the newspapers, but these discourses were generally understood to relate to the reality of rape. In the eyes of contemporaries rape was a very limited phenomenon. The pamphleteers did not concern themselves with virginity or shame after the experience of rape, but they were sympathetic only to women of good character. Rapes concerning children were more prominent in the trial pamphlets, due to the widespread belief that adult women lied about rape, and an acceptance that coercive intercourse was something which women might enjoy, and could escape if they wished to. In eighteenth century literatures in general, rape was increasingly portrayed as a particular arena for female mendacity, an elaboration on the warnings printed in legal texts from at least the late sixteenth century.

In the public cultures of nonconsensual sex, the eighteenth century was a time of shifting paradigms. Although Hitchcock may have over-estimated the degree of change, there is evidence of an increasing phallocentrism and interest in the sexually aggressive man from the later seventeenth century onwards. Seventeenth century literatures display a significant degree of concern for false accusation of rape, as well as a more muted ambivalence towards coercive intercourse, which is portrayed alongside images of the sexually voracious woman. From the Restoration onwards, women are increasingly portrayed as sexually passive, and the aggressively sexual masculinity of the rapist seems to have fascinated audiences. Ravishment became ever more visible from the later seventeenth century, but as the discourses of sexual violence proliferated, *rape* as a legal category became increasingly unreal for contemporaries. Beattie calculated an increase in prosecutions for rape in Surrey over the eighteenth century, but Bashar's study of the Home Counties indictments found that the number of convictions actually fell in the late seventeenth century, from one in five in 1600-49, to one in eight in the second half of the century. It seems that the boundaries of rape as a legal category became more ambiguous as the eighteenth

century wore on, and the conclusion will show that throughout the period some raped women were more invisible than others.<sup>82</sup>

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<sup>82</sup>Hitchcock, *Sexualities*, passim; John Beattie, *Crime and the Courts in England 1600-1800* (Princeton, 1986), p. 130; Bashar, 'Rape in England', pp. 34-5. Bashar calculated a fall in the number of rape cases prosecuted in the second half of the seventeenth century, and this decrease matches a general decrease in indictments for felonies involving property noted by Sharpe in Essex and Beattie in Surrey and Sussex. The gradual increase in rape indictments, but more marked increase after 1750 is interesting in the context of the increase in prosecution of property offences after 1750. The figures raise more questions than they can answer, particularly as the number of prosecutions for rape in Surrey and Sussex was small, but they must modify to some extent Beattie's contention that violent crime decreased in the eighteenth century. For figures of prosecution for property offences see John Beattie, *Crime and the Courts in England 1600-1800* (Princeton, 1986), pp. 204-5, and J.A. Sharpe, *Crime in seventeenth-century England*, p.189, Fig. 2. For Beattie's suggestion that violent crime decreased in the later eighteenth century, see Beattie, *Crime and the Courts*, p. 139. Beattie comments that not all of the increase in reported rape cases can be explained by the increase in population after the mid-century, but suggests increased willingness to report as an explanation. This seems unlikely given the evidence for increased scepticism towards rape from the later seventeenth century. Beattie, *Crime and the Courts*, p. 130.

## **Conclusion: Sexuality, Gender and Consent**

The women who initiated prosecutions for rape in the seventeenth and eighteenth centuries did not express in their depositions any sense of shame about the rape itself.<sup>1</sup> Despite this, women must have been aware that reporting rape was an uncertain business. Seventeenth century ballads, and from the later seventeenth century pamphlets and drama, made scepticism about rape axiomatic for the ordinary reader. Although writers expressed horror about the rape of virtuous young girls, this material cast doubt on the veracity of most rape accusations and suggested that women and men might enjoy forceful intercourse.<sup>2</sup> These attitudes meant that reporting rape was a risky strategy. An accusation often brought women into suspicion in the community and was unlikely to result in conviction. In the seventeenth century Home Circuit indictments for rape, convictions were most likely in cases involving girls under eighteen.<sup>3</sup> As I have already suggested, these girls were of an age where courtship and consensual sexual activity were thought unlikely, and in the case of the younger girls, unacceptable. In the case of the girls under ten, the law did not demand that lack of consent be proved. These cases were therefore those least tainted with the assumption of consensuality, and so convictions were higher.<sup>4</sup> Adult women evidently only reported if they thought that their neighbours and the jury would believe them, or when desire for protection from the rapist outweighed fears of loss of reputation or failure of the court case.

The dominance of the reported rape narrative in depositions can be largely explained with reference to the wide-spread contemporary ambivalence to coercive intercourse, which may have intensified after 1700. The narrative of sexual assault found in the depositions is conveniently uncomplicated by important questions of

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<sup>1</sup>See above, p. 73.

<sup>2</sup>See above, p. 119-20.

<sup>3</sup>N. Bashar, 'Rape in England between 1550 and 1700' in The London Feminist History Group, *The Sexual Dynamics of History* (London, 1983), pp. 37-38.

<sup>4</sup>See above, pp. 98-101.

consent, because the assault is staged in a context conveniently devoid of overtly sexual content. The scene is the road, not the alehouse, and the field, rather than the bed. It is clear that contemporaries associated certain socio-spatial locations with illicit, consensual sexuality. In contrast to the rape depositions, the majority of illicit sexual encounters described in court records were located inside the house, while fairs, festivals and alehouses were notoriously connected with clandestine sexuality until well into the eighteenth century.<sup>5</sup> Modern studies of the post-trauma recovery of the rape victim have shown that recovery patterns may be contrary to conventional expectations. Some studies showed that a woman attacked on the streets by a stranger, and those who displayed severe and visible injuries, made a better recovery. The woman herself faced fewer confusing self-accusations of complicity and stupidity. Her family was freed from considering those same difficult questions, and was more likely to be unequivocally supportive. The women raped by family members or close family friends tended to experience more self-doubt, and receive less support.<sup>6</sup>

It seems that seventeenth and eighteenth century women rarely felt shame after experiencing sexual assault, but that contemporaries had a narrow definition of what constituted rape, and were inclined to be suspicious of those who alleged rape in circumstances which could be interpreted as consensual. The unequivocal stories told by these women were the only tales of rape that could be told, and the majority of trials still ended in acquittal.<sup>7</sup> Women who had experienced this type of assault would find it easier to report, and a woman involved in a more complicated (and perhaps more typical) situation would have been likely to frame her story in this simplified way. Justices of the Peace may have been more willing to bring cases to court which portrayed a more socially accepted face of rape, both because they themselves would

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<sup>5</sup>G.R. Quaipe, *Wanton Wenches and Wayward Wives: Peasants and Illicit Sex in Early Seventeenth Century England* (London, 1979), pp. 74-75; Peter Clark, *The English alehouse: a social history, 1200-1830* (London, 1983), p. 74.

<sup>6</sup>Julie Allison and Lawrence S. Wrightsman, *Rape the Misunderstood Crime* (London, 1993), *passim*.

<sup>7</sup>See pp. 9-10 above. See also pp. 24-26 above.



find it easier to accept the woman's story, and in the pragmatic belief that these cases were more likely to result in the ever-elusive conviction. There must have been substantial under-reporting where a woman sexually assaulted in different circumstances felt she could not fit her story to this narrative. Such women must have been deterred from reporting by fear of the reaction of friends, family and the wider community, the low likelihood of conviction, and adverse publicity in local newspapers and trial pamphlets from the early eighteenth century onwards.

The public construction of masculinity in both the seventeenth and eighteenth centuries included a significant component of sexual aggression. This sexually forceful behaviour depicted in ballads, drama and novels almost certainly reflects a dimension of private sexual mores, and then helped to re-inforce such sexually forceful behaviour. Quaife's depiction of the behaviour of women with sexual agency does have some basis in the evidence, but common behavioural patterns where intercourse was initiated by the man ran counter to this idea of women. The most commonly used expression for intercourse in the seventeenth century ecclesiastical court depositions was of the man 'occupying', and the most commonly expressed idea was that the man asked for, and the woman should deny sex.<sup>8</sup> The 1720s bastardy depositions in the Northallerton quarter sessions records show these same assumptions at work in courtship. A commonly used term was that the alleged father of the child had 'prevailed' by 'professing great kindness'. Isabel Rowntrey told Justice Pennyman that she was pregnant to Thomas Carter because he had had 'made love to her for the space of one year under the pretence of marriage he at last by several fair speeches

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<sup>8</sup>Laura Gowing, *Domestic dangers : women, words and sex in early modern London* (Oxford, 1996), p. 179; Quaife, *Wanton Wenches*, pp. 156-8. For the importance of sexual prowess to early modern men, see Anthony Fletcher, *Gender, Sex and Subordination in England 1500-1800* (London, 1995), pp. 103-4; Elizabeth Foyster, 'The Concept of Male Honour in Seventeenth Century England', Ph.D thesis, University of Durham (1996), pp. 233-237. But see also Susan Dwyer Amussen, 'The part of a Christian man': the cultural politics of manhood in early modern England' in Susan Dwyer Amussen and Mark A. Kishlansky (eds.), *Political culture and cultural politics in early modern England: Essays presented to David Underdown* (Manchester, 1995), pp. 213-233.

and forcible provocations got her to suffer him to lie with her...<sup>9</sup> Sexual violence was alleged in several documents in the Sussex quarter sessions bastardy depositions, and just under one tenth of women questioned in seventeenth century Somerset bastardy depositions claimed that force had been used against them.<sup>10</sup>

The financial and personal concerns of courting couples normally resulted in negotiation of sexual exploration by degrees between the parties, where intercourse was usually decided upon only when the couple was sure of their intention to marry. This is the model of behaviour in courtship described by Lawrence Stone, and by Levine and Wrightson in their work on Terling.<sup>11</sup> The positive value attached to this normative pattern of behaviour perhaps forced some women into a position of employing 'token resistance' to hold on to virtue, which modern sociologists have described as an unfortunate strategy of twentieth century sexuality employed by some women.<sup>12</sup> As today, so in the past, belief that some women engaged in such no-but-yes behaviour meant that a minority of men felt entitled to use seduction techniques involving alcohol, as well as verbal persuasion and physical force in intercourse.<sup>13</sup> In the seventeenth century ballad material, and more particularly in the eighteenth century literature, contemporaries seem to have accepted token resistance as a real phenomenon in the courting relationship. In *The Denying Lady: OR, A Travellers Frolick with a Woman that Reply'd no to all questions and Discourses put to Her*, the traveller talks his way into sexual intercourse with a lady with the strange affliction of constant negatives, by framing his questions carefully to result in the double negative: 'Will you your sweet embraces grutch/ *her answer to me was no.*' After the traveller

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<sup>9</sup>Northallerton Quarter Sessions Records Microfilm 125: 1721, Margaret Robson, 1724, Mary Cock, 1719, Isabel Rowntrey, 1720, Elizabeth Harland, 1720, Elizabeth Wilkinson.

<sup>10</sup>Laura Gowing, *Domestic dangers: women, words and sex in early modern London* (Oxford, 1996), p. 271; Quaife, *Wanton Wenches*, p.65.

<sup>11</sup>Lawrence Stone, *Family, Sex and Marriage* (Harmondsworth, 1979), pp. 349, 384-5; K. Wrightson and D. Levine, *Poverty and Piety in an English Village: Terling, 1525-1700* (New York, 1979), pp. 125-128. See also pp. 18-19 above.

<sup>12</sup>Allison and Wrightsman, *Rape: the Misunderstood Crime*, pp. 78-82.

<sup>13</sup>See Quaife, *Wanton Wenches*, pp. 66-67.

has 'pleas'd her fancy' sexually, 'her answer no more was no', and they 'oft repeated their sport'.<sup>14</sup>

As detailed in the previous chapter, the eighteenth century saw an increased public stress on penetrative intercourse in general, and an increase in representations of the 'token resistance' element of sexual relationships. Women's sexual passivity and enjoyment of force in intercourse was stressed alongside an increased emphasis on male arousal and portrayals of sexually forceful masculinity. It is impossible to be sure whether this change in public representations of women and intercourse was in response to a real shift in plebeian sexuality, but the increase in illegitimacy and pre-nuptial intercourse in the course of the eighteenth century is a good indicator of some change in the private sexuality of ordinary people, though perhaps not the 'revolution' which Hitchcock claims. It seems that courting couples were more likely to engage in penetrative intercourse in the eighteenth century than they had been in the previous century, though similar courting practice continued. In the course of the eighteenth century, new sexual mores seem to have begun to be diffused among ordinary people. Eighteenth century male deponents in the ecclesiastical courts were increasingly willing to implicate themselves in illicit sexual activity with words of defamation. These changes may also explain the appearance in the very late eighteenth century depositions of a few men admitting intercourse, and a small number of women claiming insensibility during assault.<sup>15</sup> It seems likely that the eighteenth century increase in reported rapes in the Home Counties noted by Beattie may reflect a reality of some increase in sexual violence.<sup>16</sup> There may well have been more confusion about sexual signalling during the eighteenth century due to this shift in sexual practice, and it is tempting to ascribe the increase in reported rapes to these changes in patterns of sexual activity. Yet any such connection must remain tenuous, particularly in view of

<sup>14</sup>R. Latham (ed.), *Pepys Library Catalogue* (5 vols, Bury St. Edmunds, 1987), vol. V, p. 248.

<sup>15</sup>Polly Morris, 'Defamation and Sexual Reputation in Somerset 1733-1850', Ph.D. thesis, University of Warwick (1985), pp. 291-2. See also pp. 73-4 above.

<sup>16</sup>J. M. Beattie, *Crime and the Courts in England 1660-1800* (Princeton, 1986), pp. 402, 411. See also pp. 119-120 above.

the very small numbers of these cases reported by women who admitted that the man had been a lover. Throughout the period rates of conviction were low, and women in general had good reason not to report. The trial pamphlets and other representations of women crying rape must have left assaulted women in no doubt that they would struggle for credibility.<sup>17</sup>

The patterns of courtship discussed above suggest that there must have been more assaults within couples in the Isle of Ely and Northern Assize Circuit between 1640 and 1750 than the solitary assault reported by Elizabeth Linton in 1647 against a man with whom she said she had previously been 'too kind'.<sup>18</sup> Most women who bore illegitimate children during this period were at the average age of first marriage, suggesting that such babies were the product of postponed marriages.<sup>19</sup> Forced intercourse in bastardy depositions, like those from Northallerton, must therefore suggest at least some level of forced intercourse within courting relationships throughout our period. Official disapproval of fornication and adultery resulted in women suppressing evidence of a pre-existing sexual or courting relationship with the alleged rapist or another man.<sup>20</sup> The contemporary legal confusion as to whether a mistress could prosecute her lover, and whether a prostitute could bring a case, combined with ambivalence to coercive intercourse must also have contributed to this under-reporting.<sup>21</sup>

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<sup>17</sup>For a discussion of the relationships between accusing women and alleged attackers see above pp. 70-72. For the low rates of reporting and conviction see pp. 9-10 above.

<sup>18</sup>PRO ASSI 45/2/1/181.

<sup>19</sup>Wrightson and Levine, *Poverty and Piety*, pp. 125-8. See also G. R. Quaipe, *Wanton Wenches and Wayward Wives*, passim. Wrightson, *English Society*, pp. 84-6; J.A. Sharpe, *Early Modern England: A Social History 1550-1760*, (London, 1987), p. 43.

<sup>20</sup>There might be some community tolerance for pre-marital intercourse, but there was none for adultery. See Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge, 1987), p. 249. Sexual reputation was also important to large numbers of single women, who were one third of the litigants at the London ecclesiastical courts which have been studied by Laura Gowing, *Domestic dangers: women, words and sex in early modern London* (Oxford, 1996), pp. 127-132. See below, pp. 128-129 for the greater importance of reputation to married women.

<sup>21</sup>For a discussion of the status of legal cases brought by a prostitute or a mistress see above p. 38 and for ambivalence to coercion see pp. 88-91.

Given the contemporary legal consensus that a mistress might not prosecute for rape, and the connection in ideology between bad character and false accusation, it is hardly surprising that the majority of the women reporting rape in Ely and the Northern Circuit seem to have had an ordinary moral reputation. Few of the women who made these depositions spoke of illegitimate children, admitted to pre-existing sexual relationships with the accused, or admitted to having previously had intercourse for money. Those examinations of accused men which survive are almost entirely free of allegations of bad character against the woman accusing, probably because only those women with a good local reputation would contemplate prosecution. Prostitutes and women who feared that they had a bad local reputation were extremely unlikely to embark on the risky course of a prosecution for rape.<sup>22</sup> Though the pamphlets rarely provide an explicit explanation for acquittals, the argument often offered for false accusation was that women of bad character accused men of rape in order to get money. Women of more marginal social and moral status were unlikely to be believed by the jury. A pamphlet report of the 1739 trial of a gang of men accused of the rape of Sarah Main listed the evidence of a procession of local men and women who took the stand to swear that she was a poor girl with bad morals. Thomas Masters deposed 'That he had seen the Fellows that lurk about the Glass House pulling and halling both Pogey [Main's nickname] and the Girl, and he thought they seemed willing to be so pulled and halled about'. The men were acquitted.<sup>23</sup>

A tiny minority of the rape depositions mention pregnancy, and in these two cases the woman stated the suspicion rather than the certainty of pregnancy.<sup>24</sup> Most early modern medical texts and midwifery books stated unequivocally that pregnancy could never result from rape, although Laqueur has suggested this opinion probably became less widely accepted as the eighteenth century drew to a close. In her much

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<sup>22</sup>See above, pp. 118-120.

<sup>23</sup>*British Trials 1600-1900, The Microfiche Edition* (Cambridge, 1993), 905 (b) XXXIII.

<sup>24</sup>EDR E19 Margaret Clark; PRO ASSI 45/4/3/112.

reprinted *Complete Midwives Companion*, Jane Sharpe told her readers that 'there never follows a conception upon a rape'.<sup>25</sup> As outlined in chapter one, the legal texts were less secure on this point than the medical books, with some writers opposing the maxim both on principle, and on grounds of practicality.<sup>26</sup> The pamphlet evidence suggests popular confusion as to whether rape could lead to pregnancy. A few of these girls claimed that they were pregnant as a result of rape, and a girl who had been raped by several men claimed 'I believe in my conscience that every one of them got me with child'.<sup>27</sup> The presence within bastardy depositions of allegations of sexual violence has already been discussed.<sup>28</sup> The vast majority of women who reported rape did so within one month, and substantial numbers reported within a fortnight. Perhaps in some of these cases a woman had chosen to wait for a few weeks until the onset of her period signalled that she was not pregnant, thus removing a large obstacle to her credibility.

A two-thirds majority of the Ely and Northern Circuit women accusing men of rape were single, and therefore also likely to be aged between their teens and mid twenties. This age imbalance among the reporting women is explained by the peculiar sensitivity of the married woman to allegations of sexual misconduct. Married women were subject to suspicion of adultery, and had very much more to lose than single women if a case did not end in conviction. In contrast, two thirds of all cases of sexual slander in the London ecclesiastical court records were brought by married women and there was a similarly high number of married female litigants in the Somerset ecclesiastical records between 1733 and 1850. This interesting discrepancy may be explained by the importance of sexual honesty to the married woman and her husband, who suffered the consequences of imputations of adultery both financially and

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<sup>25</sup>Jane Sharpe, *Complete Midwives Companion* (London, 1725), p. 26.

<sup>26</sup>See above, pp. 38-39.

<sup>27</sup>*Select Trials, 1720-24* (2 vols., London, 1934), vol. I p. 179, vol. II pp. 261, 238 and 395; *British Trials*, 746/X.

<sup>28</sup>See above, pp. 123-4.

personally.<sup>29</sup> Allegations of rape were viewed with such suspicion that many married women had good cause to fear attendant accusations of adultery, for in this way a prosecution for sexual assault might cost a couple their credit in every sense of that word. A scattering of comments in the depositions evoke a sense of this fear, and create the impression that many such rapes were only prosecuted to refute the scandal of adultery where a perpetrator boasted about his actions. Jane Cundall said she had been 'fearful to disclose it to her husband or any, being but about half a year married.' Elizabeth Frith explained that she had never intended to prosecute Walter Partarick for his rape of her but that 'her husband was dung in the teeth with being called cuckold and said he would now take it up...therefore she doth prosecute...Partarick for ravishment to stay scandal and shame.' Mary Daulton claimed that she had been raped in the previous May and never told her husband or anybody else of it 'til January last and had not then done so but that the said John Ansley had spoken of it so it came to her husband's ear who quarrelled with her and made her come for a warrant.<sup>30</sup>

The rare married complainants of rape tended to tell a variant story. Many of these women stressed a complicated history of sexual propositions and harassment by one individual man, stretching over months or even years. Fear of loss of reputation meant that married women often reported only after a prolonged series of assaults and harassment, and would often report only if they could tell a particularly severe story of rape, which they expected to be believed. For example, Elizabeth Beuton told J.P. William Calverley an unusually long and complicated story about the events of the 14th of November 1724. Elizabeth, a married woman, explained how Thomas Poole had sent her a message to trick her into a wood where he lay in wait for her. Despite her attempts to escape, Poole raped her, announcing that she would 'never go to

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<sup>29</sup>For the preponderance of married women see Gowing, *Domestic Dangers*, pp. 59, 127-132. For the importance of reputation to married women see Morris, 'Defamation and Sexual Reputation', p. 3. For the personal and financial consequences of reputation as a cuckold see Gowing, *Domestic Dangers*, pp. 179, 192.

<sup>30</sup>PRO ASSI 45/10/2/3; PRO ASSI 45/4/3/77 and PRO ASSI 45/9/2/9; Quaipe, *Wanton Wenches*, p. 193.

sessions nor assizes more against me'. When he found her still determined to go into Elland and report the rape to a J.P., he beat her with a stick until her mouth and nose bled. The man who had tricked her into entering the wood then told her that had she known his identity he would have killed her. Beuton was then allowed to walk into Elland, where she showed her landlady and other women her injuries. She later miscarried, and said that Poole had been 'sensible she was then with child'.<sup>31</sup>

Men formally accused of rape tended to be from the lower strata of early modern society because women assaulted by men of a higher social status than themselves were afraid to report.<sup>32</sup> Contemporaries were only too ready to believe that most reports of rape were false accusations, and poor women prosecuting men with the power of reputation and solid economic standing must have realised the danger of reporting. In May 1669, Jane Cundall consulted Mr. Robinson, an attorney, about prosecuting another attorney for rape. She told the magistrate that he had warned her to 'have a care what she did, and said if Mr. Beale had ravished her it was death, but if she could not prove it he would ruin her in suits for a stand'. At Lord Baltimore's trial for rape, Sarah Woodcock explained that she had feared prosecuting Baltimore because 'as he was a man of so much money and power...there might be a great deal of bribery and...justice might not be done.' These fears were realised when he was acquitted at his trial.<sup>33</sup>

The sexual relationships of domestic servants within the early modern household have been neglected by historians, and Meldrum's recent essay on London servants is an important first step in uncovering this area.<sup>34</sup> He used bastardy

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<sup>31</sup>PRO ASSI 45/18/2/46.

<sup>32</sup>See above, pp. 66 and 69.

<sup>33</sup>PRO ASSI 45/9/2/9; *British Trials*, 561.

<sup>34</sup>See for example, Ann Kussmaul, *Servants in husbandry in early modern England* (Cambridge, 1981), pp. 43-4. Servant sexuality is dealt with very briefly in this book. Tim Meldrum, 'London Domestic Servants from Depositional Evidence, 1660-1750: Servant-Employer Sexuality in the Patriarchal Household' in T. Hitchcock, P. King and P. Sharpe (eds.), *Chronicling Poverty: The Voices and Strategies of the English Poor 1640-1840* (Basingstoke, 1997), pp. 47-69.



depositions to examine the preconditions for sexual liaisons between masters and their servants. Sexual exploitation was most likely where there was an inattentive or absent mistress, a particularly sexually aggressive master and the servant was relatively vulnerable. He rightly points out that the frequency of sexual exploitation of servants cannot be gauged, but claims that the severity of the few reported cases in his documents suggests a relative infrequency of such exploitative relationships. I would argue that just as the small minority of rape cases brought by married women were described as particularly harrowing, only those servant women who were most badly treated dared to give voice to their experiences. Most writers of conduct books did not explore the possibilities of sexual assault in the household, but Eliza Haywood warned against the sexual approaches of masters in particular, as well as apprentices and lodgers.<sup>35</sup> At least one other writer, Seaton, also warned against the possible threat which servants faced from their masters. Like Haywood, Seaton recognised that a master might be 'young and wanton, and bold and rakish' and solicit the affections of his maidservants. His helpful recommendations were that the female staff of the household should hide, refuse to comply, and behave and dress modestly in order not to encourage his attentions. He felt that such advances were more likely to come from fellow servants, and counselled caution until a lawful marriage had been made.<sup>36</sup>

A significant minority of those reporting rape to J.P.s in the Isle of Ely and the Northern Circuit were servants, but few of these women were reporting a rape by their master.<sup>37</sup> However, there is clear evidence that servant women were particularly at risk from sexual exploitation. In those eighteenth infanticide court records where the occupation of the convicted woman was listed, the majority of women were described as domestic servants. Morris found that in the eighteenth and early

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<sup>35</sup>Tim Meldrum, 'London Domestic Servants', pp. 47-69; Anon, *A Present for Servants* (reprinted London, 1985), pp. 42-43. This text discusses the dangers of temptation for 'men and maids that live together', but not sexual assault; E. Haywood, *A Present for a Servant Maid* (Dublin, 1743, reprinted London, 1985), pp. 36-44.

<sup>36</sup>Thomas Seaton, *The Conduct of Servants in Great Families* (London, 1720), pp. 144-155.

<sup>37</sup>See above, pp. 66-71.

nineteenth century a significant number of the sexual allegations challenged in the ecclesiastical court related to masters' relationships with their servants.<sup>38</sup> It should not be surprising that servants feature strongly in these records when so many young people went into domestic service, and it might also be argued that servants were less at risk from employer exploitation in the seventeenth and earlier eighteenth centuries, when there was often a minimal disparity in social status between master and servant. However, living in the house of an employer, sometimes sleeping in the same room as men, female servants were uniquely accessible, psychologically and physically, to their masters and fellow servants.<sup>39</sup> The assault of a maidservant in the intimate space of the house as she went about her every-day work or lay in bed would locate her complaint precisely in the confused territory which the commonly reported rape story did not include. A few brave women did report the sexual assaults they experienced at the hands of their masters, though the depositions rarely reveal the reason why an individual chose to report. In July 1769 Ann Levett was in bed in her master's house, and her mistress was away, when her master returned and persuaded her to unbolt her door because he 'pretended that this informant had a man in bed with her and said that she must open the door'. Levett claimed that her master then 'told her she should lay in her mistresses place', and raped her. She claimed that he had then offered her compensation, which she refused, and that she proceeded immediately to tell her fellow servants, neighbours and family and the J.P. Telling the story of her assault in the interior space of the bedchamber, connected with consensual illicit sexuality between master and servant, may have posed a risk for Ann Levett. She seems to have been very sure of herself and her rights, and her motivation may best be interpreted as sheer outrage.<sup>40</sup>

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<sup>38</sup>Polly Morris, 'Defamation and Sexual Reputation', p. 332.

<sup>39</sup>Bridget Hill, *Women, Work and Sexual Politics in Eighteenth-Century England* (Oxford, 1989), pp. 136-8.

<sup>40</sup>EDR E40 Ann Levett.

Fear must account for substantial under-reporting by servants of the magisterial exploitation and assault that many of them probably experienced. Maidservants faced loss of their place, loss of reputation, and possibly loss of the possibility of future employment if a sexual liaison became public. This must have dissuaded many women from making complaints about sexual assault which might very easily be disbelieved. Hindle's study of the case of Margaret Knowsley, who accused her clergyman master of attempted rape, reveals the possible consequences of such an accusation. Knowsley was herself punished by the Nantwich magistrates for speaking slanderously about her master's attempted rape upon her, despite the fact that they had been informed by the clergyman's previous employers that he had a history of sexual impropriety.<sup>41</sup>

Relative levels of sexual assault against women of differing social status can never be calculated with any confidence. I would suggest that gentry and aristocratic women were perhaps less likely to become the victims of the opportunistic assaults outside the home which predominate among cases coming to court, because there was greater psychological and physical access to less well off women. These midling sort women were more likely to be working or travelling alone in geographically and socially isolated areas, and may have been seen as easy targets for random assault by their social equals or superiors. Women of higher social standing were also less open to the type of magisterial sexual exploitation and assault by social superiors experienced by poorer women, especially servants. We may accept that ordinary women always formed the majority of the female population, and were probably more at risk from certain types of sexual assault. These women would always form the

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<sup>41</sup>Steve Hindle, 'The shaming of Margaret Knowsley: gossip, gender and the experience of authority in early modern England', *Continuity and Change*, 9:3 (1994), 391-419; Tim Meldrum, 'London Domestic Servants', pp. 47-48; Elizabeth Foyster, 'The Concept of Male Honour in Seventeenth Century England', pp. 99-101; Bridget Hill, *Women, Work and Sexual Politics*, pp. 136-8; Anna Clark, *Women's Silence, Men's Violence: Sexual Assault in England 1770-1845* (London, 1987), pp. 104-109; Jill Barber, 'Stolen Goods': The Sexual Harassment of Female Servants in West Wales during the Nineteenth Century', *Rural History, Economy, Society and Culture*, 4 2 (October 1993), 123-136.

larger part of those prosecuting for rape. However, the number of better off women among those accusing in Ely and the Northern Assizes remains implausibly small. Better-off women and girls may have been as likely to experience sexual assault from their social equals as were women of other social backgrounds. We must then account for the fact that sexual assault of aristocratic and gentry women very rarely came to court in this period.

Better-off women contemplating an accusation of rape would face some of the same pressures as poorer women in accusing their equals, but gentry and aristocratic women may have found themselves unable to fit their stories into the socially acceptable one of the middling sort woman travelling or working alone. From the early eighteenth century particularly, they faced the attendant fear of distressing negative publicity in the local press, national periodicals and pamphlets. The same fear must also often have deterred poorer women from accusing social superiors.

A case study of the experience of Griselda Murray will illustrate the possible personal effect on the individual woman of this public attention. Griselda Murray was separated from her husband and lived with her father, who was a Member of Parliament. Griselda moved in exalted social circles, and Mary Wortley Montagu was a close personal friend. John Gay included Griselda Murray alongside Lady Mary in his 1720 poem celebrating Pope's return from Greece.<sup>42</sup>

In the Old Bailey trial of December 1721, Mrs Murray alleged that in October her sister's footman, Arthur Gray, had armed himself and broken into her chamber at her father's house in an attempt to rape her. In his defence Arthur Gray accused Griselda Murray of leaving her bedchamber unlocked as she awaited her lover, Gilbert Burnet, who had been chaplain to the King from 1718. Gray claimed that he had gone

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<sup>42</sup>W. Moy Thomas (ed.), *Letters and Works of Lady Mary Wortley Montagu* (London, 1893), vol. I pp. 97-98; R. Halsband, *The Life of Lady Mary Wortley Montagu* (Oxford, 1956), p. 106.

into the unlocked room because he had been drunk and thought he heard a noise in there.<sup>43</sup>

Mrs Murray's version of events was accepted by the jury, which convicted Gray of the felony of 'breaking and entering with attempt to ravish', and he was duly sentenced to hang. Arthur Gray later received the reduced sentence of transportation at the request of Mrs. Murray's family. Griselda Murray was unusually lucky in seeing the man she accused of attempted rape convicted, but behind the apparent success of her case lurks a heavy personal cost. From October 1721 the incident was reported in newspapers, often in a highly embroidered form, including one version where Mrs. Murray leaps upon Gray, standing on his chest, and another containing hyperbolic verse comparing her with Lucrece. The trial itself was then reported in the newspapers and various trial pamphlets which repeated the accusations of adultery (though they denied them).<sup>44</sup>

The account of the trial published in the *Select Trials*, printed 1734, ran to three and a half pages of report followed by a ballad. The trial report part of the pamphlet was a mildly sensationalised account of the trial, which gave both sides of the evidence in a fairly straightforward way, but implicitly supported the guilty verdict. The pamphlet ended with a coyly explicit ballad 'Virtue in Danger', which made light of the attempted rape, and insinuated an adulterous liaison between the hapless Griselda Murray and the (nameless) Bishop Burnet:

'In order to this bold attempt,  
                   He ran upstairs apace;  
 Whilst she poor lady nothing dreamt,  
                   Or dreamt it was his Grace'

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<sup>43</sup>*Select Trials, 1720-24* (2 vols., London, 1734), vol. I, pp. 80-84.

<sup>44</sup>*Select Trials, 1720-24*, vol. I, pp. 80-84.

'A sword he had and hard by it,  
 A thing appeared withal,  
 Which we for very modesty,  
 A pistol chuse to call'<sup>45</sup>

The addition of this highly sensationalised ballad to the end of the pamphlet trivialised the entire episode and the pamphlet's account of it. Mrs Murray was rather mockingly compared with Lucrece, and her reaction to the attempted rape was made to seem foolish. Anyone who knew the story must have been aware that 'his Grace' was short-hand for Burnet. This could not fail to be distressing and offensive to Griselda Murray and her family and merely added to the contemporary prevalence in literature of foolish women crying rape over inconsequential incidents, and women enjoying forceful intercourse.<sup>46</sup> The scurrilous ballad had initially been attributed to 'a Gentleman at St. James' but was later re-attributed to Lady Mary Wortley Montagu. It is unclear whether Lady Mary actually wrote this ballad, because she neither explicitly denied it, nor ever admitted it, even in correspondence to her sister Lady Mar. Lady Mary did write a far more literary ballad on the Arthur Gray affair, and it is perhaps unsurprising that authorship of 'Virtue in Danger' was consequently ascribed to her.<sup>47</sup>

Mrs Murray was obviously initially troubled by the scandal, because she spent the entire spring and summer of 1722 in seclusion in Yorkshire visiting Lord Carlisle's family. Lady Mary wrote to her sister Lady Mar in December 1721: 'poor Mrs. Murray's affair is a fatal instance...that the most groundless accusation is always of ill consequence to a woman'. Griselda Murray's distress about the ensuing publicity can

<sup>45</sup>*Select Trials, 1720-24*, vol. I, pp. 83-84.

<sup>46</sup>*Select Trials, 1720-24*, vol. I, pp. 83-84.

<sup>47</sup>Her acknowledged 'Epistle from Arthur Gray in Newgate' describes Arthur Gray's passion for his 'lovely nymph', and jealousy of his 'great rivals' who courted her. This poem is entirely uncritical of Mrs Murray and contains no explicit references to adultery. *Letters and works of Lady Mary Wortley Montagu* (ed.), W. Moy Thomas (London, 1893), vol. I, pp. 97-98. This poem did not of itself lead to a breach between Lady Mary and her friend. Halsband, *Life*, pp. 107-8.

be measured by her reaction to Lady Mary when at some time between 1723 and 1725 Griselda became convinced that her friend had written both ballads about her attempted rape. By 1725 Lady Mary was writing to thank her sister for promising to intercede on her behalf with Mrs Murray who had announced to Lady Mary: 'that she was convinced that I had made the ballad upon her, and was resolved never to speak to me again'. In April 1726 Lady Mary wrote that Mrs Murray was now: 'in open wars' with her, had 'attacked her in very Billingsgate language at a masquerade' and out of spite had bid against her at auction for a portrait of Lady Mar. Mrs Murray continued to see Lady Mar, but she never forgave Lady Mary.<sup>48</sup>

The publicity given to this most intimate of experiences was obviously highly distressing to Griselda Murray, who claimed not only to have suffered a frightening attempted rape, but also damaging allegations of sexual misconduct. The ordeal was sufficiently unpleasant to cause any potential litigant and her family to think twice before prosecuting a case.

Scepticism about rape accounts for the master narrative of reported sexual assaults, because it was the cause of selective reporting. Women raped by men who had been courting them, women who believed themselves pregnant, women who feared for their reputations, and particularly married women who feared the imputation of adultery, were unlikely to report rape. Women were afraid to prosecute men of higher social status for rape, and servants were loath to prosecute their masters. Better-off women were afraid of negative publicity, and were unable to fit their stories to the most socially accepted narrative of a single young woman of ordinary status assaulted while working alone. These women did not feel themselves able to report rape, but bastardy depositions and infanticide records provide documentary evidence that at least a minority of servants and courting women did suffer coercive intercourse.

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<sup>48</sup>W. Moy Thomas, (ed.), *Letters and works*, vol. I, pp. 97-98.

The level of actual assault must then have been significantly higher than the tiny number of reported assaults would suggest. Forceful and aggressive sexual behaviour was a common theme in popular literature, particularly from the later seventeenth century onwards, although brutal rape was almost universally condemned.<sup>49</sup> It seems probable that the sexual intercourse experienced by the vast majority of men and women took place in the context of consensuality after a mutual decision to marry, or within the matrimonial bond itself.<sup>50</sup> Nevertheless, the linguistic evidence of the church courts demonstrates that, despite the image of the sexually voracious woman, men were expected to initiate sexual encounters.<sup>51</sup> This should not be surprising, given that men were expected to play the suitor in courtship, and sex was usually a final stage in betrothal. Most courting relationships were probably mutual partnerships within this theoretical framework of male agency, as Keith Wrightson has characterised companionate marriages.

A woman who stepped too obviously into her husband's shoes could expect to suffer in the opinion of her neighbours, and her husband was entitled in law to use moderate violence to correct her.<sup>52</sup> However, women were expected to possess considerable personal capabilities, and good marriages could be decision-making partnerships.<sup>53</sup> Similarly, courtship was usually a time of mutual enjoyment of festivities, friendship and sexual exploration.<sup>54</sup> While it seems likely that only a small minority of men played out the extremely forceful and sexually aggressive roles of the

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<sup>49</sup>See above, pp. 116-118.

<sup>50</sup>J.A. Sharpe, *Early Modern England*, p. 43-4. See also K. Wrightson, *English Society 1580-1680* (London, 1982), pp. 84-86, 145-6, 166;

<sup>51</sup>Laura Gowing, *Domestic dangers : women, words and sex in early modern London* (Oxford, 1996), p. 179.

<sup>52</sup>See Martin Ingram, "Scolding Women Cucked or Washed:" a crisis in gender relations in early modern England?" in Jenny Kermode and Garthine Walker (eds.), *Women, crime and the courts in early modern England* (London, 1994). See also Wrightson, *English Society*, pp. 98-99.

<sup>53</sup>Wrightson, *English Society*, pp. 92-104; Anne Laurence, *Women in England 1500-1760* (London, 1994), p. 235.

<sup>54</sup>John Gillis, *For Better, For Worse: English Marriages, 1600 to the Present* (New York and Oxford, 1985), pp. 25-52.



public cultures of sexual violence in their sexual relationships, some obviously stepped over this line.

I would suggest that the eighteenth century increase in reported assaults indicates an increased frequency of assaults in a culture where men were more exposed to representations which condoned sexual coercion. Not only did sexual violence come to be portrayed with increasing ambivalence, but it seems possible that there may well have been some weakening in the previously clear progression from betrothal to intercourse to marriage. Hitchcock may well have overestimated the extent of the change in positing an eighteenth century 'sexual revolution'.<sup>55</sup> However, it does seem likely that as the eighteenth century wore on couples probably had sex somewhat more precipitately than in previous generations. This probably led to increased expectations on the part of young men, more token resistance from women, and increased confusion about sexual signalling. These circumstances all made sexual assault and coercive sexual encounters more likely to occur, although it is worth remembering that men who were sexually violent towards women probably remained a small minority throughout the period.

Attitudes to rape were shaped by negative views of women, and in turn formed a part of such ideas. Legal writers, men of letters and journalists expressed horror about rape in general, and shared a genuine willingness to convict men of a crime which most people viewed as revolting. The men and women who came to the aid of assaulted women in the Isle of Ely and the Northern Circuit depositions were genuinely zealous in their attempts to capture rapists and assist raped women. Despite this, contemporaries were only willing to view forced sex as *rape* in certain stereotyped circumstances. Legal men usually interpreted *rape* very narrowly, while men of letters characterised it as a very rare crime and stereotyped the virtuous victim. A chorus of voices warned that women made false accusations of rape, and women

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<sup>55</sup>Tim Hitchcock, *English Sexualities, 1700-1800* (Basingstoke, 1997), passim.

were often portrayed as enjoying forceful intercourse. Juries were evidently very loath to convict for rape throughout this period, and this suggests that these ideas about rape were diffused throughout society. They were widely accepted precisely because they fitted well into contemporary ideas about women, which contained significant negative components throughout this period.

The best of the more recent research on witchcraft prosecutions has stressed the need for a subtle understanding of the gender-specificity of this crime. The overwhelming majority of those hanged for witchcraft in the sixteenth and seventeenth centuries were female. Women had always been associated with the myths that became the basis for the texts on witchcraft, and this work then enshrined the image of the witch as woman in popular thought and educated opinion. The picture of the woman as witch was plausible for contemporaries because it employed commonly accepted ideas about women. Women were insatiable, petty, vengeful, venal and weak. For these reasons women were more likely to be witches, though male witches were also thought to exist, and a significant minority were hanged. There was no concerted desire to hang women, but the witchcraft prosecutions claimed the most likely victims.<sup>56</sup>

Similarly, there was no misogynistic conspiracy among men on grand juries and juries in the seventeenth and eighteenth centuries to free known rapists. However, the belief that women lied about rape, and that women liked a bit of rough treatment fitted neatly with the current conception of women. Rape trials presented very tricky evidential problems, and conviction depended on the credibility of the accusing woman. The culturally constructed seventeenth and eighteenth century view of women favoured the acquittal of men accused of rape. In the seventeenth century, women were viewed as morally as well as physically weaker than men. Women's

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<sup>56</sup>Brian P. Levack, *The witch-hunt in early modern Europe* (London, 1987), pp. 123-130; Christina Larner, *Witchcraft and Religion: the Politics of Popular Belief* (Oxford, 1984), pp. 62, 87; J. A. Sharpe, *Instruments of Darkness: witchcraft in England, 1550-1750* (London, 1996), pp. 169-189.

words were generally held in less esteem than the words of men.<sup>57</sup> A woman was conventionally said to be more likely to lie and dissemble, and women were thought to be changeable.<sup>58</sup> It has been suggested that there was an increased recognition of women's worth in the eighteenth century. There may well have been a change in the tone of eighteenth century prescriptive literature and fiction, which promoted a view of women's moral superiority and positive qualities as a mother.<sup>59</sup> Despite these changes, however, legal writers and literary men continued to be sceptical about rape, and to accept that women enjoyed coercion. I would argue that the continuation of these attitudes and of the low conviction rate for rape suggests that there was an ongoing and significant negative part to the contemporary construction of woman.

The surprisingly high conviction rates for attempted rape suggest that the contemporary legal system had provided a practical working compromise. Pragmatic prosecution of rape and severe sexual assault as attempted rape satisfied the general societal desire to punish men for sexual assault. Scepticism about rape was far too widespread to allow juries to feel comfortable in sentencing men to death for the felony. Yet, by prosecuting for attempted rape, raped and sexually assaulted women could be protected, and guilty men might be penalised.<sup>60</sup>

In this thesis I have argued that from the later seventeenth century through the eighteenth century a shift occurred in sexual behaviour towards more penetrative sex within courtship and that there was an increase in the public cultures of nonconsensual intercourse. There was some change in the construction of prescribed gender roles towards an increasingly sexually passive woman, and an emphasis on male sexual prowess. I have suggested that these changes led to some increase in levels of sexual violence, reflected in a moderate rise in reported rapes. Modern sociologists have

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<sup>57</sup>Gowing, *Domestic Dangers*, p. 51.

<sup>58</sup>Fletcher, *Gender, Sex*, pp. 1-27.

<sup>59</sup>Fletcher, *Gender, Sex*, pp. 391-397.

<sup>60</sup>See above, pp. 24-26.

debated whether the approximately ten-fold increase in reported rapes in our own century may be explained by an increased willingness to report, or whether there has been some increase in sexual assault due to changes in conceptions of gender and sexual scripts. These issues are under discussion, but various causal and attendant factors have been suggested, including an increase in pre-marital sexual intercourse, an increase in public representations of sexual violence and a shift in conception of gender roles and the economic position of women.<sup>61</sup> The social conditions of the later twentieth century and those of the seventeenth and eighteenth centuries would strain any overt comparison, but interestingly nonetheless, developments in these areas were also present in the eighteenth century at the same time that there was some increase in prosecutions. It is unlikely that the eighteenth century experienced such revolutionary social change as the twentieth century and increases in reported figures were certainly not so steep, but this does show that rape is a violent behaviour constructed within historically specific paradigms of gender and sexuality. When general conceptions of gender and sex role scripts change, attitudes to rape and patterns of sexual assault will also change. Rape may not have a social function, but it does have historical meaning as a signifier of gender stereotypes and sexual mores.

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<sup>61</sup>There is, of course, an alternative argument that the later twentieth century increase in levels of reporting simply reflect increased willingness on the part of women to come forward. This seems rather inadequate as an explanation of such a steep increase in reported cases, when conviction rates remained low.

## Appendix A

Tables from R.F.King, University of Cambridge, Undergraduate Dissertation (1995).

Time of day of sexual assaults	
Before 6 p.m.	21
After 6 p.m.	8
Total assaults giving time of day	29

There were 49 single assaults in total. The nine multiple assault cases were excluded because numbers of assaults and times were often not given.

Relationship between perpetrator and victim	
family	4
master of house of correction	5
master	4
fellow servant	1
borrowed/lent money	6
legal suits	1
neighbour	16
previous sexual relationship	1
stranger	9
total number of women where relationship stated	47

There were 64 accusing women in total. 'Neighbour' was defined as someone from the same town as well as friends living close to each-other.

Marital status of women	
Married	20
Spinsters	44
Total women marital status known	64

There were 64 accusing women in total. Figures for single women include women where no marital status is explicitly stated, but who were aged below twelve, and so could not legally have married, and those below the mean age for first marriage indicated in Cambridge Group reconstructions. Servants are designated spinsters.

Age of victim	
Under ten	2
Over 10, under 25	40
Over 25	22
Women age known	64

There were 64 accusing women in total. The age of victims was extrapolated from marital status, house-ownership and age of children.

Victims' social status	
Lower	7
Middling (including 11 servants)	34
Some means	2
Total women status known	43

There were 64 accusing women in total. Social status was defined by occupation of victim or her family or house ownership.

Perpetrator's social status	
Lower social status	3
Middling sort	29
Some means	7
Total men status known	39

There were 62 accused men in total. Social status was defined by the occupation of the perpetrator or his family or house ownership.

Age of perpetrator	
Over 14 and under 26	6
Over 26	13
Men age known	19

There were 62 accused men in total.

Location of assaults	
victim's house	14
perpetrator's house	8
other indoor location	4
on road or footpath	19
other outside locations	12
Total women giving location	57

There were 64 accusing women in total..

The complete transcript of the deposition of Isabel Moorhouse

The information of Isabel Moorhouse  
of the City of York, spinster, servant to  
Thomas Lockwood taken upon oath  
the 27th of October 1653.

1 Who saith and informeth that on Tuesday  
last about eight or nine of the clock  
in the evening as she was coming from  
milking kine one John Wood (milner crossed through) baker  
5 did meet her near St Nicholas Church  
and put his hand about her neck and  
kissed her and then took up her coats and  
put his hand to her secret parts and then  
took the skeel from her head and struggled  
10 with her for a quater of an hour and  
endeavoured to have ravished her but she  
prevented him that time, and took up  
the skeel and came homeward and as  
she was coming the said John Wood  
15 struggled with her again and took down  
her milk and threw her down and by  
force did ravish her and she cried out  
but the said John Wood laid his hand  
on her mouth and stopped her from crying  
20 and she is afraid that she is got with  
child at the same time and saith that  
she did not know his name til this day  
that she see him in the market and was  
informed that his name is John Wood, but  
25 she hath seen him formerly going to Moyler  
milne.

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