

"Is He a Licentious Lewd Sort of a Person?": Constructing the  
Child Rapist in Early Modern England

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When in April 1747 the judge presiding over the trial of John Hunter for the rape of Grace Pitts, aged ten, at the Old Bailey, London's central criminal court, asked a witness called to testify to Hunter's character and reputation, "Is he a licentious lewd Sort of a Person?" he clearly had in mind that a particular kind of man was likely to be guilty of the rape of a child.<sup>1</sup> Such a man would have demonstrated through

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his behavior that he was likely to behave in a sexually immoral and immodest fashion—but not necessarily that he would direct his sexual attentions primarily toward children. Unlike the modern pedophile, who is understood to have a primary, if not exclusive, sexual interest in children that he is likely to conceal, the early modern child rapist was a man whose immorality would be clearly visible as someone who frequented “lewd women” or who acted in an “unseemly” fashion with other women. This article investigates how individuals living in early modern England may have understood and thought about the behavior of those who engaged in sexual activities with children below the age of consent and especially whether they were regarded as having a particular, and abnormal, sexual desire for children. It examines how such people were characterized and represented in prosecutions of sexual crime involving children in late seventeenth- and eighteenth-century London and to what extent such characterizations and representations conformed to later sexological categorizations. It argues that, as suggested by the quotation above, such men were thought to be a particular “sort of a person,” but not one whose identity was defined by whom he had sex with. He was, rather, a man who was characterized as

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<sup>1</sup> Old Bailey Proceedings Online,

<http://www.oldbaileyonline.org>, April 1747, trial of John Hunter (t17470429-28); hereafter cited as OBP.

generally immoral, lewd, lustful, and loose-living, notable for his debauchery and lack of self-mastery, and therefore inevitably coming to a very bad, and untimely, end.

Categories of sexual deviation—or perversion—emerged with the development of psychiatry and sexology in the late nineteenth century, particularly from Richard von Krafft-Ebing's exhaustive cataloging of such behaviors in his Psychopathia Sexualis, first published in German in 1886.<sup>2</sup> Krafft-Ebing did not, in his brief discussion of those who engaged in sexual activities with children, employ the term pedophilia or pedophile to describe such individuals but rather referred to the "violation of individuals under the age of fourteen."<sup>3</sup> The term paedophilia, defined by the Oxford

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<sup>2</sup> See the excellent discussion of the emergence of categories of perversion by Arnold I. Davidson, The Emergence of Sexuality: Historical Epistemology and the Formation of Concepts (Cambridge, MA: Harvard University Press, 2001); on the development of the field, see, for example, Harry Oosterhuis, "Medical Science and the Modernisation of Sexuality," in Sexual Cultures in Europe: National Histories, ed. Franz X. Eder, Lesley A. Hall, and Gert Hekma (Manchester, UK: Manchester University Press, 1999), 221-41.

<sup>3</sup> Richard von Krafft-Ebing, Psychopathia Sexualis, with Especial Reference to Contrary Sexual Instinct: A Medico-Legal

English Dictionary as "sexual desire directed towards children," appears to have first been used by Havelock Ellis in his Studies in the Psychology of Sex in 1906.<sup>4</sup> The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM) first used the term in 1980 "to describe a specific subset of child molesters who displayed particular characteristics."<sup>5</sup> By 1987 the DSM definition had been revised to define pedophilia as characterized by "recurrent intense sexual urges and sexually arousing fantasies involving sexual activity with a prepubescent child or children."<sup>6</sup> It has been one of the major narratives in the

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Study, trans. Charles Gilbert Chaddock (1886; Philadelphia: F. A. Davis, 1892), 402.

<sup>4</sup> Oxford English Dictionary, 3rd ed., <http://www.oed.com:80/Entry/135968>, accessed 16 March 2011, s.v. "paedophilia"/"pedophilia." An entry for this word was first included in A Supplement to the OED, vol. 3 (1982). Havelock Ellis, Studies in the Psychology of Sex, 6 vols. (1906; Teddington, UK: Echo Library, 2007), 5:16.

<sup>5</sup> W. L. Marshall, "Pedophilia Psychopathology and Theory," in Sexual Deviance: Theory, Assessment, and Treatment, ed. D. Richard Laws and William O'Donohue (New York: Guilford, 1997), 152.

<sup>6</sup> DSM-II and DSM-III-R (American Psychiatric Association, 1987), 285, cited in Marshall, "Pedophilia," 152. There are

history of sexuality, since Foucault, that there was a shift in understandings of sexual behaviors, particularly homosexual, between the early modern and the modern worlds. Sexual acts that were previously understood as subject to religious and legal regulation and which anyone might commit, now became understood as integral to sexual identities. The rise of sexology and the medical categorization of sexual behaviors defined primarily by sexual object choice gave birth to "the homosexual" as well as to other sexual types such as the pedophile.<sup>7</sup>

The early modern period predates these formulations, so it would be anachronistic to use the term pedophile for those who engaged in sexual activities with children. It would also

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clearly problems with applying this definition to those who engage in sexual activity with children, not least because it potentially excludes those who act but don't fantasize and includes those who don't act but do fantasize.

<sup>7</sup> There is now a large literature on child sexual abuse and pedophilia. For an overview of modern definitions of types, see, for example, Ronald M. Holmes, Sex Crimes (London: Sage, 1991), 35-41; David Finkelhor, Child Sexual Abuse: New Theory and Research (New York: Free Press, 1984), chap. 4, "Perpetrators"; and Dennis Howitt, Paedophiles and Sexual Offences against Children (Chichester, UK: John Wiley, 1995), chaps. 1 and 2.

be next to impossible: there are few diaries, letters, or autobiographies recording sexual thoughts or fantasies, let alone sexual behavior, with those who today would be under the age of consent. Sir Simonds D'Ewes and Samuel Jeake both recorded marriages to girls of thirteen and that these marriages were consummated, but these marriages were legally contracted, since the age of consent to marriage for girls was twelve. There would not have been any contemporary sense that such men harbored "abnormal" desires. Despite some contemporary concern about the health and well-being of girls giving birth at such a young age, the desire to consummate such a marriage would have been regarded as neither inappropriate nor perverse if the bride had undergone the physical changes of pubertal development, including especially the onset of regular menstruation, so that she was "ripe" for reproduction.<sup>8</sup> And there is some evidence that those who did

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<sup>8</sup> Michael Hunter and Annabel Gregory in the introduction to their edition of the diary of Samuel Jeake, a merchant from Rye in Sussex, assert that it was extremely unusual for marriages with girls under the age of sixteen to be consummated and that Jeake's immediate cohabitation with Elizabeth Hartshorne, aged thirteen, to whom he was married in 1680, was an exception; see An Astrological Diary of the Seventeenth Century: Samuel Jeake of Rye, 1652-1699, ed. Michael Hunter and Annabel Gregory (Oxford: Clarendon, 1988),

marry at a young age, usually the children of upper-class families to cement family alliances for political or economic advantage, were kept apart until they were sexually mature.<sup>9</sup>

Julie Peakman has likewise argued that later nineteenth-century and early twentieth-century formulations of perverse

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37. Other examples show that Jeake was not, in fact, an exception: see Simonds D'Ewes, The Autobiography and Correspondence of Sir Simonds D'Ewes, Bart during the Reigns of James I and Charles I, ed. J. O. Halliwell, 2 vols. (London: R. Bentley, 1845), October 1626, 1:319; and Autobiography of Mary Countess of Warwick, ed. T. Crofton Croker (London: Percy Society, 1848), 5. See also Susan Broomhall, "'Women's Little Secrets': Defining the Boundaries of Reproductive Knowledge in Sixteenth-Century France," Social History of Medicine 15, no. 1 (2002): 1-15; and Sarah Toulalan, "'Unripe' Bodies: Children and Sex in Early Modern England," in Bodies, Sex and Desire from the Renaissance to the Present, ed. Kate Fisher and Sarah Toulalan (Basingstoke, UK: Palgrave Macmillan, 2011), 131-50.

<sup>9</sup> Toulalan, "'Unripe' Bodies," 138-39. Boys, too, until around the age of eighteen were not thought to be "fully ripe, are unfruitfull and not able to get any children, for that they lacke manly strength, a[nd] theyre seede to cold and thinne" (Levinus Lemnius, The Touchstone of Complexions, trans. Thomas Newton [1561; London: Thomas Marsh, 1576], 43).

or "abnormal" sexual behavior should not be applied retrospectively to early modern behaviors. Rather, sexual behaviors might be referred to as "unnatural" or "deviant" if they transgressed contemporary notions of what was morally acceptable because they took place outside of marriage or were thought to be "against nature" because they were against God's will and "deviated from procreative sex between man and wife."<sup>10</sup> These terms do not seem to have been used by any person appearing in the reports of trials for rape and sexual assault of children held at the Old Bailey between 1674 and 1800, though the rape of a child was clearly understood as morally repugnant and as ruining the child. If the child was prepubescent, the rape was also clearly nonprocreative sex. Although ecclesiastical jurisdiction in England over sexual discipline was removed in 1641, and subsequent secular legislation varied in the severity with which it prosecuted adultery and fornication and had almost ceased to be enforced by the 1730s, sex was still expected to take place within marriage. As Faramerz Dabhoiwala has recently pointed out, "The idea of carnal licence was incessantly deplored and attacked, and most men and women continued to respect the

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<sup>10</sup> Julie Peakman, "Sexual Perversion in History: An Introduction," in Sexual Perversions, 1670-1890, ed. Julie Peakman (Basingstoke, UK: Palgrave Macmillan, 2009), 1-49, 13.

ideals of sexual discipline."<sup>11</sup> The discovery of a child's loss of virginity or other injury from sexual contact, especially venereal infection, was thus regarded as a serious matter, both for the girl herself and for her family, having a potentially negative impact upon her sexual reputation and, by association, upon the family's good name.<sup>12</sup>

The histories of both childhood and sexuality are new and thriving fields of study. But it is only recently that scholars have turned their attention to histories of childhood sexuality and children's sexual experiences, and particularly to the questions of the nature and extent of child sexual abuse, bringing Lloyd de Mause's assertion in the 1970s of the more widespread sexual abuse of children in the past under closer scrutiny.<sup>13</sup> Discussion of children and sex in early

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<sup>11</sup> Faramerz Dabhoiwala, The Origins of Sex: A History of the First Sexual Revolution (London: Allen Lane, 2012), 117.

<sup>12</sup> Some girls themselves used this language when revealing rape: twelve-year-old Sarah Pearse "said her Master had ruined her," and a witness testified that Anne Albina Barnard, also aged twelve, had said to her that Stephen Hope "had ruined her" (OBP, December 1721, Christopher Graff [t17211206-67]; OBP, February 1754, Stephen Hope [t17540227-56]).

<sup>13</sup> Lloyd de Mause, "The Evolution of Childhood," in The History of Childhood, ed. Lloyd de Mause (1974; London: Souvenir, 1976), 1-73. On childhood sexuality, see Sterling Fishman,

modern Europe has mostly been in the context of rape and the law and the difficulties surrounding the prosecution of rape, particularly in the absence of corroborating witness evidence and the reliability of children as witnesses.<sup>14</sup> William Naphy's

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"The History of Childhood Sexuality," Journal of Contemporary History 17, no. 2 (1982): 269-83; and Children and Sexuality from the Greeks to the Great War, ed. George Rousseau (Basingstoke, UK: Palgrave Macmillan, 2007); on child sexual abuse, see Martin Ingram, "Child Sexual Abuse in Early Modern England," in Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland, ed. Michael J. Braddick and John Walter (Cambridge: Cambridge University Press, 2001), 63-84; Louise A. Jackson, Child Sexual Abuse in Victorian England (London: Routledge, 2000); William G. Naphy, "'Under-Age' Sexual Activity in Reformation Geneva," in Rousseau, Children and Sexuality, 108-27; and William Naphy, Sex Crimes: From Renaissance to Enlightenment (Stroud, UK: Tempus, 2002).

<sup>14</sup> Julie Gammon, "'A Denial of Innocence': Female Juvenile Victims of Rape and the English Legal System in the Eighteenth Century," in Childhood in Question: Children, Parents and the State, ed. Anthony Fletcher and Stephen Hussey (Manchester, UK: Manchester University Press, 1999), 74-95; Jennie Mills, "Rape in Early Eighteenth-Century London: A Perversion 'So Very Perplex'd,'" in Peakman, Sexual Perversions, 140-66;

studies on Reformation Geneva indicate the complexities of prosecuting sex with minors and adolescents where "innocence and culpability overlapped" and when it was nearly impossible to determine "when a relationship had moved from friendship to love to the physical to abuse."<sup>15</sup> He has less to say about the men (and occasional woman) who were prosecuted, noting only that it was "for no other reason than the fulfilment of 'base and beastly appetite . . . [a] sinful appetite.'"<sup>16</sup> Scholars have paid the most attention to the female victims of sexual crime, their vicissitudes in the courtroom, and the discourses of power that made them vulnerable both to male predation and to male-dominated social and legal institutions that failed to deliver adequate protection and redress. One exception is Martin Ingram, who tells us rather more about the kinds of men who were prosecuted, the nature of their occupations, social

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Julia Rudolph, "Rape and Resistance: Women and Consent in Seventeenth-Century English Legal and Political Thought," Journal of British Studies 39, no. 2 (2000): 157-84; and Antony E. Simpson, "Vulnerability and the Age of Female Consent: Legal Innovation and Its Effect on Prosecutions for Rape in Eighteenth-Century London," in Sexual Underworlds of the Enlightenment, ed. G. S. Rousseau and R. Porter (Manchester, UK: Manchester University Press, 1987), 181-205.

<sup>15</sup> Naphy, Sex Crimes, 120.

<sup>16</sup> Naphy, "'Under-Age' Sexual Activity," 110.

status, and ages, and what may have motivated such acts, which "may have arisen from fatally misguided attempts at sexual experimentation; others were opportunistic, some occurring in drink."<sup>17</sup> Ingram also notes that "there is no clear indication that any of them had an exclusive interest in little girls," and he provides examples of those few cases where there was some evidence of how these "abusers" presented their behavior, but he does not examine these issues in any great depth nor suggest how such men may have been understood in early modern society more broadly. The question of whether sex with a virgin as a cure for venereal disease had any currency, for example, is dismissed.<sup>18</sup> There is, however, some evidence relating to this belief in the Old Bailey trials examined here. Further considerations of how the perpetrators of sexual crimes against female children were represented in the seventeenth and eighteenth centuries is warranted.

There were no specific laws in England against child abuse or incest with children until the nineteenth and twentieth centuries; all the legislation that was specific to the protection of children as a category of person immature in both mind and body, and therefore in need of the state's

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<sup>17</sup> Ingram, "Child Sexual Abuse," 77.

<sup>18</sup> Ibid., 78.

special care and protection, came much later.<sup>19</sup> In the seventeenth and eighteenth centuries, when a perpetrator was apprehended, children's sexual contact with adults was prosecuted as rape or assault with intent to rape, in the case of girls, and as sodomy or assault with sodomitical intent, when boys were involved. The following discussion will be confined to the charges involving girls, as there are far fewer prosecutions involving boys, and such a discussion would raise a range of different issues to do with the prosecution of and attitudes toward sodomy.<sup>20</sup> Through court records and descriptions of the person prosecuted we can gain a sense of what witnesses and the court may have thought about the person prosecuted for rape or sexual assault of a child and also

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<sup>19</sup> The age of consent was not raised to the current age of sixteen until 1885; incest was criminalized only in 1908. For a summary of the earlier legislation, see Jackson, Child Sexual Abuse, 12-14.

<sup>20</sup> Apprehended sexual contact with boys was, as today, a much smaller proportion of cases: of 365 cases tried at the Old Bailey between 1674 and 1800 for rape, sodomy, and assaults with intent to rape or sodomize, those involving boys under the age of fourteen comprise just 2 percent of the total. For a review of modern research, see David Finkelhor, "Current Information on the Scope and Nature of Child Sexual Abuse," Future of Children 4, no. 2 (1994): 31-53.

whether or not this person appeared to have been a serial offender, thus, perhaps, suggesting recurring sexual desire for a child.

What follows is based on 306 trials for rape and for sexual assault with intent to rape held at the Old Bailey between 1674 and 1800. The trial proceedings that took place in eight sessions a year were published after each session, surviving from 1674, and are referred to collectively as the Old Bailey Sessions Papers.<sup>21</sup> They provide an exceptional record of what was said in court, albeit never a fully complete one.<sup>22</sup> It is, of course, impossible to establish the full extent of the incidence of adult sexual interaction with children in England (or anywhere else) at this time, not only

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<sup>21</sup> The online resource calls them Old Bailey Proceedings, but I will use the more common name throughout. Initially, not all trials were reported. The Old Bailey Proceedings Online provides a succinct summary of their publishing history at <http://www.oldbaileyonline.org/static/Publishinghistory.jsp#a1678-1729>.

<sup>22</sup> J. M. Beattie, Policing and Punishment in London, 1660-1750: Urban Crime and the Limits of Terror (Oxford: Oxford University Press, 2001), esp. chap. 6; and John H. Langbein, "The Criminal Trial before the Lawyers," University of Chicago Law Review 45, no. 2 (1978): 263-316: "Most of what was said at an Old Bailey sessions must have been omitted" (271).

since records are incomplete for most jurisdictions, but also because not all incidents would have been reported or prosecuted.<sup>23</sup> Some prosecutions did not proceed because the accused man absconded, as did William Gower, who ran away to France when he was accused of attempting to rape four-year-old Mary Dodge in 1737.<sup>24</sup> Ingram has quite rightly observed that "to try to gauge the incidence of abuse in the distant past poses such insuperable problems as to be fruitless."<sup>25</sup> Any estimates about either the incidence of rape generally and the

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<sup>23</sup> See the essays in Keith Burgess-Jackson, ed., A Most Detestable Crime: New Philosophical Essays on Rape (Oxford: Oxford University Press, 1999); Sylvana Tomaselli and Roy Porter, eds., Rape: An Historical and Cultural Enquiry (1986; Oxford: Basil Blackwell, 1989); Garthine Walker, "Rereading Rape and Sexual Violence in Early Modern England," Gender & History 10, no. 1 (1998): 1-25.

<sup>24</sup> Deposition of Daniel Thompson, London Metropolitan Archives, MJ/SP/1737/09/045, available online at City of London Sessions: Sessions Papers—Justices' Working Documents, September 1737, London Lives 1690 to 1800, LMSMPS503250047, <http://www.londonlives.org>, accessed 8 November 2011; hereafter cited as LMA.

<sup>25</sup> Ingram, "Child Sexual Abuse," 64.

rape of children more specifically should be treated with a great deal of caution.<sup>26</sup>

Some trials were reported in much greater detail than others, with reports increasing in length and detail into the eighteenth century, particularly if they were deemed to be more interesting to readers, controversial, or titillating.<sup>27</sup> In the latter half of the century, this detail included questioning of witnesses by both prosecution and defense counsel.<sup>28</sup> Few of the pretrial depositions that record the information provided by complainants and witnesses and their examinations by the justices of the peace to whom the original complaints were brought survive for these trials, and so any

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<sup>26</sup> The apparent marked increase in the incidence of rape after 1720, for example, almost a doubling of the numbers that a simple counting of reported trials per decade reveals, can be accounted for by an incomplete run of Sessions Papers up to this time.

<sup>27</sup> Peter Wagner, "The Pornographer in the Courtroom: Trial Reports about Cases of Sexual Crimes and Delinquencies as a Genre of Eighteenth-Century Erotica," in Sexuality in Eighteenth-Century Britain, ed. P. G. Boucé (Manchester, UK: Manchester University Press, 1982), 120-40.

<sup>28</sup> David Lemmings, Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century (Oxford: Oxford University Press, 2000), chap. 6.

further information about either persons or events is very limited.<sup>29</sup> A substantial number of the original manuscript indictments are extant, but they are highly formulaic and provide little further information beyond confirming a defendant's parish of residence and social status and sometimes the exact age of a child, which may have been reported in the Sessions Papers simply as "under ten."<sup>30</sup> The Sessions Papers, however, often provide more detail about a defendant and his occupation than the indictments reveal: a man recorded as a laborer on the indictment might be revealed as a young man who helped out around the yard of a tanner and did odd jobs or as a waiter in a tavern; a yeoman could be a soldier or a journeyman collar-maker.<sup>31</sup> The narratives recorded in both the depositions and the reports published in the Sessions Papers are also not entirely the original words of

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<sup>29</sup> The records are now held at the LMA and include indictments (many of which also note the trial outcome), calendars of prisoners and gaol delivery, and a few depositions.

<sup>30</sup> On using trial records, see R. B. Shoemaker, "Using Quarter Sessions Records as Evidence for the Study of Crime and Criminal Justice," Archives 20, no. 90 (1993): 145-57.

<sup>31</sup> William Allam was a laborer in the yard of a tanner, Edward Brophy was a head waiter, Charles Earle was a soldier, and Francis Moulcer was a journeyman collar maker.

those who made complaints, provided witness statements, and gave evidence in court. Their stories were filtered through those who wrote down the details when a complaint was made and a suspect brought before a justice, the clerks who recorded the words spoken during the course of the trials, and those who compiled the trial reports for publication.<sup>32</sup> Consequently, there are omissions, paraphrasing, summaries of evidence, and interpolation of formulaic phrases that would clearly not have been used by witnesses. For example, Deborah Covell was recorded in 1698 as saying, in language very unlikely to be her own, that Deborah Wise, aged nine, "told this Informant the said Pheasant was the Person that did lye with Her as aforesaid."<sup>33</sup> Although contemporary newspapers also reported

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<sup>32</sup> On the proceedings and their problems, see Langbein, "The Criminal Trial"; and Robert B. Shoemaker, "The Old Bailey Proceedings and the Representation of Crime and Criminal Justice in Eighteenth-Century London," Journal of British Studies 47, no. 3 (2008): 559-80.

<sup>33</sup> "The Information of Deborah Covell Singlewoman on Oath taken the 19th December 1698," City of London Sessions: Sessions Papers—Justices' Working Documents, 6/7 February 1696-25 February 1699, London Lives 1690 to 1800, LMSLPS150090107, LMA 00520, 19 December 1698, <http://www.londonlives.org>, accessed 7 November 2011; hereafter cited as London Lives. The details of the actual

the London and Middlesex trials and convictions, their coverage was extremely limited, providing little detail and no competition with the Sessions Papers.<sup>34</sup> Further information about defendants can be gleaned from the accounts of prisoners' lives written by the Ordinary of Newgate Prison (the prison chaplain), though these also need to be interpreted with caution, as they have an overtly reforming purpose, drawing moral lessons from the tales of lives lived in

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rape itself may be subsumed under generalized descriptions such as that used here, "lye with" or "had carnal knowledge of" or "carnally know and abuse." Garthine Walker gives an excellent account of the elisions and silences presented in rape narratives in the seventeenth century in "Rereading Rape."

<sup>34</sup> Reports were very brief and did not always include details of either the defendant or the complainant. There were some exceptions where a trial aroused public interest and was reported in considerably more detail, such as the trial of Francis Charteris for the rape of his servant Ann Bond in 1730 and that of Benjamin Russen for the rape of several girls attending his school in 1777. See Michael Harris, "Trials and Criminal Biographies: A Case Study in Distribution," in Sale and Distribution of Books from 1700, ed. Robin Myers and Michael Harris (Oxford: Oxford Polytechnic Press, 1982), 1-36.

wickedness and debauchery brought to an untimely end.<sup>35</sup>

Nevertheless, the Sessions Papers together with the Ordinary of Newgate's Accounts do reveal something about the nature of some sexual interactions with children in this period (at least those that were prosecuted) and the men who initiated them, even if the Accounts cannot reveal a full picture of either the extent or the nature of all sexual activity involving children.

London was not necessarily representative of the whole of England at this time, particularly due to the higher recorded incidence of crime in London than in more rural areas, although the nature of the evidence that was reported in the Sessions Papers does not seem to have been unique to London. Attitudes seem indicative of those held more widely in the population, as do the kinds of legal issues that arose in cases of rape and when dealing with children as victims and

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<sup>35</sup> On the Ordinary's Accounts, see Peter Linebaugh, "The Ordinary of Newgate and His Account," in Crime in England 1550-1800, ed. J. S. Cockburn (London: Methuen, 1977), 246-69; Andrea McKenzie, Tyburn's Martyrs: Execution in England, 1675-1775 (London: Hambledon Continuum, 2007), chap. 5; Andrea McKenzie, "From True Confessions to True Reporting? The Decline and Fall of the Ordinary's Account," London Journal 30, no. 1 (2005): 55-70.

witnesses.<sup>36</sup> London was the largest by far of England's growing towns and cities at this time, with a population expanding from around two hundred thousand in 1600 to over half a million by 1700 and nearly doubling again by the early nineteenth century.<sup>37</sup> London's size and population density meant that many more cases of sexual crime were apprehended

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<sup>36</sup> Langbein argues that the Old Bailey trials are indicative of English law generally and that London was no different in practice from the rest of the country; John H. Langbein, "Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources," University of Chicago Law Review 50, no. 1 (1983): 1-136, at 36. See also Ingram, "Child Sexual Abuse"; and Walker, "Rereading Rape."

<sup>37</sup> Londinopolis: Essays in the Cultural and Social History of Early Modern London, ed. P. Griffiths and M. S. R. Jenner (Manchester, UK: Manchester University Press, 2000), 2. See also V. Harding, "The Population of London, 1550-1700: A Review of the Published Evidence," London Journal 15, no. 2 (1990): 111-28; P. Corfield, "Urban Development in England and Wales in the Sixteenth and Seventeenth Centuries," in The Tudor and Stuart Town, 1530-1688: A Reader in English Urban History, ed. Jonathan Barry (Harlow, UK: Longman, 1990), 35-62, 39; and P. J. Corfield, The Impact of English Towns, 1700-1800 (Oxford: Oxford University Press, 1982), 66-81.

there than in more sparsely populated rural areas.<sup>38</sup> The jurisdiction of the Old Bailey included both the county of Middlesex and the City of London. Middlesex encompassed a very large geographical area that included not only London north of the Thames, Westminster to the west, and parishes to the east surrounding the City of London but also large rural areas beyond. The Old Bailey therefore served both urban and rural populations as well as a socially diverse mix of rich and poor, from the households of the nobility and gentry to those working in crafts and trades and as servants. The men who appeared as defendants in the cases of rape and sexual assault discussed here are representative of this geographical

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<sup>38</sup> The Northern Circuit, which encompassed the counties of Yorkshire, Northumberland, Cumberland, and Westmorland and the county boroughs of York and Newcastle, had, over a slightly longer period, fewer than half the number of cases tried at the Old Bailey: 130 extant cases between 1646 and 1798. For further comparison, see C. B. Herrup, The Common Peace: Participation and the Criminal Law in Seventeenth-Century England (Cambridge: Cambridge University Press, 1987), 26-27; and J. A. Sharpe, Crime in Seventeenth-Century England: A County Study (Cambridge: Cambridge University Press, 1983), 63. Herrup records only three rapes in nearly fifty years out of a sample of 1,631 offenses reported in eastern Sussex between 1592 and 1640.

diversity, coming from areas as far apart as Bishopsgate, Hackney, Staines, and Westminster as well as from the more central and crowded parishes of the city. They also include men of all ages ranging from a boy as young as twelve to an old man of eighty-three, although the age of the defendant was not usually reported.<sup>39</sup> The occupations of the girls, their family members who brought cases to court, or the men they accused were not always reported, but, when they were, it can be seen that there was little social diversity, as the men were generally from the artisanal, servant, shop-keeping, and laboring classes. Men from the higher social classes barely made an appearance: only one gentleman, Sir John Murry, Baronet, was tried (and found not guilty) for the rape of a child in February 1719.<sup>40</sup> Girls of the lower classes thus seem

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<sup>39</sup> Edward Crother, aged twelve, was acquitted of the rape of Ann Fletcher, aged four, in September 1774; Thomas Merrick, aged eighty-three, was acquitted of the rape of Charity Land, aged eleven, in July 1720. Newspapers tended to report the age of the defendant if he was particularly young or old but rarely otherwise.

<sup>40</sup> OBP, February 1719, John Murry (t17190225-43). On social class and occupations, see L. D. Schwarz, London in the Age of Industrialisation: Entrepreneurs, Labour Force and Living Conditions, 1700-1850 (Cambridge: Cambridge University Press, 1992).

to have been potentially at risk of sexual assault almost exclusively by men of the same social classes and with whom they mainly came into contact in the daily course of their lives. Perhaps most surprising is the relative absence of incest, as research into the incidence of sexual abuse today has shown that a significant proportion is intrafamilial.<sup>41</sup> Only five of the trials where the girl was fourteen or younger involved incest, and all except one of the accused were acquitted; two of the cases involved girls under ten.<sup>42</sup> This may be indicative of a very strong contemporary "incest

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<sup>41</sup> See Finkelhor ("Current Information," 46), who notes that while figures differ according to source, retrospective studies indicate less intrafamilial abuse (between one-third and one-half of girls and one-tenth to one-fifth of boys) than that reported by child protection authorities.

<sup>42</sup> This constitutes 5 percent of trials where girls are aged under fourteen and 3 percent of those aged under ten: William Webb in May 1687 for the rape of his eight-year-old ward, Mary Sidercomb, and Philip Sherwin in January 1779 for the rape of his ten-year-old daughter, Mary. In two trials a father was prosecuted: Adam White, acquitted of the rape of his daughter Mary, aged eleven, in 1726, and John Marsland, convicted of the rape of his thirteen-year-old daughter, Mary, in 1739. Henry Johnson, an uncle by marriage, was acquitted of the rape of his niece Elizabeth Watson, aged twelve, in 1768.

taboo," or it might mean simply that families did not pursue a prosecution when it involved a relative by blood or marriage, as it would have been both shameful and scandalous.<sup>43</sup>

About half of the rape trials involved child victims, where a child is defined as one who was aged fourteen and under.<sup>44</sup> Fourteen marked not only the end of childhood in contemporary categorizations of the stages of life but also, roughly, the age at which a child might formally enter paid

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<sup>43</sup> See my discussion of the trial in September 1796 of David Scott for the rape of Mary Homewood, aged eleven, in Sarah Toulalan, "Child Sexual Abuse in Late Seventeenth- and Eighteenth-Century London: Rape, Sexual Assault and the Denial of Agency," in Childhood and Child Labour in Industrial England: Diversity and Agency, 1750-1914, ed. Nigel Goose and Katrina Honeyman (Aldershot, UK: Ashgate, 2013). For the negative impact on a family's reputation and honor, see Cynthia B. Herrup, A House in Gross Disorder: Sex, Law, and the Second Earl of Castlehaven (New York: Oxford University Press, 1999). For a modern discussion of the incest taboo, see Vikki Bell, Interrogating Incest: Feminism, Foucault, and the Law (London: Routledge, 1993).

<sup>44</sup> Of the 306 trials, 155 (51 percent) involved girls aged fourteen and under; not all reports included the age of the victim.

employment and the development of sexual maturity.<sup>45</sup> The age of consent to marriage and thus to sexual relations for a girl was twelve, but for the prosecution of rape it had been lowered to the age of ten by the Westminster rape statute of 1576.<sup>46</sup> Rape was thus defined in law as "the unlawfull and

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<sup>45</sup> William Vaughan, Approved Directions for Health, Both Naturall and Artificiall: Derived from the Best Physicians as Well Moderne as Auncient, 4th ed. (London: T. S. for Roger Jackson, 1612), 112-13; Anna-Christina Giovanopoulos, "The Legal Status of Children in Eighteenth-Century England," in Fashioning Childhood in the Eighteenth Century: Age and Identity, ed. Anja Müller (Aldershot, UK: Ashgate, 2006), 43-52, 46-47; Hugh Cunningham, Children and Childhood in Western Society since 1500 (Harlow, UK: Longman, 1995), 17. For a discussion of age as a category of historical analysis, see Anna Davin, "What Is a Child?," in Fletcher and Hussey, Childhood in Question, 14-36; and the articles in Journal of the History of Childhood and Youth 1, no. 1 (2008), esp. Steven Mintz, "Reflections on Age as a Category of Historical Analysis," 91-94; Leslie Paris, "Through the Looking Glass: Age, Stages, and Historical Analysis," 106-13; and Peter N. Stearns, "Challenges in the History of Childhood," 35-42.

<sup>46</sup> Keith Burgess-Jackson, "A History of Rape Law," in Burgess-Jackson, A Most Detestable Crime, 15-31, at 18. See also Edward Coke, The Third Part of the Institutes of the Laws

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.”<sup>47</sup> Men therefore could, and did, use the defense of consent when a child was over the age of ten and the men's acquittal could be secured by presenting sufficient evidence of the child's acquiescence, even if it had been obtained through threats or bribery, however iniquitous juries may have found this behavior. John Hunter, for example, was acquitted of the rape of ten-year-old Grace Pitts in 1747 because she apparently willingly went with him into the room and sat upon his lap in exchange for an orange, and there was no evidence that he had used violence to achieve his aim nor that Grace had offered any resistance.<sup>48</sup>

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of England, 4th ed. (London: A. Crooke, 1669), 60; The Infants Lawyer: Or, The Law (Both Ancient and Modern) Relating to Infants (London: R. & E. Atkyns for Robert Battersby, 1697), 253; William Hawkins, A Treatise of the Pleas of the Crown (London: Eliz. Nutt for J. Walthoe and J. Walthoe jun., 1716), 108-9.

<sup>47</sup> Statute of Elizabeth I, 1576, 18, cap. 7. See also The Infants Lawyer, 253; Coke, The Third Part, 60.

<sup>48</sup> There is some evidence from Hunter's trial that the members of the jury found it difficult to accept that at just a few months above the age of ten Grace was capable of giving consent, and the court had to remind them that the law set ten

Jennie Mills has thus argued that "to desire to have sexual intercourse with very young girls was entirely within the boundaries of acceptable sexual behaviour."<sup>49</sup> The substance of the following analysis therefore focuses primarily upon men who were prosecuted for the rape and sexual assault of girls under the age of ten where it is clear that acting on such desire was not acceptable in law. These constituted 29 percent of these 306 rape prosecutions, and 33 percent of them resulted in a conviction.

Although the word "abuse" in relation to carnal knowledge of a girl under the age of ten was used in the statute concerning rape, this term alone did not connote an early modern understanding of child sexual abuse as we understand it today, as a destruction of the innocence of childhood.<sup>50</sup> Attitudes toward children at this time could be ambivalent, associating them simultaneously with both sin and innocence.

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as the age of consent. OBP, April 1747, John Hunter (t17470429-28).

<sup>49</sup> Mills, "Rape in Early Eighteenth-Century London," 141.

<sup>50</sup> Anneke Meyer, "The Moral Rhetoric of Childhood," Childhood 14, no. 1 (2007): 85-104. Colin Heywood has also noted that children in the West are now associated with "innocence, vulnerability and asexuality" (A History of Childhood: Children and Childhood in the West from Medieval to Modern Times [Cambridge: Polity, 2001], 4).

Puritan ideas about original sin and the need to guide and discipline children to ensure that they learned the right path to follow in life to ensure salvation suggest that children were not yet thought of as innocent, although some parents believed that they were to blame for their children's sins and were therefore justly punished by God when their children suffered sickness and death.<sup>51</sup> Harsh disciplinary practices at least in these lower classes are still evident through children's testimonies reported in the Sessions Papers, where they invariably tell the court that they did not tell anyone what had happened to them because they were afraid of being

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<sup>51</sup> David E. Stannard, "Death and the Puritan Child," American Quarterly 26, no. 5 (1974): 456-76; see also Alexandra Walsham, "'Out of the Mouths of Babes and Sucklings': Prophecy, Puritanism, and Childhood in Elizabethan Suffolk," in The Church and Childhood, ed. Diana Wood (London: Blackwell, 1994), 285-99; and Anthony Fletcher, "Prescription and Practice: Protestantism and the Upbringing of Children, 1560-1700," in Wood, The Church and Childhood, 325-46. The Countess of Bridgewater, Elizabeth Egerton, decided that the illness of her daughter was "for the sinnes of her parents" rather than for those of the child herself, as baptism had taken away her sin (Egerton MS 607, fols. 131-34, British Library, London). I am very grateful to Hannah Newton for this reference.

beaten. A shift in attitudes about such practices that has been detected by historians can be seen only at the end of the eighteenth century, at least in the legal profession, when a judge tells a father that his daughter should be better treated in future.<sup>52</sup> Louise Jackson has argued that the phrase "sexually abused" did not come into use until the nineteenth century, while Carol-Ann Hooper noted that concerns emerged in the 1870s but were not pursued with any success until the 1970s and after.<sup>53</sup> Unlawful and illicit sexual activity was termed abuse of the body at this time, but this was not a term that was used only, or specifically, for adult sexual relations with children, though some children appearing in

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<sup>52</sup> OBP, February 1796, Thomas Davenport (t17960217-37). See John M. Beattie, "Violence and Society in Early-Modern England," in Perspectives in Criminal Law: Essays in Honour of John L. J. Edwards, ed. Anthony N. Doob and Edward L. Greenspan (Aurora, ON: Canada Law Book, 1985), 36-50; Peter King, "Punishing Assault: The Transformation of Attitudes in the English Courts," Journal of Interdisciplinary History 27, no. 1 (1996): 43-74.

<sup>53</sup> Jackson, Child Sexual Abuse, 2; Carol-Ann Hooper, "Child Sexual Abuse and the Regulation of Women: Variations on a Theme," in Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality, ed. Carol Smart (London: Routledge, 1992), 53-77, at 53.

these trial records were referred to as having been  
"shamefully abused."<sup>54</sup>

Such abuse may not have been understood as we think of it today, but the prosecution of sexual contact with girls as rape and sexual assault, and hence against their will and outside of the legitimate confines of marriage, was clearly understood as an abuse of a girl's body that should be apprehended and punished. It was also abuse in the sense that it caused injury and damage to a girl's body that was not yet ready for sexual intercourse because it had not undergone the physical changes of puberty that would dilate the vagina and moisten it (through the regular menstrual flow) to enable penetrative sex. Girls under the age of ten were understood to have not yet arrived at sexual "ripenesse": the changes of puberty that brought the growth of breasts and pubic hair, the

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<sup>54</sup> For examples from the many such references, see OBP, December 1678, Stephen Arrowsmith (t16781211e-2); and OBP, April 1747, John Hunter (t17470428-28). For the language of sex, particularly illicit sex, see Carol Kazmierczak Manzione, "Sex in Tudor London: Abusing Their Bodies with Each Other," in Desire and Discipline: Sex and Sexuality in the Premodern West, ed. Jacqueline Murray and Konrad Eisenbichler (Toronto: University of Toronto Press, 1996), 87-100; and Laura Gowing, "Gender and the Language of Insult," History Workshop Journal 35, no. 1 (1993): 1-21.

onset of menstruation, and the first stirrings of sexual feelings were thought to occur usually around the age of fourteen, sometimes at twelve, but very rarely before that. Force and violence would thus be necessary for a man to enter a prepubescent girl's body, causing obvious injuries such as tearing ("laceration") and, consequently, bleeding.<sup>55</sup> Harm to the child's body might also be done through venereal infection. Sex with a child was thus understood as both physically and morally abusive even before explicit ideas about child sexual abuse had been articulated. That such behavior was regarded as appalling and unacceptable can be seen in comments that were occasionally made about the crime: Edward Coker's rape of an eleven-year-old girl was described as "a brutish act of beastliness"; William Rowlandson's rape of a nine-year-old girl as "a filthy brutish offence"; Stephen Arrowsmith's rape of Elizabeth Hopkins, aged eight, as "so Horrid and Vile an Offence"; and John Raven's rape of Mary Katt, also aged eight, as "appearing so Odious to the Court."<sup>56</sup>

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<sup>55</sup> Toulalan, "'Unripe' Bodies," 135-38, 140-41.

<sup>56</sup> OBP, January 1675, Edward Coker (t16750115-3); see also A Narrative of the Proceedings at the Session for London and Middlesex, Holden at the Old Bailey, on the Third and Fourth Days of July, 1678 (London: Printed for D.M., 1678), 1. Reported only as "a young fellow," Rowlandson is named in the indictment, LMA CLA-0267; OBP, December 1678, Stephen

According to the 1576 statute, rape was encoded as “carnal copulation.” Penetration with an object or with a finger rather than with a penis, partial penetration, and seminal emission outside the body, therefore, were not judged as constituting rape and were treated as sexual assault with intent to ravish.<sup>57</sup> Although this wording seems to exclude women from prosecution for rape, the aiding and abetting of the commission of a felony was prosecuted just as for the felony itself.<sup>58</sup> Several women also appear as defendants in a

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Arrowsmith (t16781211e-2); OBP, September 1686, John Raven (t16860901-21).

<sup>57</sup> Coke, The Third Part, 60; The Infants Lawyer, 253; Hawkins, A Treatise of the Pleas of the Crown, 108-9. For rapes retried as assault where there was digital penetration, see OBP, May 1754, William Kirk (t17540530-36); OBP, July 1774, Richard Freelove (t17740706-57); and OBP, June 1788, Joseph Fyson (t17880625-93).

<sup>58</sup> J. H. Baker, An Introduction to English Legal History (London: Butterworths, 2002), esp. chaps. 29 and 30, and 525-26 on felony accessories. Anna Clark identifies five women aiding and abetting rapes by taking money for luring women to a man’s home between 1770 and 1780 in the northeast of England (Women’s Silence, Men’s Violence: Sexual Assault in England, 1770-1845 [London: Pandora, 1987], 31-32). Peter King, in his survey of gender and crime, seems to ignore these women when

number of these Old Bailey trials, but they number only sixteen, or 5 percent. In only four of these trials was the victim under the age of fourteen.<sup>59</sup> Only one of these women, Alice Gray, accused in April 1707 of aiding and abetting the rape of Catherine Masters, aged ten, by John, alias Thomas, Smith, was found guilty and sentenced to death. In this trial Catherine Masters deposed that it was the woman who pulled her back to bed when she tried to get out, held her down, and covered her mouth while Smith "gain'd the perfect knowledge of her Body."<sup>60</sup> None of the records of these trials provide any evidence that the woman herself had had sexual contact with the child nor what her possible motive may have been in assisting the man in committing the rape. There is thus no

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he states that "only a man could be indicted for rape or sodomy" ("Gender, Crime and Justice in Late Eighteenth- and Early Nineteenth-Century England," in Gender and Crime in Modern Europe, ed. Margaret L. Arnot and Cornelia Usborne [London: UCL Press, 1999], 44-74, 55).

<sup>59</sup> Of these four, one was aged nine, two were aged ten, and one was eleven years old at the time of the alleged rape, twelve when it came to court. In the other eight trials, two girls were aged fourteen, another two were aged fifteen, one girl was sixteen, and no age was recorded for the other three complainants.

<sup>60</sup> OBP, April 1707, Alice Gray (t17070423-26).

evidence of women themselves having had sexual interaction with a child, male or female, unlike the case William Naphy identified in Geneva in 1565.<sup>61</sup> There is some very small anecdotal evidence from other textual sources that suggests that women might seek sexual contact with a male child for their own sexual gratification, as Krafft-Ebing indicated in the nineteenth century when he included in his examples of those who violated children "sensual women" who abuse boys "in order to satisfy themselves by means of friction or onanism."<sup>62</sup> These anecdotes, however, cannot be regarded as evidence of actual incidence.<sup>63</sup> The lack of evidence for female perpetrators, although shaped by the nature of the extant sources, does strongly suggest that there is historical continuity in the preponderance of male perpetrators of sexual

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<sup>61</sup> A woman was arrested for abusing an eight-year-old boy whom she confessed to having violently fondled (Naphy, Sex Crimes, 111).

<sup>62</sup> Krafft-Ebing, Psychopathia Sexualis, 404.

<sup>63</sup> The two anecdotal cases are in E. Fenton, Certaine Secrete Wonders of Nature (London: Henry Bynneman, 1569), 12; and John Marten, A Treatise of All the Degrees and Symptoms of the Venereal Disease, in Both Sexes, 6th ed. (London: printed for S. Crouch et al., n.d. [dated 1708 in British Library catalog; the first edition is dated in the preface as 1704]), 37.

crimes against children (as for the commission of violent crime more generally) and that female perpetrators are unusual.<sup>64</sup>

Finding information about men who may have had a sexual preference for children is not easy. Multiple prosecutions for the same offense might be indicative of such a sexual preference, but those who were successfully prosecuted were executed, thus precluding the possibility of reoffending. For some, however, a history of sexual acts with the same child or with other children emerged during the trial. A number of men, like James Booty in 1721, were accused of raping or attempting to rape either several different girls or the same girl repeatedly on different occasions, perhaps suggesting a particular desire for young girls—although Booty himself offered a different explanation, as we shall see. Adam Martindale recorded in the story of his life an old man's rape

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<sup>64</sup> See Finkelhor, Child Sexual Abuse, 11-13; J. M. Beattie, "The Criminality of Women in Eighteenth-Century England," Journal of Social History 8, no. 4 (1975): 80-116, esp. 89n37 for a woman aiding and abetting a rape; Robert B. Shoemaker, "Reforming Male Manners: Public Insult and the Decline of Violence in London, 1660-1740," in English Masculinities, 1660-1800, ed. Tim Hitchcock and Michele Cohen (London: Longman, 1999), 133-66; King, "Gender, Crime and Justice."

of a neighbor's young daughter, "under six yeares of age," about which his own three-and-a-half-year-old daughter was questioned as a witness. Martindale noted that the man had raped her "severall times" and had also attempted to rape at least one other child.<sup>65</sup> Both Stephen Arrowsmith in 1678 and Thomas Benson in 1684 were accused of having had sexual intercourse more than once with the girls they were convicted of raping (the daughters of the men to whom they were apprenticed). Arrowsmith allegedly had sex with eight-year-old Elizabeth Hopkins every Sunday for six months, "half a year together every Sunday," while Benson had done so with Elizabeth Nichols, aged seven or eight, between five and seven times.<sup>66</sup> Both Thomas Broughton in 1685 and William Webb in 1687 were accused of an unspecified number of repeated incidents, which were reported only as "sundry times."<sup>67</sup> Deborah Wise, aged nine, deposed that William Pheasant "had to do with her"

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<sup>65</sup> The Life of Adam Martindale, 206-7.

<sup>66</sup> OBP, December 1678, Stephen Arrowsmith (t16781211e-2); OBP, October 1684, Thomas Benson (t16841008-12).

<sup>67</sup> The Proceedings on the King's Commissions of the Peace, and Oyer and Terminer, and Goal Delivery of Newgate, Held for the City of London and County of Middlesex, at Justice-Hall in the Oldy-Bayly, the 15th and 16th of January, 1685 (London: R.L.S. for D. Mallet, 1685), 3; and OBP, May 1687, William Webb (t16870512-34).

three times before he was discovered in 1699.<sup>68</sup> The unnamed man in 1719 accused of the rape of Bridget Stevenson, also aged nine, was alleged to have done so "two or three times."<sup>69</sup> In 1720 ten-year-old Mary Tennet testified of Thomas Beesley that "she was with him twice within 2 or 3 Days of each other, and he served her so both Times," and Mary Faucet, aged nine, said that John Cannon "serv'd me so 3 Days" in 1733.<sup>70</sup> Thomas Walgrave, father of three-year-old Catherine, testified in 1739 that his apprentice, John Adamson, had "owned he had abused her three Times for Satisfaction in his own lustful Way, in the Garret."<sup>71</sup> In 1766 Phillis Holmes, aged nine, said that after raping her the first time Edward Brophy did it again "two times more."<sup>72</sup>

Occasionally, it is evident that an accused man had previously been prosecuted and acquitted of a similar crime, suggesting that he might be a possible serial rapist of young girls. Although acquitted, it was alleged at his trial in 1749

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<sup>68</sup> "The Information of Deborah Wise," 19 December 1698, London Lives, LMSLPS150090108, LMA 00521; see also OBP, January 1699, William Pheasant (t16990113-1).

<sup>69</sup> OBP, February 1719, unnamed man (t17190225-48).

<sup>70</sup> OBP, April 1720, Thomas Beesley (t17200427-38); OBP, September 1733, John Cannon (t17330912-55).

<sup>71</sup> OBP, January 1739, John Adamson (t17390117-11).

<sup>72</sup> OBP, September 1766, Edward Brophy (t17660903-38).

that George Tennant had assaulted more girls than the one, Mary Craggs, aged nine, for whose rape he was standing trial. Mary Craggs's mother alleged that "he serv'd another neighbour's child in the same manner" and that the apothecary's widow from whom she sought treatment for her child's consequent venereal disorder told her that "this is the third or fourth child he has serv'd so."<sup>73</sup> Another woman, Margaret Goodson, who is not mentioned in the trial report in the Sessions Papers, made a sworn statement that her daughter Elizabeth had told her that Tennant had "feloniously forced her body" about four years earlier.<sup>74</sup> Tennant was subsequently indicted for the rape of seven-year-old Grace Howel, but the judge considered her too young to give evidence, and so Tennant was again acquitted. Tennant denied that he had done anything to the child and was acquitted after eleven witnesses gave evidence of his good character and reputation as an "honest" and "modest" man, including several women and some who had known him for as long as sixteen or seventeen years.<sup>75</sup> One character witness alleged that the prosecution had been

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<sup>73</sup> OBP, January 1749, George Tennant (t17490113-15). This allegation is not mentioned in Hannah Craig's sworn information, LMA MJ/SP/1749/01/51.

<sup>74</sup> "The Information of Margaret Goodson," 31 December 1748, LMA MJ/SP/1749/01/51.

<sup>75</sup> OBP, January 1749, George Tennant (t17490113-15).

brought against him out of "malice." It is possible that these allegations of further assaults on other girls were made in order to support this particular prosecution, to suggest that it was more likely that Tennant had raped Mary Craggs if it could be shown that he had also done so on previous occasions, rather than to indicate that he was a man who had a particular desire for young girls. The subsequent indictment for the rape of another child might, however, suggest that the first prosecution was not malicious and that he was, in fact, a serial offender who successfully evaded prosecution through the strength of his reputation in the community. Perhaps that is why he targeted girls too young to be admitted to give sworn testimony against him, or, even if their sworn testimony was allowed, it would not be found sufficiently credible or reliable by a jury to convict him.

Many historians of rape have pointed out how difficult it was in early modern England to secure a conviction for rape: Mills, for example, has noted that between 1700 and 1750, 85 percent of the rape trials reported in the Sessions Papers ended in acquittal.<sup>76</sup> A significant obstacle to prosecution was presented when a child's evidence, which was crucial to a prosecution, could not be heard by the court. Despite overwhelming physical evidence of a violent assault from those who had examined the child, a man might still be acquitted if

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<sup>76</sup> Mills, "Rape in Early Eighteenth-Century London," 151.

the judge decided that the child was too young to give evidence or if questioning revealed that the child did not understand the nature of an oath and could not therefore provide sworn testimony. The very youngest children, aged between three and eight, were not sworn in to give evidence, as they were usually judged not "capable of giving evidence." Sometimes they were allowed to give their evidence, but not under oath. There is some variation for girls aged nine and older: some girls were sworn to give evidence, while others were not. Winifred Strolger, aged nine, was admitted to give sworn evidence against Robert Warden in 1745 because she satisfied the court that she had sufficient understanding of the importance of telling the truth, but Mary Reynolds, also aged nine, was not admitted to give sworn evidence against Thomas Crosby, who was accused of her rape in 1757.<sup>77</sup> In 1723 Susannah Mitchel, aged ten, gave sworn evidence against Edward Fox, but the testimony of Catherine Black, also aged ten, against Gerard Bourn and Jonas Penn in that same year was not allowed because she could not give "a satisfactory Answer" as to the nature of an oath, "And so the Evidence against the Prisoners not coming up to what the Lawer requires, the

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<sup>77</sup> OBP, July 1745, Robert Warden (t17450710-15); OBP, December 1757, Thomas Crosby (t17571207-14).

Prisoners were acquitted.”<sup>78</sup> It is not always completely clear in the report of the trial that it was the lack of sworn testimony that meant a conviction could not be achieved, but in some trials, such as the one just mentioned, it is explicit. This is also the case in the trial of William Nichols for the rape of Dorcas Reeves, aged five, in 1724, where it was noted: “The Child being too young to swear to the Fact, the Jury acquitted him of the Rape, but found him guilty of the Assault.”<sup>79</sup> Without the sworn testimony of the child to the fact of rape, a conviction could not be achieved, even when medical evidence was given confirming that penetration had indeed taken place, as happened in the acquittal of Bourn and Penn. In that instance, Catherine Black’s accusation of rape was confirmed both “by another Evidence,” that is, by another witness, and by a surgeon who testified that he “found her abus’d to the utmost degree, the Parts being violently lacerated, contus’d, and inflam’d, and she pox’d in a miserable manner.”<sup>80</sup> In such cases the accused man was usually retried for the lesser charge of assault with intent to rape.

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<sup>78</sup> OBP, January 1723, Edward Fox (t17230116-39); OBP, October 1723, Gerard Bourn and Jonas Penn (t17231016-52).

<sup>79</sup> OBP, February 1724, William Nichols (t17240226-73).

<sup>80</sup> OBP, October 1723, Gerard Bourn and Jonas Penn (t17231016-52).

A further obstacle to a rape conviction was proving penetration. Where it was doubtful—often because the surgeon giving evidence of his examination of the child said that he found no evidence of tearing or “laceration” or it was possible that something else had caused the tearing, such as the man’s fingernails in one case—even if the evidence indicated sexual contact, frequently because of venereal infection, rape could not be proven.<sup>81</sup> In such cases the court might then also order that the accused man be retried for assault. Twenty-five trials involved girls below the age of fourteen—eighteen of which involved girls under the age of consent of ten—where a defendant was acquitted of the charge of rape but then retried or ordered to be detained for trial on the lesser charge. Of these eighteen cases, no details are available for two, but in the remaining sixteen cases, there was evidence of venereal infection in thirteen of the girls. This suggests that the court both accepted infection with a venereal disease as evidence of sexual contact and regarded it

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<sup>81</sup> See, for example, the trial of Richard Freelove for the rape of two-year-old Ann Radford. The surgeon testified that the child was lacerated, that her discharge was not venereal but came from this wound, and that Freelove “had long nails, which might have scratched and wounded the parts.” He also examined Freelove for infection and found none. OBP, July 1774, Richard Freelove (t17740706-57).

as harm done to a child that required punishment. That the court took such harm seriously can be seen in the comments made about a defendant when ordering detention for further trial and, on one occasion, in the award of an allowance to the child's family so that they could afford to pursue the second prosecution. After the jury found Joseph Fyson not guilty of rape, the judge ordered his detention to be prosecuted for assault to bring him "to that punishment which you deserve" and allowed "the prosecutor five guineas for the expence of this prosecution," as he was a poor man who otherwise could not afford it.<sup>82</sup>

In order to secure a conviction for sexual assault where penetration could not be proven but where there was evidence of venereal infection, those giving medical evidence had to convince the court not only that both child and defendant had the infection but also that it was possible to transmit the infection without penetration. The questions asked in court established whether contact had taken place, to what extent,

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<sup>82</sup> OBP, June 1788, Joseph Fyson (t17880625-93). It is perhaps also an indicator that infection with venereal disease was regarded as a kind of criminal damage, as it was sometimes also mentioned in a charge or on an indictment. See, for example, the indictment of George Manning for the rape of two-year-old Eleanor Clay, LMA MJ/SR/2695. He was, however, acquitted: OBP, April 1738, George Manning (t17380412-56).

with what, and whether or not it was possible to infect a person without either penetration or emission of semen inside the body or onto the private parts. There was overwhelming agreement that it was indeed possible to transmit the infection by touch alone, confirming the assertions of the authors of venereal treatises of the day.<sup>83</sup> The two anecdotal examples of infection by hand presented by John Marten in his A Treatise of All the Degrees and Symptoms of the Venereal Disease, in Both Sexes, published at the beginning of the eighteenth century, are of female (prostitutes) to men rather than of men to women, reflecting the contemporary bias noted by historians that women were predominantly seen as communicators of venereal infections, but, nevertheless, they prove the point.<sup>84</sup> The surgeon, Henry Tompson, who testified at

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<sup>83</sup> J. Sintelaer, The Scourge of Venus and Mercury (London: n.p., 1709), 12-13; Marten, Treatise, 33-39. Both Sintelaer (24) and Marten (68-69) also note the possibility of contracting disease through sodomy and oral sex, condemning both practices.

<sup>84</sup> Marten, Treatise, 34. See also Diane Cady, "Linguistic Dis-ease: Foreign Language as Sexual Disease in Early Modern England," in Sins of the Flesh: Responding to Sexual Disease in Early Modern Europe, ed. Kevin Siena (Toronto: Centre for Reformation and Renaissance Studies, 2005), 159-86; and Laura

the trial of Christopher Larkin for the rape of ten-year-old Jane Gallicote in 1751 that he thought she was too young to have been penetrated, gave further evidence that her gonorrhoea could have been transmitted by an "impure cohesion," that is, by genital contact without full penetration.<sup>85</sup> More explicitly, William Barrel, surgeon, testified at the trial of William Allam for the rape of eight-year-old Elizabeth Hall in 1768 that "the disorder is communicable, if the two parts touch one another."<sup>86</sup>

The question of whether or not venereal infection was possible without penetration was important because it might prove sexual contact and injury to a child. But it might prove that penetration might not have taken place, and the presence of a venereal infection in a child does not seem to have meant that a prosecution for rape was more likely to succeed. Only 30 percent of men prosecuted for rape of a child under the age of ten were found guilty, and of the thirty-nine girls under ten who were firmly diagnosed as having a venereal infection, only fifteen (38 percent) secured a guilty verdict. In 1753 at the trial of John Birmingham for the rape of Elizabeth Wheeler, aged nine, who was diagnosed at the London Hospital

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J. McGough, "Quarantining Beauty: The French Disease in Early Modern Venice," in Siena, Sins of the Flesh, 211-37.

<sup>85</sup> OBP, July 1751, Christopher Larkin (t17510703-21).

<sup>86</sup> OBP, September 1768, William Allam (t17680907-40).

by two surgeons as having "the foul disease," the question was asked: "Had she been penetrated?" The surgeon, Robert Bristow, replied that he believed she had not, and this response was immediately followed by the question: "Could she have that distemper without penetration?"<sup>87</sup> A year later, the same question was asked at the trial of John Grimes for the rape of nine-year-old Elizabeth Salter, to which the surgeon, Samuel Clark, responded: "I believe if any nastiness should lie upon a child's tender parts, it may be."<sup>88</sup> William Kirk was acquitted of the rape of six-year-old Anne Brown in 1754 because of doubts about his ability to effect penetration: the surgeon, Mr. Moffatt, who examined him found that his penis was at first sight "intirely hid" by "a double rupture," though it was eventually "produced." A second witness, who is not named as a surgeon in the trial report but who also participated in the medical examination of Kirk, Mr. Stevenson, further testified that Anne Brown told him that "Mr Kirk used to set her upon his knee, and used to put his finger into her." This evidence accounted for Mr. Moffatt's testimony that "she has had her parts torn by means of some forcible entry." **{{again, capitalised in the original}}** Kirk was also found to have a venereal infection, as did the child, indicating that there had been some sexual contact; on his

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<sup>87</sup> OBP, May 1753, John Birmingham (t17530502-35).

<sup>88</sup> OBP, May 1754, John Grimes (t17540530-1).

acquittal he was ordered to be detained to be tried for assault with intent to rape the child.<sup>89</sup> So even if the presence of a venereal infection in a child did not mean that a man was more likely to be found guilty of rape, it did mean that he was more likely to be retried on a charge of sexual assault. The court was reluctant to see a man go unpunished, and when a defendant could not be convicted on the evidence presented, a report might comment that he nevertheless "richly deserved severe Punishment."<sup>90</sup>

Very few reports of the trials held at the Old Bailey recorded any motive for the alleged rape or assault with intent to rape of a child. It is thus almost impossible to establish whether or not an accused man was acting on sexual desire specifically directed toward children. It was extremely rare for a man to admit his guilt in court; most denied it. Of eighty-nine trials for rape or sexual assault in which the girl was under the age of consent of ten, there were twenty-seven guilty verdicts (30 percent).<sup>91</sup> Only three of the accused admitted their guilt: Thomas Benson in 1684, James Booty in

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<sup>89</sup> OBP, May 1754, William Kirk (t17540530-36).

<sup>90</sup> See the trial of Matthew Cave for the rape of Martha Flanders, aged twelve: OBP, October 1747, Matthew Cave (t17471014-15).

<sup>91</sup> A further five men were reported as subsequently found guilty of assault and another one as guilty of trespass.

1722, John Adamson in 1739. Two men did not deny it: Thomas Broughton in 1685 and "a young fellow," named in the indictment as William Rowlandson, in 1678.<sup>92</sup> Some of the accused admitted to having had some sexual contact with the child but denied that it was as much as rape. Thomas Gray in September 1735 "admitted he had plaid and been familiar with the Child, and had even taken some indecent Liberties, but never offered to ravish her, or any thing like it."<sup>93</sup> Jacob Whitlock in 1696 confessed to having thrown the child on the bed but said he did nothing more. Whitlock was convicted of rape, as there was physical evidence that the child "had been very much abused, and had got a great Clap," that is, a venereal infection.<sup>94</sup> In 1744 Justice Spurling gave evidence at the trial of Francis Moulcer for the rape of Ann Bishop that when Moulcer was first brought before him, he had originally confessed that he had attempted to enter her body but had not done so, thus attempting to reduce the charge. At his trial, however, he denied that he had either raped or attempted to rape her, retracting his confession as having been given when drunk: "What I said before the Justice was when I was in

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<sup>92</sup> A Narrative of the Proceedings, 1; William Rowlandson, indicted for the rape of Margaret Bush, aged nine, 12 June 1678, LMA CLA-0267.

<sup>93</sup> OBP, September 1735, Thomas Gray (t17350911-53).

<sup>94</sup> OBP, October 1696, Jacob Whitlock (t16961014-10).

Liquor, for I did not offer any such Thing to the Child."<sup>95</sup> In another case, Edward Brophy in 1766, witnesses gave evidence that the accused had admitted to having had sexual intercourse with Phillis Holmes, aged nine, but he did not admit to it in court. The child's nurse testified that when she asked him what he had done, he had confessed to her: "O nurse! the devil was in me, and I was devoid of my senses."<sup>96</sup> There are, consequently, very few reports in which a man accounted for his actions.

When a reason was offered for the rape or sexual assault of a child, either in the record of the trial or afterward as part of the man's confession before execution, it was never to do with sexual desire for a child. There are far too few of these narratives from which to generalize, but two explanations that do appear included being drunk and attempting to cure venereal disease.<sup>97</sup> Edward Brophy's

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<sup>95</sup> "Francis Moulcer, for a Rape, October, 1744," in Select Trials for Murder, Sodomy, etc. . . . from 1741 to the Present Year, 1764, Inclusive, 4 vols. (London: Printed for J. Wilkie, 1764), 1:131.

<sup>96</sup> OBP, September 1766, Edward Brophy (t17660903-38).

<sup>97</sup> Modern studies of child sexual abuse indicate that alcohol is often implicated in what may be characterized as "circumstantial" abuse of children. See Howitt, Paedophiles, 101.

confession to having been "devoid of my senses" might suggest that he was drunk rather than insane, as he worked in an inn, and Phillis Holmes said that he had been stirring beer in the cellar before he raped her there.<sup>98</sup> Thomas Benson, convicted in 1684 of the rape of Elizabeth Nichols, "a Child about 7 or 8 Year old," "confess'd he had forced her once, but was in Drink when he did it."<sup>99</sup> At the trial of Thomas Beesley in April 1720 a witness, Edmund James, testified that Beesley had "own'd to him, that he had lain with her when he was drunk," but Beesley himself said that "he knew nothing of the Matter."<sup>100</sup> Although he did not offer it as a defense in court, in 1750 William Tankling was described as being "much in liquor" when he returned three-year-old Anne Collings to her home bruised and bleeding. It was not immediately realized that Anne had been raped, as the source of her injuries was mistaken: "We thought it [the blood] came from the mouth of the child." It was not until her mother "found the child very ill" and she was diagnosed with "the foul distemper" that it was realized that Tankling had raped Anne before bringing her home.<sup>101</sup> The constable, Henry Banford, testified that when Kitty Sweetman's

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<sup>98</sup> OBP, September 1766, Edward Brophy (t17660903-38).

<sup>99</sup> OBP, October 1684, Thomas Benson (t16841008-12); OBP, October 1684, Ordinary's Account (OA16841017).

<sup>100</sup> OBP, April 1720, Thomas Beesley (t17200427-38).

<sup>101</sup> OBP, July 1750, William Tankling (t17500711-25).

father asked Joseph Fyson why he had assaulted her, Fyson replied: "I was in liquor, but I hope you will forgive me," but Fyson denied it "intirely" when taken before the justice.<sup>102</sup>

It has been argued that some men raped and assaulted young girls because of a belief that sex with a virgin could cure venereal disease. A case from Bridewell in the early seventeenth century seems to confirm that seeking such a cure could prompt a man to have sex with a child: an apprentice was presented for taking one of his master's children to bed; he "spoyled her" after going to a "whore and beinge by her tainted."<sup>103</sup> Some books on venereal disease mention it, including John Marten's treatise, published in the early eighteenth century, in which he related a case of a young man who plied a young woman with drink before debauching her "for no other Reason, as he alledg'd, but because he had heard it would clear him of the Distemper."<sup>104</sup> Martin Ingram notes that

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<sup>102</sup> OBP, June 1788, Joseph Fyson (t17880625-93).

<sup>103</sup> Bridewell Court Book 6, fol. 43r, 9 May 1618, <http://www.bethlemheritage.org.uk/archive/web/BCB.htm>, image 87. I am very grateful to Martin Ingram for bringing this case to my attention and to Martin and Eleanor Fox for generously sharing the reference with me.

<sup>104</sup> Marten, Treatise, 24-25. On the possible origins of the idea and its subsequent discussion in medical literature,

there was no evidence of this belief in the trials that he examined, while Antony E. Simpson has asserted that "the belief was a prevalent one and it is, therefore, not surprising that it was commonly presented as a defence by those accused of attacking little girls." There is some evidence in these Old Bailey trials, although not as much as Simpson has suggested.<sup>105</sup> Just one defendant, Joseph Fyson in June 1788, was reported as making a statement in court in defense of his behavior that refers to his having "the foul disease," though he did not say that his intention was to be cured through sex. It is not clear whether he was seeking a cure or revenge on the child's mother, as he said it was she who had infected him. Neither does the court's response—"that is no excuse for the crime with which you are now charged"—

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see Winfried Schleiner, "Infection and Cure through Women: Renaissance Constructions of Syphilis," Journal of Medieval and Renaissance Studies 24, no. 3 (1994): 499-517.

<sup>105</sup> Simpson, "Vulnerability," 193. He lists four trials (203n48), three from the late eighteenth century, two of which took place at the Old Bailey, and one from 1826. But it was not actually presented as a defense in either of the two Old Bailey trials that Simpson references (R v. Davenport, February 1796, and R v. Scott, September 1796). The third eighteenth-century trial is found only in a report in the London Evening Post, 8-10 August 1780.

indicate which was more likely.<sup>106</sup> In two cases the idea that venereal disease might be cured by sexual intercourse with a girl was raised, but not by the counsel for the prosecution or the defense, nor by the defendant himself, but by the court, that is, by the presiding judge in both cases, Mr. Justice Rooke, who appears to have had a personal desire to disabuse the public of any such mistaken notion. In the case against Thomas Davenport from 1796 Rooke made this intention quite clear when he raised the issue directly with the surgeon, James Gale, who gave evidence of his physical examinations of Davenport and of eleven-year-old Ann Thacker:

Q. Then I will ask you a question for the sake of the public, and enlightening the public mind upon this subject; is it possible for a man, having a venereal taint of this sort, to receive any benefit from connexion with a child? A. It is an extremely false idea.

Court. This idea cannot be too well understood, because many poor miserable wretches have that notion? A. I should suppose quite the reverse, because any thing that irritates the penis must inflame it and encrease the discharge.

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<sup>106</sup> Ingram, "Child Sexual Abuse," 78; OBP, June 1788, Joseph Fyson (t17880625-93).

Court. That has been the uniform answer of every surgeon that I ever heard.<sup>107</sup>

In September of the same year, at the trial of David Scott for the rape of eleven-year-old Mary Homewood, Mr. Justice Rooke again directly raised the question with the surgeon giving evidence, asking him twice in the same words: "Can it be any relief to any person that has the gonorrhoea to be connected with a young child?" He then also reiterated that "it cannot be too generally known, that it does harm, and not good."<sup>108</sup> These two examples suggest that those presiding over such cases at the Old Bailey may have inferred from the prevalence of venereal infections in the children examined for the purpose of prosecuting rape that the men so accused had done so in order to attempt to cure themselves of the infection, even if a defendant never did so himself. Such a belief could not have been offered as a valid defense, though, as it would have meant admitting the offense in the first place, and it was rare for men to do so. This may explain the absence of this defense from the reports of trials for rape and sexual assault of children held at the Old Bailey.

Kevin Siena has argued that this belief may have been widespread among the lower classes in London, since so many of the rape trials at the Old Bailey that involved girls under

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<sup>107</sup> OBP, February 1796, Thomas Davenport (t17960217-37).

<sup>108</sup> OBP, September 1796, David Scott (t17960914-12).

the age of sixteen also presented evidence of venereal infection. Siena identified forty-six rape trials between 1714 and 1759 that included an accusation of venereal infection, about 85 percent of which involved girls under sixteen years, indicating that there was "an overwhelming connection between rape cases involving young girls and venereal transmission."<sup>109</sup> Within the larger context of these 306 trials reported between 1674 and 1800, however, about half involved girls aged fourteen and under, and of these girls fewer than half (43 percent) were diagnosed with a venereal disease. The percentage of those girls aged under ten who were infected was only a fraction higher at 44 percent.<sup>110</sup> This is still quite a high incidence of infection, but it does not seem to be conclusive proof that young girls were specifically targeted

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<sup>109</sup> Kevin P. Siena, Venereal Disease, Hospitals and the Urban Poor: London's "Foul Wards," 1600-1800 (Rochester, NY: University of Rochester Press, 2004), 193.

<sup>110</sup> A further 7 percent (8 percent of those under ten) were of uncertain or inconclusive diagnosis, including one diagnosis of "fluor albus" (white flux) and two children with a "running" for which other causes than sexual transmission were thought to have been possible. For the "fluor albus," see the trial of Charles Earle, December 1770 (t17701205-39). For the "running," see the trials of William Robbins, January 1720 (t17210113-28) and James Penoroy, April 1749 (t17490411-22).

for this purpose, suggesting that other motivations were more prevalent. This rate of infection may be indicative of a generally high incidence of infection in the population more generally rather than of any belief that sex with a virgin would effect a cure. Siena himself has argued that "the pox was absolutely rife among the London poor long before 1690."<sup>111</sup> Linda Merians has shown that 26,800 men, women, and children were treated at London's Lock Hospital for venereal infection between 31 January 1747 and 3 March 1800.<sup>112</sup> Actual incidence of such infections in the London population would have been much higher, though, as sufferers would have sought treatment from other sources, including other hospitals as well as privately through advertisements for remedies and from surgeons. In the 1751 Account of the Proceedings of the Governors of the Lock Hospital, it was noted that more than fifty children aged between two and twelve had been treated in the four years since the hospital's opening, having contracted the disease as a result of sexual attacks. Merians regards this as confirming a belief that sex with a virgin could cure the infection, a belief against which the hospital "mounted a

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<sup>111</sup> Siena, Venereal Disease, 4.

<sup>112</sup> Linda E. Merians, "The London Lock Hospital and the Lock Asylum for Women," in The Secret Malady: Venereal Disease in Eighteenth-Century Britain and France, ed. Linda E. Merians (Lexington: University Press of Kentucky, 1996), 128-45, 128.

very public campaign."<sup>113</sup> This number is just over 4 percent of the total number of persons treated in that period, however, and does not therefore suggest a very widespread incidence of attempts to cure oneself through sex. The hospital's campaign does imply that, while acknowledging the sexual transmission of the disease to children, hospital staff saw this sexual transmission as a medical problem rather than one of sexual desire for and predation upon children.<sup>114</sup>

The belief is presented as the motivation for one rape that was successfully prosecuted in the eighteenth century, that of fifteen-year-old James Booty in 1722 for the rape of five-year-old Ann Milton—though he did not use it in his defense in court, where he said: "I know nothing of it, and if I confess'd any such Thing, it was in Fright, when I did not know what I said."<sup>115</sup> Booty finally confessed to the Ordinary

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<sup>113</sup> Ibid., 134.

<sup>114</sup> Raymond A. Anselment, "Seventeenth-Century Pox: The Medical and Literary Realities of Venereal Disease," Seventeenth Century 4, no. 2 (1989): 189-211; Bruce Thomas Boehrer, "Early Modern Syphilis," Journal of the History of Sexuality 1, no. 2 (1990): 197-214.

<sup>115</sup> Select Trials, for Murders, Sodomy, Robberies, Coining, Rapes, Frauds, and Other Offences. At the Sessions-House in the Old-Bailey, 4 vols., 2nd ed. (London: Printed for J. Gilliver and J. Huggonson, 1742), December 1720-October

in Newgate before his execution that he had been infected by his cousin and that he raped not only Ann Milton but also three or four other girls in an attempt to rid himself of the disease, as an acquaintance had told him: "I have heard say, that a Man may clear himself of that Distemper by lying with a Girl that is sound."<sup>116</sup> It was further reported that "he afterwards said, that he enticed the Child to the Top of the House, and on the Leads did abuse her, and gave her the Foul Disease, because he had heard that it would ease his Pains of Body; for he was afraid to discover to any Body his Condition, even to his own Mother."<sup>117</sup> This justification is reiterated at the end of the Ordinary's Account: Booty "declared to the last, that what he did was for no other end than to ease himself of the Pains he was in, which he had heard might be that Way effected."<sup>118</sup> Whether or not this belief was widespread in the seventeenth and eighteenth centuries, in at least this one case it appears to have been a factor, as the condemned man seems to have thought that it might plausibly

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1723, 1:199. See also OBP, May 1722, James Booty (t17220510-34). This abbreviated report of Booty's trial records only that "he said he knew nothing of the matter; and if ever he confest any such Thing, it was only in a fright."

<sup>116</sup> Select Trials, 1:201 (emphasis in original).

<sup>117</sup> OBP, May 1722, Ordinary's Account (OA17220521).

<sup>118</sup> Select Trials, 201.

excuse his behavior and make it easier to forgive than a crime of inexcusable brutish violence and lust.

Regardless of the motivation, it is quite clear that those presiding over trials at the Old Bailey regarded the infliction of venereal disease on a child as a very serious matter. Children were described as having been "ruined," as did the mother of two-year-old Ann Radford in 1774.<sup>119</sup> Indeed, a child's health and beauty could be permanently blighted through a range of symptoms that encompassed different infections, including both the pox and gonorrhoea, which we now understand as separate diseases.<sup>120</sup> It was usually treated with mercury, which itself had noxious side effects that could have long-term consequences for health, so that the cure was often regarded as worse than the disease itself. Given to children in the form of salivations, pills, and topical ointments, mercury caused nausea, wasting, tremors and fatigue, inflammation and ulceration of the mouth and throat, and loosened teeth, among other problems.<sup>121</sup> Later stages of the disease brought different or aggravated symptoms, such as

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<sup>119</sup> OBP, July 1774, Richard Freelove (t17740706-57).

<sup>120</sup> Kevin Siena, introduction to Siena, Sins of the Flesh, 12.

<sup>121</sup> Nine-year-old Mary Faucet was treated with a salivation for her infection in 1733; see OBP, September 1733, John Cannon (t17330912-55).

pains in the bones and skin eruptions, or worsening of "buboes" and ulcers. The final stage of pox brought disfigurement to the face as the nose collapsed, further ulcerations to the face, head, and body, and, eventually, death. Venereal disease was also regarded as shameful, indicating a lack of sexual chastity, especially as it was believed to be spread mostly by prostitutes. When Samuel Pepys thought his brother was ill with the pox, he wrote in his diary in March 1664 that "the shame of this very thing I confess troubles me as much as any thing."<sup>122</sup> A child infected with the disease thus faced an uncertain, potentially painful, and difficult future: she would be physically debilitated, which would affect her employment as well as her marital prospects, and likely suffer a premature and unpleasant death. It was no wonder, then, that parents were horrified to discover that a child was "foul" and that those trying a man accused of infecting a child through rape or sexual assault treated it as a most serious matter.

Francis Moulcer's 1744 case also provides us with evidence of other reasons put forward to explain the actions of men convicted of the rape of young girls, none of which again suggest that there was any contemporary perception of

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<sup>122</sup> Entry for 14 March 1664, The Diary of Samuel Pepys, ed. Robert Latham and William Matthews, 11 vols. (London: Bell & Hyman, 1970-83), 5:84.

men particularly directing their sexual desire toward children. In the ordinary of Newgate's account of Moulcer's incarceration and behavior before his execution, two issues were thought to have contributed to his actions. First, it was noted that he was disinherited by his father because of his "Vice and Wickedness": "His following lewd Women was so apparently barefac'd, that his Father in his Will left his whole Fortune to his Brother." His rape of a child might well have been regarded as the culmination of a predilection for sexually immoral behavior. Second, he had recently married a woman, but the marriage was unconsummated: "He was married last June to one Martha Gr—y, who was a Servant in Cheapside; but she would never suffer him (whatever might be her Reason for marrying) to Bed with her."<sup>123</sup> There was thus also the implication that he had been deprived of legitimate sexual relations through marriage and had clearly sought them elsewhere, as made evident by his venereal infection. His crime was therefore one of lust and lack of self-control over a sexual appetite that had been wrongly directed outside of marriage, rather than specifically directed toward a child. This suggestion is articulated more explicitly in the ordinary's narration of the life and behavior of Henry or Humphery Symkins (also variously spelled as Simkins or Simpkins) after his sentence of death for the rape of a ten-

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<sup>123</sup> OBP, November 1744, Ordinary's Account (OA17441107).

year-old girl in 1698. The Ordinary's Account includes the comment: "He was a married Person; and therefore the Ordinary told him, that his Crime was the more heinous and abominable, because he had an obligation to have been more Chaste, as having a remedy against such a gross Sin."<sup>124</sup> There was no need for him to have committed his crime, as he had a legitimate outlet for his sexual desires—a wife—and therefore should have been able to confine his sexual activity to marriage. The fact that he had raped a child rather than an adult woman does not seem to have been of particular significance in eliciting this condemnation. While Joanne Bailey has argued that "in religious teaching, adultery broke the conjugal vows and therefore male and female adulteries were considered to be offences of equal weight," Alexandra Shepard has noted that some writers of conduct books thought adultery worse in men because they were supposed to set an example, having more self-mastery than women.<sup>125</sup> The strong disapproval of lack of

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<sup>124</sup> OBP, January 1698, Ordinary's Account (OA16980126).

<sup>125</sup> Joanne Bailey, Unquiet Lives: Marriage and Marriage Breakdown in England, 1660-1800 (Cambridge: Cambridge University Press, 2003), 143; Alexandra Shepard, Meanings of Manhood in Early Modern England (Oxford: Oxford University Press, 2003), 81. See also Elizabeth A. Foyster, Manhood in Early Modern England: Honour, Sex and Marriage (London: Longman, 1999), 79; and Todd W. Reeser, Moderating Masculinity

chastity on the part of a married man expressed in the Ordinary's Account also lends some support to David Turner's contention that a man's sexual misconduct might "discredit him in the wider community" and be a source of shame and dishonor.<sup>126</sup> A lack of chastity that went as far as rape was more clearly perceived as shameful, not only resulting in the humiliation of a public trial, condemnation, and execution but also serving as a warning to others of the consequences of lack of control over one's sexual appetite.<sup>127</sup> Such men were clearly not being defined as particular types of persons according to the object of their sexual attentions, the children they raped, but were being characterized in these descriptions as suffering from a particular moral laxity. The rape of a child was perceived at this time as a crime of immoderation rather than perversion, one of uncontrolled lust

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in Early Modern Culture (Chapel Hill: University of North Carolina Press, 2006), 270-71.

<sup>126</sup> David Turner, "'Nothing Is So Secret but Shall Be Revealed': The Scandalous Life of Robert Foulkes," in Hitchcock and Cohen, English Masculinities, 169-92, at 174-75.

<sup>127</sup> David M. Turner, Fashioning Adultery: Gender, Sex and Civility in England, 1660-1740 (Cambridge: Cambridge University Press, 2002), chap. 4.

rather than an abnormal sexual desire or the desire to assert power and dominance.<sup>128</sup>

While some historians have dismissed the Ordinary's Accounts as of little value as a historical source, even to the extent of being fabricated and sensationalized, others, such as Peter Linebaugh, have argued that, "if carefully used," they can be a valuable and useful source.<sup>129</sup> Although clearly formulaic, the descriptions of those convicted of child rape and of the kinds of delinquent and sinful behaviors that culminated in the specific crime that sent them to the scaffold can indicate whether or not these men were conceived of as in any way different from other rapists or other kinds of criminals.<sup>130</sup> In these accounts, it was usual for the generally dissolute nature of the men's lives to be highlighted: a life generally given over to drinking and debauchery was likely only to come to a bad end. There was thus both a moralizing and a reformatory purpose to these

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<sup>128</sup> Some have denied the primacy of the sexual component in modern child sexual abuse and rape; against this notion, see Finkelhor, Child Sexual Abuse, 33-35.

<sup>129</sup> Linebaugh, "The Ordinary of Newgate," 247.

<sup>130</sup> Not all those convicted accepted these characterizations of their lives (ibid., 258).

narratives.<sup>131</sup> Phillippe Rosenberg has noted that their point was "to sharpen perceptions of the criminal's guilt."<sup>132</sup> Convicted criminals were thus frequently described as having kept bad company, not heeding the advice of those in whose charge they lived and worked, being disobedient, spending time in idleness or unprofitable pursuits such as drinking and gambling, and not paying attention to religious instruction or observance, often to the extent of not attending church and blaspheming. George Hutton, convicted in 1690 of the rape of nine-year-old Elizabeth Marriott, was described as having "kept bad Company, among whom he would be drunken and often swear."<sup>133</sup> Thomas Benson in 1684 confessed that "he was dismissed from that Service [his first apprenticeship] for his

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<sup>131</sup> See McKenzie, Tyburn's Martyrs; and McKenzie, "From True Confessions," 57-61.

<sup>132</sup> Phillippe Rosenberg, "Sanctifying the Robe: Punitive Violence and the English Press, 1650-1700," in Penal Practice and Culture, 1500-1900: Punishing the English, ed. Simon Devereaux and Paul Griffiths (Basingstoke, UK: Palgrave Macmillan, 2004), 157-82, at 171.

<sup>133</sup> OBP, December 1690, Ordinary's Account (OA16901222). On manliness and independence from the influence of others and self-restraint in conversation, see Philip Carter, "James Boswell's Manliness," in Hitchcock and Cohen, English Masculinities, 111-30, 119-24.

refractory Carriage toward his Master."<sup>134</sup> These were all standard misbehaviors attributed to condemned criminals in the Ordinary's Account and not restricted to those convicted of child rape or of rape more generally but common to all criminals. William Duell, convicted of the rape of Sarah Griffin in 1740, whose age is not given but who was clearly not a child, is similarly described as unwilling to submit himself to authority and to the discipline of learning a trade: "His Father being a Shoemaker in the Town of Acton, was willing to learn him his own Trade, but being careless and negligent, and not willing to be confined, but went out to ride Horses, and look after them, and sometimes he was employ'd by the Farmers, or at Gentleman's Houses."<sup>135</sup> These were the vices of many men, particularly young men, and of manhood more generally, against which all men were warned. As Alexandra Shepard has pointed out, "The main vices for which young men were excoriated were related to intemperance and pride. Lust, drunkenness, anger, and idleness were demonized as particular pitfalls stemming from an incapacity for self-control."<sup>136</sup> Andrea McKenzie has commented that "such confessions were inevitably shaped by the Ordinary's

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<sup>134</sup> OBP, October 1684, Ordinary's Account (OA16841017).

<sup>135</sup> OBP, October 1740, William Duell (t17401015-53); OBP, November 1740, Ordinary's Account (OA17401124).

<sup>136</sup> Shepard, Meanings of Manhood, 26.

tendentious questions," so that "frequently, the confessions of criminals resembled something of a checklist," including any or all of these behaviors.<sup>137</sup>

Idleness and disobedience might also be linked to a lack of proper instruction or education so that these men might be considered ignorant of the right ways to behave. John Raven, aged seventeen, convicted in 1686 of the rape of Mary Katt, aged eight, admitted to "having spent his time idly and vainly" and, furthermore, "was disobedient to his Mother."<sup>138</sup> Raven was also found to be very poorly educated, "so little instructed," to the extent that he was unable "to repeat perfectly the Lords Prayer." The death of his father when he was very young had left James Booty "to the Care of his Mother, who brought him up without so much Learning as would enable him to read."<sup>139</sup> Such neglect would have excluded Raven and Booty from the guidance, both religious and secular, on correct male behavior offered by a proliferation of printed conduct literature in this period as well as from that contained within the Bible. They also lacked the guiding authority and example of a father.<sup>140</sup> Lack of instruction,

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<sup>137</sup> McKenzie, Tyburn's Martyrs, 148-49.

<sup>138</sup> OBP, September 1686, Ordinary's Account (OA16860917).

<sup>139</sup> Select Trials, 200.

<sup>140</sup> Jeremy Gregory, "Homo Religiosus: Masculinity and Religion in the Long Eighteenth Century," in Hitchcock and

particularly in religious principles, in these accounts of criminal lives was clearly regarded as a root cause of deviation from the right path of a moral and virtuous life and was characteristic of many malefactors, not only those who had raped children.<sup>141</sup> William Duell "had little Education at School, and what little Reading he had, being an obstinate Boy, he almost forgot it."<sup>142</sup> James Whitney, implicated in the 1735 gang rape of a widow, Margaret Mackullough, was the son "of mean Parents, who gave him little or no Education at School, so that he had not much Knowledge of Religion."<sup>143</sup> The moral lesson of these narratives was that attention should have been paid to these young men's upbringing so that they would have been less likely to give themselves over to "immodesty and Lasciviousness" or to "be hardened in a course of Wickedness, and come to an untimely End."<sup>144</sup> The development

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Cohen, English Masculinities, 85-110, at 87-88; Shepard, Meanings of Manhood, chap. 3; Joanne Bailey, "'A Very Sensible Man': Imagining Fatherhood in England, c.1750-1830," History 95, no. 319 (2010): 267-92.

<sup>141</sup> McKenzie, "From True Confessions," 62.

<sup>142</sup> OBP, November 1740, Ordinary's Account (OA17401124).

<sup>143</sup> OBP, September 1735, Ordinary's Account (OA17350922).

On the importance of instruction, see also Bailey, "'A Very Sensible Man,'" 285-87.

<sup>144</sup> OBP, September 1686, Ordinary's Account (OA16860917).

of both moral virtue and the male virtue of self-control was thus represented as something that, as Elizabeth Foyster has noted, "should be taught from childhood in a systematic and organised way."<sup>145</sup>

The rape of children was seen in the context of general "lasciviousness," or indulgence of lust and sexual appetite, rather than as a particular sexual desire directed toward children. An account of the rape of Elizabeth Hopkins, aged eight, by Stephen Arrowsmith in 1678 describes his conviction as "a fit Warning for all lascivious persons to deter them from the horrid practices of debauching and ruining poor Children of such tender years."<sup>146</sup> Although this warning seems specifically to identify sexual "practices" aimed at children, it is rather an indication that those who could be identified as "lascivious persons" might, as part of their excessive lustfulness, direct their sexual attentions toward children as well as toward women. This is further supported by the description of the crime attributed to him on the scaffold as

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<sup>145</sup> Elizabeth Foyster, "Boys Will Be Boys? Manhood and Aggression, 1660-1800," in Hitchcock and Cohen, English Masculinities, 151-66, at 161; Shepard, Meanings of Manhood, 73.

<sup>146</sup> The Confession and Execution of the Two Prisoners That Suffered at Tyburn on Munday the 16th of Decemb. 1678 (London: Printed for R.G., 1678), 4.

one simply "of Brutish Lust" that came from "the violent temptation of Satan."<sup>147</sup> Thomas Benson, convicted in 1684 of the rape of Elizabeth Nichols, aged seven or eight, and an apprentice to the child's father, a vintner, was said to have previously "known two grown Persons Carnally," indicating his general immorality and inability to control his sexual appetite while also suggesting that his sexual desires were not exclusively, or even primarily, directed toward children.<sup>148</sup> Anna Clark has suggested that "libertines, even if a minority, strongly influenced attitudes toward rape. The eighteenth-century hero was often a rake."<sup>149</sup> But this was a model of manhood that was more the province of the aristocracy than of the middle classes, as Clark notes, or of the lower classes, men involved in laboring or crafts and trades, as were the men who mainly populate the reports of trials for sexual assault and rape at the Old Bailey. For these men, such excessive misbehaviors were unequivocally opposed to male virtues that encompassed reliability, hard work to support oneself and one's dependents, obedience to those in authority, religious observance, sobriety, and chastity.

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<sup>147</sup> Ibid., 8.

<sup>148</sup> OBP, October 1684, Ordinary's Account (OA16841017).

<sup>149</sup> Clark, Women's Silence, 23. See also Anna Bryson, From Courtesy to Civility: Changing Codes of Conduct in Early Modern England (Oxford: Clarendon, 1998), chap. 7.

The account of Thomas Benson's life up to the time of his incarceration in prison after conviction and before his execution given in the Ordinary's Account for October 1684 included all the indications that would be recognized as leading to this end: he had been dismissed from a previous apprenticeship "for his refractory Carriage towards his Master," suggesting a lack of respect and obedience to those in authority over him; he had been ordered by his master to go to church, implying that he had been unwilling to go of his own volition or inclination; although he had gone to church in the morning on "the Lords day," he had spent the afternoon in company with his own friends, "with whom he sat Drinking," although he had been "only twice Drunk to be quite void of Reason"; he more and more "frequented bad Company, which drew on the prophaning of the Lords day," and disregarded his mother's admonitions; he did not pray regularly and "in passion would Curse others."<sup>150</sup> Described in almost identical fashion, Thomas Broughton, convicted and executed in 1686 for the rape of Catherine Phrasier, aged seven, was reported as indulging in "false speaking, and drinking sometimes to excesse," as well as having "formerly kept company with Lewd Women" and committing "other secret Sins," most probably

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<sup>150</sup> OBP, October 1684, Thomas Benson (t16841008-12); OBP, October 1684, Ordinary's Account (OA16841017).

masturbation.<sup>151</sup> That Broughton was said to have “kept company with Lewd Women” also implied that his previous sexual experience, like Thomas Benson’s, had not been with children but with prostitutes or other unchaste women. Both Benson’s and Broughton’s rapes of a child were therefore understood in this general context of a life lived in profanity and debauchery rather than as something particularly to do with the nature of their sexual desires.<sup>152</sup>

This sense that the crime of rape was not to do with a man’s particular sexual tastes or preferences but with his behavior and character more generally can be seen in the kinds of descriptions of a man’s character that were solicited in court as evidence of his good name.<sup>153</sup> At the trial of John Hunter for the rape of Grace Pitts, aged ten, in April 1747, the first witness who was called upon to testify to his reputation described him as bearing “a very honest Character.” The court then asked this witness directly: “Is he a licentious lewd Sort of a Person?” Clearly his general sexual conduct and moral behavior were thought to be relevant, but not his behavior toward young children. The role of

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<sup>151</sup> OBP, January 1686, Ordinary’s Account (OA16860120).

<sup>152</sup> Philip Carter, Men and the Emergence of Polite Society, Britain 1660-1800 (Harlow, UK: Longman, 2001), 194-95.

<sup>153</sup> Jackson, Child Sexual Abuse, 108.

drunkenness in immoral and criminal behavior was perhaps here also recognized, as another witness was asked whether Hunter was "a modest sober young Man," and another two witnesses testified that he had "the Character of a sober Man" and that "he behaved soberly."<sup>154</sup> Soberness was not only about not being drunk, though: it had connotations of propriety, moral uprightness, self-control, and seriousness of demeanor and purpose. Thus a "sober" man was unlikely to be someone who would be swayed by irrational impulse to indulge in immoral sexual activity.

Louise Jackson argues for a similar construction of the child rapist in the nineteenth century: "The abuser was the vicious, idle slum-dweller who represented the antithesis of the 'normal,' respectable, breadwinner."<sup>155</sup> Nonetheless, a change was happening. Krafft-Ebing's late nineteenth-century discussion of those who sexually violated children can be seen as encapsulating these earlier understandings: such behaviors belonged to those whose lives were characterized by unrestrained lust, brutality, and drunkenness. At the same time, he seemed to move toward the modern conceptualization of these behaviors as indicative of mental aberration and

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<sup>154</sup> OBP, April 1747, John Hunter (t17470429-28).

<sup>155</sup> See also Louise Jackson's discussion of masculine virtues in the nineteenth century in Child Sexual Abuse, chap. 6.

perversion. His discussion shifts back and forth, identifying such acts as "possible only to a man who is controlled by lust and morally weak" but concluding that "it is psychologically incomprehensible that an adult of full virility, and mentally sound, should indulge in sexual abuses with children." He continued: "Unfortunately it must be admitted that the most revolting of these crimes are done by sane individuals who, by reason of satiety in normal sexual indulgence, lasciviousness, and brutality, and not seldom during intoxication, forget that they are human beings." He then added that "a great number of these cases, however, certainly depend upon pathological states."<sup>156</sup>

The seventeenth- and eighteenth-century reports of Old Bailey trials for rape and sexual assault demonstrate that this nineteenth-century shift in ways of thinking about perpetrators of sexual crimes was not yet apparent. To be sure, the sense of outrage at such a crime that is evident in Krafft-Ebing's language can be found in this earlier period in comments made in court about the accused and their crimes as "brutish" or "odious" and as "richly" deserving punishment. Yet there was no suggestion that there were men who might desire children as an erotic preference and prey upon them or who might therefore be characterized by this preference. There may have been men who did experience such feelings, but any

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<sup>156</sup> Krafft-Ebing, Psychopathia Sexualis, 402, 404.

conception of it appears to be absent from the sources available to us, and the few men who did admit to having raped or sexually assaulted a child presented other motives for their actions. These may have been inspired by a desire to excuse their actions, to deny culpability, to elicit sympathy, or to ward off public opprobrium. The absence of any conceptualization of such a sexual desire at this time is further indicated by the lack of any pervasive sense of "moral panic" about men sexually preying upon "innocent" children or that there might be a sexual motive behind the abduction of children.<sup>157</sup> The "sort of a person" who was likely to rape children was characterized as immoral, lewd, lustful, and loose-living, and he was noted for his debauchery and lack of control rather than defined by his sexual object choice.

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<sup>157</sup> Elizabeth A. Foyster, "The 'New World of Children' Reconsidered: Child Abduction in Late Eighteenth- and Early Nineteenth-Century England," Journal of British Studies, 52, no. 3 (2013), 669-692. I am very grateful to Elizabeth for allowing me to read this article before publication. For a discussion of "social panic" and "moral outrage," see Behaving Badly: Social Panic and Moral Outrage: Victorian and Modern Parallels, ed. Judith Rowbotham and Kim Stevenson (Aldershot, UK: Ashgate, 2003), 6-9 and chap. 2.