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'by force and against her will': Rape in law and literature, 1700-1765

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**‘by *force* and against her will’:
Rape in Law and Literature, 1700-1765**

D R MCDONNELL

PhD

2016

**‘by *force* and against her will’:
Rape in Law and Literature, 1700-1765**

DANIELLE REBECCA MCDONNELL

A thesis submitted in partial fulfillment of
the requirements of the
University of Northumbria at Newcastle for
the degree of
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ABSTRACT

Danielle McDonnell, 'by *force* and against her will': Rape in Law and Literature, 1700-1765

Under the supervision of Richard Terry and Claudine van Hensbergen

This thesis examines the relationship between fictional depictions of rape and legal and social realities between 1700 and 1765, and argues that these contexts are essential to reconstruct contemporary understandings of rape in this period. Rape was presented differently in legislation, legal texts, trials and literature, reflecting the varied ideas of what constituted a rape. The research begins by asking why the statutory definition of rape was inconsistent with legal practice, and how clear the legal conventions of rape were in contemporary society. This leads to a series of case studies investigating why Alexander Pope, Daniel Defoe, Henry Fielding, Tobias Smollett and Samuel Richardson were interested in rape, how their depictions of rape relate to legal realities and were informed by their own legal knowledge, and what form of interpretation the authors invite. The geographical focus on London is occasioned by the selection of trials, largely heard at the Old Bailey, and texts published in London, but acknowledges the wider national readership for the texts and trials, which were often reported in the press and/or published. The historical parameters reflect the decline in standardized legal education and increased reliance on legal texts from 1700, and the lack of a significant contemporary legal treatise to guide interpretations of statutory and common law until the publication of William Blackstone's *Commentaries on the Laws of England* (1765-1769).

This study contributes to existing scholarship on rape in the eighteenth century. Criticism in this area has begun to adopt an interdisciplinary approach to this subject. This thesis combines legal and non-legal sources to inform its analysis, suggesting that critical approaches need to use a wider range of sources to reconstruct the context in which contemporary portrayals of rape were situated. Part two of this thesis offers new readings of canonical works, showing how Pope, Defoe, Richardson, Smollett and Fielding engaged with wider contextual legal discourse in their works, and explores their reasons for doing so. These case studies assert the importance of legal and social contexts, offer new ways of interpreting rape in literature, and show that literary authors negotiated and presented ideas of rape in a variety of ways in their texts, influencing public perceptions of the nature and illegality of such acts.

Declaration

I declare that the work contained in this thesis has not been submitted for any other award and that it is all my own work. I also confirm that this work fully acknowledges opinions, ideas and contributions from the work of others.

Any ethical clearance for the research presented in this thesis has been approved. Approval has been sought and granted by the Faculty Ethics Committee on 6.10.2015, reference RE12-12-121558.

I declare that the Word Count of this Thesis is 70,355 words.

Name: Danielle Rebecca McDonnell

Signature:

Date: 26.10.2016

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Acknowledgments



My interest in the relationship between the law, legal texts and literature has evolved from my previous research interests in how and why the crime of obscene libel was legally prosecuted in the mid-eighteenth century, and the legal suppression of seditious libel in the late seventeenth century. These studies have developed my interest in, and understanding of, eighteenth-century laws, judiciary and trial procedure, which has supported my research for this thesis.

First and foremost, I wish to thank my supervisor, Professor Richard Terry, without whom none of this would have been possible. He has supported me to develop my interest in law and literature in the eighteenth century since my undergraduate studies, and during this research has been an unfailing source of expertise and encouragement. Similarly, Dr. Claudine van Hensbergen has been a fabulous member of my supervision team, who has provided a new insight into, and welcome challenges to, my ideas, whilst always encouraging me to progress. My profound gratitude also goes to Northumbria University who provided the financial support to enable me to pursue this thesis through a studentship, and the research culture which has influenced my work. Many members of the student body and lecturers within the English and Law departments have contributed to this research through discussion and resources, and I would like to extend my thanks to them all. Finally, but by no means least, a special thanks go to my mum and son for their unfailing support and encouragement: I dedicate this thesis to them.

Conventions



Whilst the primary sources cited have been accurately transcribed, the texts have occasionally been adjusted to allow for the quotations to be embedded and the long ‘s’ of eighteenth-century typography has been replaced with the modern conventional ‘s’.

List of Abbreviations



d.	pence
s.	shilling
JP	Justice of the Peace
TNA	The National Archives
NAS	The National Archives Scotland
PRO	Public Records Office
C	Court of Chancery
KB	Court of King’s (or Queen’s) Bench

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Introduction



‘The Nature of a Rape is so very perplex’d’, comments the anonymous author of *The case of the Ld. John Drummond* (1715) in reporting the 1715 trials of Lord John Drummond and Captain Hugh Lesson for rape.¹ The lack of clarity in the period about the ‘Nature’ of the act is striking. The legal definition of the crime should have been clear and concise. The rape laws had not altered since the amendments made by the 1285 Statute of Westminster II that confirmed the act as a statutory felony and reinstated the death sentence.² Information about the prosecution of rape was readily available and increasingly accessible through the expansive trade in legal texts,³ newspaper crime reportage,⁴ and the court proceedings that were widely attended⁵ and

¹ *The case of the Ld. John Drummond* (London: J. Roberts, 1715) p.2. Drummond was acquitted of the charge of raping Elizabeth Gallway. Lesson was convicted of the rape of Mary May and later pardoned. Sarah Blandford was also convicted and sentenced to death for aiding and abetting Lesson during May’s rape. See Clive Emsley, Tim Hitchcock and Robert Shoemaker, *Old Bailey Proceedings Online*, Version 6.0, <www.oldbaileyonline.org> [accessed 21 September 2011] t17150427-43 and s17150427-1.

² The Statute of Westminster (1275) that was confirmed by the second statute in 1285 redefined rape as a felony and therefore a statutory offence. The legislation allowed the victim forty days after the offence was committed to make their accusation, required the presence of a jury to judge the case, and drew no distinction between a virgin and a non-virgin. The legislation in 1285 confirmed these provisions but increased the penalty from imprisonment to death.

³ See the preface to part I and chapter one for further details.

⁴ Garthine Walker notes that reports of rape allegations and trials in newspapers offered the most accessible range of sources to the widest audience in ‘Rape Acquittal and Culpability in Popular Crime Reports in England, c.1670-c.1750’, *Past and Present*, 220 (August 2013) pp.119-120.

⁵ See Benjamin M. Jones, *Henry Fielding: Novelist and Magistrate* (London: Allen and Unwin, 1933) pp.32-33; Douglas Hay, ‘Property, Authority and the Criminal Law’ in *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England*, ed. by Douglas Hay and Peter Linebaugh (New York: Pantheon, 1976) p.27; J. Baker, ‘Criminal Courts and Procedure at Common Law, 1550-1800’ in *Crime in England, 1550-1800*, ed. by J. S. Cockburn (London: Methuen, 1977) pp.27-28; Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (London: Allen Lane, Penguin Press, 1991) pp.86-88; Beth Swan, ‘Moll Flanders: The Felon as Lawyer’, *Eighteenth-Century Fiction*, 2.1 (October 1998) pp.36-37.

often published.⁶ Legal knowledge was common and of interest to people across the social strata during the eighteenth century and we can infer a level of general public familiarity with the legislation and procedure of rape trials.⁷

Despite the access to definitions of rape and insight into judicial procedure, the treatment of sexual violation in case law, rape narratives, and the wider market confirms the confusion expressed in *The case of Ld. John Drummond*. Allegations or scenes of rape that appear credible to the modern reader were frequently responded to as false allegations or as forceful yet permissible seduction. In a rare depiction of the brutal destruction of a woman's sexual autonomy, *The Forced Virgin; Or, The Unnatural Mother* (1730), the narrator describes how:

In vain she strove to stay his raging Flames; Regard to her Virtue or Fear of future Punishment, could make no room for a Moment's Delay; he had her now in full Possession, and was resolved to use the wished-for Hour; with one Hand intangled in her Hair, he held the Maiden down; while the other furthered him to compleat his hellish Purpose.⁸

Even though it is evident to a modern reader that the coitus is violently inflicted against the will of Lominia, it is not termed a rape in the text nor is she treated as a victim after the incident. Instead both parties are regarded as complicit and are punished by death in the narrative's culmination. It is impossible to read this prose fiction and not question what *was* required to establish an act as a rape and to query whether contemporary readers responded to such depictions in a similar way to the text's narrator. This thesis

⁶ These took the form of official court records such as *The Proceedings* of the Old Bailey that were published approximately every six weeks, 'official' pamphlets published 'by Authority' of the courts and 'unofficial' pamphlets occasioned by a particularly sensational trial, criminal biographies, and published case law collections. The latter were usually published for an exclusive legal audience and priced accordingly.

⁷ It was of particular importance to defendants because defence counsel was rarely accessed due to the cost or, in cases of felony or treason, permitted. Thomas Wood explains that in these trials the accused 'shall have no Counsel [...] because the Evidence must be so plain that it cannot be denied', *An Institute of the Laws of England*, vol.4 (London: E. and R. Nutt and R. Gosling, 1724) p.645. William Blackstone later comments that 'no counsel shall be allowed a prisoner [...] in any capital crime, unless some point of law shall arise proper to be debated' (William Blackstone, *Commentaries on the Laws of England*, vol. 4 (London: William Strahan, 1769) pp. 349-50). Beth Swan notes that prisoners awaiting trial in Newgate had access to a library of legal texts and received assistance in interpreting them from law students. Swan, p.36.

⁸ *The Forced Virgin; or, The Unnatural Mother. A True Secret History* (London: printed for W. Trot, 1730) p.15.

seeks to apply these questions more broadly. It investigates how readers interpreted narratives or incidents of rape and how authors sought to influence their perceptions.

It is essential to this study to understand what constituted an act of rape for the contemporary audience of the early eighteenth century yet there is no easy resolution to this question. Numerous discourses of rape in the eighteenth-century market meant that the ‘act of naming’ or defining what was, and what was not, rape was diverse. Statutory law defines the crime of rape as the sexual violation of a woman ‘by Force and against her will’.⁹ However, the term rape, despite its legal connotations, does not consistently indicate the criminal act in the courts or in most of the period’s printed literature. In the eighteenth-century print market, normative sexual encounters merge almost imperceptibly into sexual assault. Rape is used haphazardly to mean anything from a feigned resistance to a false allegation or an actual act of sexual violation. This raises the problem of how to distinguish between permissible and illicit sexual behavior and how contemporary readers conceived of this distinction.

The multiple significances of the word rape are complicated by ambiguous definitions of the word and linguistic applications found in legal and fictional texts. As Kathryn Gravdal notes, the term rape does not bear a uniform definition and it cannot be assumed to refer ‘to the same signified, or signif[y] in the same way as its modern translation’.¹⁰ It is frequently supplemented, or replaced, by ‘seduce’, ‘ravish’ or ‘deflower’ in fictional texts, but the various terms do not distinguish between acts of sexual violation and those of false accusation.¹¹ Variants of ‘rape’ have a significant linguistic impact on interpretations of the act. Seduction implies that the man has secured female consent whilst the term ‘deflower’ signifies that the woman is corrupted, marred, or disgraced, thus indicating her complicity rather than asserting her role as a

⁹ Giles Jacob, *The Modern Justice*, 3rd edn. (London: Eliz. Nutt and R. Gosling, 1720) p.352.

¹⁰ Kathryn Gravdal, *Ravishing Maidens: Writing Rape in Medieval French Literature and Law* (Pennsylvania: University of Pennsylvania Press, 1991) p.2.

¹¹ See chapter five on the terminology that Richardson uses to refer to Clarissa’s rape.

victim.¹² ‘Ravish’, the word most commonly used to identify an incident or accusation of rape, is particularly complex: it is defined in the period’s dictionaries as an act of ‘taking away’ by force.¹³ In statutory law it is a separate crime from rape, involving the abduction of a wealthy woman or heiress who was then raped and/or married without the consent of her male next of kin. The term ‘seduce’ does not appear in the legal sources that discuss rape; however, ‘ravish’ and ‘deflower’ are common language within the discourse. In his legal dictionary Giles Jacob writes that rape is ‘an unlawful and carnal Knowledge of a Woman, by Force and against her Will: A *Ravishment* of the Body, and violent deflouring her’.¹⁴ As Blackstone would later reflect, rape is the only crime during this period that lacked the linguistic precision in its expression that was required to ‘express the precise idea which it entertains of the offence’.¹⁵ Through this thesis the term rape is applied to any incident that involves forcible sexual intercourse perpetrated on women yet the use of the word ‘rape’ does not imply that the contemporary audience would have perceived it as such. This research acknowledges that other types of sexual contact can now be perceived as rape but prioritizes incidents of penetrative intercourse or the threat thereof.

This study is interested in the various meanings, uses and contemporary interpretations of the term and act of rape. It considers the law, in its written form and in

¹² See Robert Cawdry, *A Table Alphabeticall, or, The English Expositor* (London: Edmund Weaver, 1617) p.22; Henry Cockeram, *The English Dictionaries: Or, An Interpreter of hard English Words* 2nd edn (London: printed for Edmund Weaver, 1623) p.25; Thomas Blount, *Glossographia: Or, A Dictionary* (London: Printed By Tho. Newcomb, 1656) p.92 and p.259; Edward Phillips, *The New World of English Words, or, A General Dictionary Containing the Interpretations of such Hard Words as are derived from other Languages* (London: printed by E. Tyler for Nath. Brooke, 1658) p.145 (p.551 in 1706 edition); Thomas Blount, *Glossographia Anglicana Nova: or, a Dictionary* (London: printed for Dan. Brown, Tim Goodwin, John Walthoe, M. Newborough, John Nicholson, Benj. Took, D. Midwinter, and Fran. Coggan, 1707) p.471.

¹³ Phillips (1706) p.551; John Cowell, *A Law Dictionary: Or, The Interpreter of Words and Terms* (London: Printed for D. Brown, R. Sare, S. Battersby, J. Walthoe, J. Nicholson, J. Sprint, G. Conyers, T. Ballard and Edw. Place, 1708) p.264; Giles Jacob, *A New Law-Dictionary* (London: printed by E. and R. Nutt, and R. Gosling, 1729 & 1739) p.618 and 41 respectively.

¹⁴ Jacob, *A New-Law Dictionary*, p.618. The 1708 edition of John Cowell’s dictionary also describes rape as ‘a Felony committed by a Man, in the violent deflouring of a Woman against her will’, and ‘a *Rape* or *Ravishment* of the Body of a Woman against her will, which is carnal knowledge had of a Woman’ (Cowell, p.263).

¹⁵ Blackstone, *Commentaries*, p.302.

practice, and the literary market, to be the essential contributors to the overarching ideas about rape that were prevalent in London society between 1700 and 1765. This approach asserts that the legal endorsement of an act of sexual violation as a criminal offence is only one of many definitions created about rape that influence contemporary perceptions. This thesis explores the dialogue between legal texts and the wider print market to consider how, in tandem, they provided an interpretive context for incidents or narratives of rape. The chapters consider trials, legal publications, and rape narratives to be key influences on how the crime was perceived, and argue that these texts influenced the creation of authorial treatments of rape by literary figures.

This research utilizes a range of textual sources including legal documents and publications, medical treatises, plays, poems, and novels. Chapter one pays particular attention to legal sources. In chapters two to five the range of legal sources include materials presented at court, influential legal treatises that were published or reprinted during the period, legal manuals, law dictionaries, and trial reports. This thesis is not a comprehensive study of the rape trials that took place during the period of which Anthony Simpson has provided an excellent study.¹⁶ I have selected trials that appear influential in informing legal attitudes towards rape or provoked a high number of responses in the print market.

Between 1700 and 1765, the treatment, experiences and voices of women allegedly raped in the rape trial records are recorded by male or unnamed authors; similarly, rape trial pamphlets, legal theory, legal manuals, and statutory laws are largely written by male authors. This means that the legal understanding of rape during this period is created by men. I therefore decided to explore fictional representations of rape written by men, allowing for a comparison of men's understanding of the crime. Although there is scope and material for future analyses of female-authored rape scenes

¹⁶ Anthony E. Simpson, 'Blackmail Myth and the Prosecution of Rape and its Attempt in 18th Century London: The Creation of a Legal Tradition', *Journal of Criminal Law and Criminology*, 77.1 (1986).

using the methodology of this thesis, social perceptions of the immorality of women who wrote about rape, would reduce the credibility of the scene for contemporary readers.¹⁷ The authors selected for discussion (Alexander Pope, Daniel Defoe, Henry Fielding, Tobias Smollett and Samuel Richardson) all interacted with the law in their personal or professional lives, therefore developing legal knowledge which I will argue informed their writings. Furthermore, each of the authors featured rape in their works yet, with the exception of Samuel Richardson, the legal context of these scenes has received little critical discussion.

Critical studies of rape tend to approach the subject through an analysis of patriarchal attitudes towards women, gender biases, or as a psychoanalytical study. Whilst my own study touches on these topics it is not selectively an exploration of them. Nor does it engage with or comment on modern feminist debates about rape. It should also be noted that it does not feature cases of men being raped by women as this is not engaged with sufficiently in the market or the act of homosexual male rape that constituted the crime of sodomy for which both men were culpable. I am interested instead in acts involving the violation of women and in female accusations of rape. The treatment of rape in these texts differs dramatically, encompassing comic, sympathetic, and dismissive attitudes. Despite this, the texts consistently display authorial awareness of the law and an expectation that their readers will interpret the legal contexts that they convey.

The research makes original contributions to knowledge in different ways in each chapter. Chapter two focuses on the trial of Francis Charteris who was convicted of raping his maid in 1730. It presents a new historiography of the publication history of the trial and pardon in the 1730s that allows new insight into the reasons for the trial's popularity. Chapter three provides a unique reading of Alexander Pope's *The Rape of*

¹⁷ For an example of an existing study of rape in female authored texts, see Toni Bowers, *Force or Fraud: British Seduction Stories and the Problem of Resistance, 1660-1760* (Oxford: Oxford University Press, 2011).

the Lock as a rendering of, and challenge to, popular rape myths. Chapter four provides a close reading of the critically contested scene of Amy's rape in Daniel Defoe's *Roxana*, placing it within the context of the statutory rape laws and judicial procedure in rape trials that reconstructs the hitherto unacknowledged legal questions that this narrative raises. Chapter five discusses the critically unacknowledged impact of public space on how accusations of rape were received in the mid-eighteenth century through analysis of Henry Fielding's *Rape upon Rape* (1730) and *Joseph Andrews* (1742), and Tobias Smollett's *The Adventures of Roderick Random* (1748) and *The Adventures of Peregrine Pickle* (1751). Chapter six adopts a new approach to Samuel Richardson's *Clarissa* (1748) by investigating the use of legal terminology, the depiction of female legal knowledge, and overlap between the crimes of rape and ravishment in the novel.

I. Literature review

Two key research areas relevant to this thesis are Law and Literature, and the study of legal history. Law and Literature is generally thought to have emerged following the publication of James Boyd White's *The Legal Imagination* in the 1970s.¹⁸ Numerous scholars have mapped the history of Law and Literature and largely identify two separate projects that arise from the approach: law *in* literature and law *as* literature.¹⁹ The first of these recognizes the importance of legal theory and practice as a context for understanding and interpreting criminal scenes in literary texts. As Bonnie

¹⁸White argued that reading novels provides a forum for the development of an individual's character, and more particularly for a lawyer's character, enabling them to comprehend the realities of life for their clients and in doing so, evolving into 'really fine lawyer[s]' (James Boyd White, *The Legal Imagination* (Chicago: The University of Chicago Press, 1973) p.xxiv). Some isolated works emerged earlier than this such as Sir Dunbar Plunket Barton's *Links Between Shakespeare and the Law* (Boston: Houghton Mifflin, 1929) and Benjamin Cardozo's 'Law and Literature', *Law and Literature and other Essays and Addresses* (Colorado: Fred B. Rothman & Co, 1986).

¹⁹ Examples of this include: Richard H. Weisberg, *Poethics, and other strategies of law and literature* (New York: Columbia University Press, 1992); Ian Ward, *Law and Literature: Possibilities and Perspectives* (Cambridge: Cambridge University Press, 1995) pp.3-28; Richard A. Posner, *Overcoming Law* (Harvard: Harvard College, 1995); Gary Minda, *Postmodern Legal Movements: Law and Jurisprudence at Century's End* (New York and London: New York University Press, 1995) pp.149-153; Richard A. Posner, *Law & Literature*, 3rd edn. (Cambridge, MA: Harvard University Press, 2009).

J. Gunzenhauser notes, this approach investigates ‘the ways in which literature articulates both the capacities and the incapacities of the law as it was practiced and as it might be practiced.’²⁰ Literature is valued for its ability to

tell us something that law itself cannot and that other forms of legal scholarship likewise do not, about the meanings of law in the lives of its subjects, its agents, and its adjudicators, and the meanings of law in the lives of those that law willfully ignores, subjugates, marginalizes or excludes as well.²¹

The idea that we can use literature to reflect on the relationship between the law and society, and the law and the individual, is particularly important to the second part of this thesis and its overall aims to ascertain how readers understood rape in the early eighteenth century. However, in contrast to Gunzenhauser’s comment, which assumes that the law influenced literary production, exploration of literary texts in this thesis seeks to first establish that the law was an influence on the selected texts. Law *as* literature projects differ from Law *in* Literature because they often suggest that literature, at some point in the past, present, or future, has the force of law. Whilst this approach is not advocated in this thesis, it is important to note a similarity in methodology: law *as* literature scholars focus on the increasing awareness of the flexibility of meaning in all texts, applying techniques of literary criticism to interpret legal texts, statutes and constitutions and construct new understandings of what the law meant.²²

In the late 1990s critics recognized the inherent problems in the interdisciplinary nature of this area of study, most of which centre around disciplinary boundaries. Gunzenhauser notes that

[f]or legal scholars, the tendency is to focus chiefly on the textuality of law, using insights from literary theory to question and complicate claims for the hegemony of legal discourse in a variety of situations. The focus on law as literature differentiates this approach from the methods used by literary scholars,

²⁰ Bonnie J. Gunzenhauser, ‘Reading the Intersections of Law and Literature in the Eighteenth Century’, *Eighteenth-Century Studies*, 40.2 (Winter 2007) p.334.

²¹ Ibid, pp.334-5.

²² Ward, p.7.

who focus mainly on law *in* literature – sometimes in a simple representational way [...], but more often in a broad-based historicist way.²³

This observation is developed in Christine L. Kreuger's analysis of historical Law and Literature studies in which she identifies a 'failure to create a sustained dialogue between law and literature and historical literary scholarship'.²⁴ Writing from a legal perspective, Kreuger argues that

this disconnect prevents literary historians from making substantive contributions to legal advocacy and handicaps legal scholars in making nuanced and defensible claims about the literary examples they draw from the past.²⁵

The desire to contribute to legal advocacy as extensively as Krueger envisages is not, however, evident in the work of the majority of the historians and literary critics who adopt the approach. Instead, as Binder and Weisberg note, analysis of legal sources is valued for the opportunities it offers 'to discover the social forms, rituals, and mechanisms of meaning that underlie its apparent function'.²⁶ This research allows for new perspectives on texts and contributes to 'a history of their [law and literature's] interdependency, and their embeddedness in print culture'.²⁷

Some critics have sought to locate a way to reconcile the differences between the disciplines by simultaneously acknowledging the autonomy of the two fields and the

²³ Gunzenhauser, p.334.

²⁴ Christine L. Kreuger, *Reading for the Law: British Legal History and Gender Advocacy* (Charlottesville and London: University of Virginia Press, 2010) p.1. This disconnect has most recently been commented on by Bernadette Meyler in 'Law, Literature, and History: The Love Triangle', *UC Irvine Law Review*, 5.365 (2015) pp.365-391.

²⁵ Krueger, p.2. Kreuger envisages disciplinary dialogue as offering the potential to improve outsider advocacy, meaning the method of advocating for the rights of minority groups or groups whose voices are perceived to be suppressed such as women, ethnic minorities, and religious minorities. She states that 'historical scholarship can [...] provide viable accounts of literary advocacy that, under specific circumstances, moved forward legal recognition for excluded groups. In addition, it can reveal instances in which literary advocacy was efficacious only because new legal rights had been granted to literary authors, as well as instances in which literary writing impeded progressive legal reforms' (p.3). See Anne Coughlin, 'Regulating the Self: Autobiographical Performances in Outsider Scholarship', *Virginia Law Review*, 81.5 (1995) pp.1229-1340; Mari Matsuda 'Public Response to Racist Speech: Considering the Victim's Story', *Michigan Law Review* 77 (1989) pp.2320-2381; and Francisco Valdes, 'Outsider Jurisprudence, Critical Pedagogy and Social Justice Activism: Marking the Stirrings of Critical Legal Education', *Asian American Law Journal*, 10.1 (January 2003) pp.65-96, for further details of outsider advocacy.

²⁶ Guyora Binder and Robert Weisberg, *Literary Criticisms of Law* (Princeton, New Jersey, Princeton University Press, 2000) p.481.

²⁷ Krueger, p.2.

interaction between them.²⁸ In recent advances, an alternative approach is advocated by Julie Stone Peters who argues that the struggles between the disciplines of literature and law within the field of Law and Literature ‘tended to exaggerate disciplinarity’.²⁹ She envisages the movement of Law and Literature towards ‘law, culture, and the humanities’ as offering the potential for ‘disciplinary mobility’ resulting in ‘richer readings of those real (and sometimes hyperreal) objects of our study’.³⁰ The progress in methodologies which focus on both law and literature, exemplified in Peters’ vision and reflected also in Anthony Musson’s methodology, which uses legal history, social sciences, and literary texts to inform analysis, forms the basis of the methodology adopted in this thesis.³¹

The relevance of a methodology which uses legal, social and literary sources to inform its discussion reflects the concerns of the period under study when there was a close relationship between the disciplines of law and literature.³² As Keith Dolin asserts, ‘the relationship between law and literature was an integral part’ of British culture and the print market, where the distinctions between what was legal and non-legal were blurred.³³ As Kathryn Temple notes, ‘the print industry of the late

²⁸ See Richard Firth Green, ‘Medieval Law and Literature’, *The Cambridge History of Medieval English Literature*, ed. by David Wallace (Cambridge, Cambridge University Press, 1999) and *A Crisis of Truth: Law and Literature in Ricardian England* (Pennsylvania: University of Pennsylvania Press, 1999).

²⁹ Julie Stone Peters, ‘Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion’, *PMLA*, 120.2 (March 2005) pp.449. Guyora Binder’s ‘The Law-as-Literature Trope’, *Law and Literature*, ed. by Michael Freeman and Andrew D. E. Lewis (Oxford: Oxford University Press, 1999) pp.64-67 provides an earlier example of this concern.

³⁰ Peters, p.451.

³¹ Andreea Boboc, ‘Theorizing Legal Personhood in Late Medieval England’, *Theorizing Legal Personhood in Late Medieval England*, ed. by Andreea Boboc (Danvers, MA: Koninklijke Brill, 2015) p.4. See Anthony Musson, *Medieval Law in Context: The Growth of Legal Consciousness From Magna Carta to the Peasants’ Revolt* (Manchester: Manchester University Press, 2001) p.3.

³² This is also recognized in the overlapping criticism on crime literature. See Lincoln Faller, *Turned to Account: The Forms and Functions of Criminal Biography in Late Seventeenth- and Early Eighteenth-Century England* (Cambridge: Cambridge University Press, 1987); Hal Gladfelder, *Criminality and Narrative in Eighteenth-Century England* (Baltimore: John Hopkins University Press, 2001); Linebaugh, *The London Hanged*; Richard M. Ward, *Print Culture, Crime and Justice in 18th-Century London* (London and New York: Bloomsbury Academic, 2014).

³³ Keith Dolin, *A Critical Introduction to Law and Literature* (Cambridge: Cambridge University Press, 2007). Erica Sheen and Lorna Hudson also note ‘how closely identified were the cultural spaces of both legal and literary writing’ in *Literature, Politics and Law*, ed. by Erica Sheen and Lorna Hudson (Basingstoke: Palgrave Macmillan, 2005) p.3. Wolfram Schmidgen argues that eighteenth-century ‘communities of persons and things [...] are on the whole characterized by permeable boundaries, [...]

seventeenth and early eighteenth centuries transformed law from an oral to a written culture'.³⁴ The expanding and evolving legal print market of the eighteenth century increased access to legal discourses through the wide range of texts that were available including: legal treatises, collections of statutory and common law, legal theory, case law collections, law dictionaries, and published accounts of trial proceedings.³⁵ This enabled increased knowledge of the law within the legal profession and amongst the general public. Authors, such as the prolific Giles Jacob, recognized and responded to the public appetite for legal information and published texts specifically for this non-legal audience.³⁶ Non-specialist authors also produced quasi-legal texts that included criminal biographies, newspaper accounts and 'unofficial' trial reports. These authors drew on the law, legal metaphors, and legal and criminal discourse to create a sense of legitimacy in their writing. Increased interest in and awareness of the law meant that authors of non-legal texts could include, and expect their readers to acknowledge, legal contexts in their work. This is particularly evident in the novels written by authors such as Henry Fielding and Samuel Richardson who also had legal training which is reflected in the legal terminology and content of their works.³⁷

Scholars working on historical studies of rape increasingly recognize the value of interdisciplinary studies. In 1991 Kathryn Gravdal commented that the 'discursive field around the topic of rape still needs to be constituted' and emphasized the importance of studying the literary and nonliterary manifestations of historical rape.³⁸ Subsequent critical analyses of historical rape often employ legal, social, historical and literary

Only very gradually, and against considerable resistance, are these boundaries delineated.' Wolfram Schmidgen, *Eighteenth-Century Fiction and the Law of Property* (Cambridge: Cambridge University Press, 2002) p.1.

³⁴ Kathryn Temple, *Scandal Nation: Law and Authorship in Britain, 1750-1832* (Ithaca and London: Cornell University Press, 2003) p.12.

³⁵ See Temple's discussion of the problems faced by the law due to this overabundance of legal writings, pp.12-13.

³⁶ Giles Jacob, *Every Man His Own Lawyer* (London: printed by E. And R. Nutt, and R. Gosling, 1736).

³⁷ See the preface to part II for further details.

³⁸ Gravdal, p.18.

sources to inform the argument.³⁹ Legal studies by scholars including Anthony Simpson work across these genres to explore the impact of sensational trials.⁴⁰ Historians such as Garthine Walker supplement the legal records and publications with evidence from related non-legal texts in the market.⁴¹ The growing corpus of literary studies that focus exclusively on rape, or on crime more widely, uses trials and the rape laws to inform analyses of the narratives.⁴² Walker, however, notes that care must be taken to ‘allow connected but discrete histories to emerge’, reflecting the contention between two conceptions of rape, one of which contends that it is a transhistorical and unchanging phenomenon whilst the other argues that rape has an historically and culturally specific meaning.⁴³

Current research does not reflect on the interaction and cumulative influence of these diverse sources on interpretations of a depicted rape that seeks to recover how these descriptions were read and responded to. A wider study of how the interaction between the disciplines, which was evident in the period’s print market, contributed to the discourses and interpretations of rape has not been conducted. This is a vast undertaking and this study cannot fully address it. Within its geographical and historical

³⁹ For examples see Jennie Mills, ‘Rape in Early Eighteenth-Century London: A Perversion “so very perplex’d”’, *Sexual Perversions, 1670-1890*, ed. by Julie Peakman (New York and Basingstoke: Palgrave Macmillan, 2009) pp.140-166; Julie Gammon, “‘A denial of innocence’: Female Juvenile Victims of Rape and the English Legal System in the Eighteenth Century”, *Childhood in Question: Children, Parents and the State*, ed. by Anthony Fletcher and Stephen Hussey (Manchester: Manchester University Press, 1999) pp.74-95; Julie Peakman, *The Pleasure’s All Mine: A History of Perverse Sex* (London: Reaktion Books Ltd., 2013).

⁴⁰ Anthony E. Simpson, ‘Popular Perceptions of Rape as a Capital Crime in Eighteenth-Century England: The Press and the Trial of Francis Charteris in the Old Bailey, February 1730’, *Law and History Review*, 22.27 (Spring 2004).

⁴¹ See Susan Chaplin, *Law, Sensibility, and the Sublime in Eighteenth-Century Women’s Fiction: Speaking of Dread* (Burlington: Ashgate, 2004) p.146; Jolene Zigarovich, ‘Courting Death: Necrophilia in Samuel Richardson’s *Clarissa*’, *Sex and Death in Eighteenth-Century Literature* (London: Routledge, 2013) pp.76-102; chapters ten, twelve and thirteen in *Interpreting Sexual Violence: The Body, Gender and Culture*, ed. by Anne Leah Greenfield (London: Pickering & Chatto, 2013)

⁴² For examples see Cheryl L. Nixon, *The Orphan in Eighteenth-Century Literature: Estate, Blood, and Body* (Boston: University of Massachusetts, 2011). For an example of this method in the study of eighteenth century crime see Gladfelder, *Criminality and Narrative*.

⁴³ Walker, ‘The history of sexuality? A view from the history of rape’, *Voice of the Elephant Shrew* (22 January 2014) <<https://garthinewalker.wordpress.com/2014/01/22/the-history-of-sexuality-a-view-from-the-history-of-rape/>> [accessed 20 April 2016] 11. Some criticism is also self-contradictory in that it makes both of these claims. See Barbara J. Baines, *Representing Rape in the Early English Modern Period* (Lewiston, NY: Edwin Mellen Press Ltd., 2003).

parameters, however, this thesis addresses how the discourse on rape in the law and the print market interacted and contributed to formulate wider ideas about rape. The study evaluates legal and non-legal sources as textual materials that influenced contemporary understanding of acts of rape. It considers how these documents provide interpretative contexts that raise questions for the contemporary reader that can be recovered by a modern analyst seeking to understand what a written depiction of rape meant to its reader in its immediate context.

The field of historical rape studies raises a number of issues that are, at times, informed by scholarship on rapes enacted or written in the present day.⁴⁴ One area of critical interest lies in the change from a conception of rape as a crime against property to a sexual crime. As Nazife Bashar notes, in the medieval period women were viewed as the property of men and therefore rape laws were ‘constructed around the protection of male property in the form of movable goods, their wives and daughters, their bequeathed inheritances, their future heirs.’⁴⁵ Some critics argue that this idea continued to permeate perceptions of rape in the early modern period.⁴⁶ Bashar, however, contends that the legal perception of rape changed in the late sixteenth century when it ‘came to be seen as a crime against the person’.⁴⁷ Julia Rudolph contributes to this idea through her analysis of Matthew Hale’s *Historia Pacitorum Coronae*, demonstrating the emphasis on ‘the specific physical actions and the physical manifestations of sexual violation’ in legal theory.⁴⁸ Walker’s study of female testimony in rape trials supports

⁴⁴ Surprisingly few books are devoted to the theory of rape, however, key texts include Susan Griffin, *Rape and the Politics of Consciousness* (London: Harper and Rowe, 1979); Susan Estrich, *Real Rape* (Massachusetts: Harvard University Press, 1987); Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Ballantine Press, 1975); Sylvia Tomaselli and Roy Porter, *Rape: An Historical and Cultural Inquiry* (Oxford: Blackwell Publishing, 1986) and Catherine MacKinnon, *Towards a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989).

⁴⁵ Nazife Bashar, ‘Rape in England Between 1550 and 1700’, *The Sexual Dynamics of History: Men’s Powers, Women’s Resistance*, ed. by The London Feminist History Group (London: Pluto Press, 1983) p.41

⁴⁶ Baines, chapter two; Miranda Chaytor, ‘Husband(ry): Narratives of Rape in the Seventeenth Century’, *Gender & History*, 7.3 (1995) pp.378-407.

⁴⁷ Bashar, p.41.

⁴⁸ Julia Rudolph, ‘Rape and Resistance: Women and Consent in Seventeenth-Century English Legal and Political Thought’, *Journal of British Studies*, 39.2 (2000) p.177.

this when she finds that ‘the “I” that spoke in an early modern rape narrative was partially, but nevertheless emphatically, its own property’.⁴⁹

Whilst criticism on early modern rape provides useful insight into possible influences on eighteenth-century legal and social attitudes towards the crime, it must be noted that these ideas are not always contextually relevant. By the eighteenth century legal publications defined rape, in its strictest statutory sense, as the forceful vaginal penetration of the victim by the defendant’s penis against her will. The legal definition of rape, a crime that was usually perpetrated in secret, required evidence that was impossible to substantiate.⁵⁰ This, in combination with the low conviction rates in rape cases,⁵¹ has led many historians to conclude that the law mitigated sexual abuse,⁵² militated against convictions,⁵³ or was uninterested in the offence.⁵⁴ Whilst

⁴⁹ Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge: Cambridge University Press, 2003).

⁵⁰ Critical works that support this view include: Gregory Durston, *Victims and Viragos: Metropolitan Women, Crime and the Eighteenth-Century Justice System* (Bury St. Edmunds, 2007); Anthony E. Simpson, *Popular Perceptions of Rape: Metropolitan Women, Crime and the Eighteenth-Century Justice System* (Bury St. Edmunds: Abramis, 2007); Anthony E. Simpson, ‘Vulnerability and the Age of Female Consent: Legal Innovation and its Effect on Prosecutions for Rape in Eighteenth-Century London’ in G. S. Rousseau and Roy Porter (eds.), *Sexual Underworlds of the Enlightenment* (Manchester: Manchester University Press, 1987).

⁵¹ Numerous critics note the propensity for rape trials to result in acquittals during this period. Critical evaluations of the cause of this and impact on perceptions of the defendant, prosecutrix, and rape suggest that the biggest impediment to a woman’s prosecution was the proof required by law, which was hard to obtain for a crime that was usually conducted secretly. Laura Gowing and Simpson further conclude that the language in which the accusation was expressed was not conducive to perceptions of the woman’s good character and implicated the women in the act, confirming suspicions about women providing false allegations. Baines and Bashar, however, suggest that the trend of acquittals is reflective of the period’s view that women, and particularly lower class women or servants, were the property of men, thus mitigating the accused’s actions. Yet, in her recent study Walker has convincingly asserted that an acquittal was more frequently viewed as evidence of insufficient proof to confirm the incident of rape according to legislative requirements than as supportive of the defendant’s innocence. See Baines, *Representing Rape*, chapter 2; Bashar, p.35; Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford, 1996) chapter 3; Mills, ‘Rape in Early Eighteenth-Century London’; Simpson, ‘The “Blackmail Myth”’, lxxvii; Garthine Walker, ‘Rereading Rape and Sexual Violence in Early Modern England’, *Gender and History*, 10 (1998) p.10; Walker, ‘Rape Acquittal’, pp.115-117. This issue will be discussed in greater depth in chapter three.

⁵² Anna Clark, *Women’s Silence, Men’s Violence: Sexual Assault in England, 1770-1845* (London and New York: Pandora Press, 1987). See also MacKinnon’s argument that ‘the rape law affirmatively rewards men with acquittals’ (*Feminist Theory*, p.182). Walker’s study of acquittals that were reported in newspapers contradicts these perceptions when she convincingly proves that the legal determination of an accusation as sufficient to be admitted in court, and judgment of a man’s innocence or guilt that could be provided through an acquittal, conviction, or pardon, did not control social perceptions of the man’s innocence. Instead, the terminology used in the newspaper reports differentiate between cases of proven innocence and others in which there is insufficient evidence to meet legal requirements for a conviction yet sufficient to support the woman’s claims. (Walker, ‘Rape Acquittal’, p.122).

⁵³ Gammon, pp.88-89.

examinations from medical professionals and midwives were frequently submitted attesting to ‘proof’ of penetration and emission, the majority of the trial process focuses on the testimony of the complainant and the accused. As Gregory Durston notes, the emphasis was placed on discovering the veracity of the prosecutrix’s claims.⁵⁵ This posed a threat to the victim who could face legal retribution for slander if her claims were not validated.⁵⁶ The judicial focus on the issue of consent that features women as autonomous beings, who were able to give or withhold their consent, posed problems for the prosecutrix. Basher found that the convictions for rape decreased when the consideration of female consent was included in the legal definition of rape, as is evident in the eighteenth century. Susan Estrich has asserted that a verbal denial of consent needs to be supported by a physical act.⁵⁷ Despite this, Walker demonstrates that complainants ‘primarily emphasized discourses of feminine vulnerability, and weakness [...that] problematized their accounts of physical self-defence.’⁵⁸ Although, as Ian Ward notes, ‘consent is not an effective defence due to the relative inequality of the parties’, in the eighteenth century, the concept of consent was complicated by the prevalent notion that coitus could not occur without female consent.⁵⁹ It was strongly presumed that a virtuous woman would value her chastity above her life and would be killed in the act of resistance, or would emulate the classical victim Lucrece and subsequently take her own life.⁶⁰ Consequently, female consent and suspicion of a

⁵⁴ Mills, p.141.

⁵⁵ ‘Complainant credibility went to the heart of rape cases [...] rape trials were as much an examination of the complainant as of the accused man.’ Gregory Durston, ‘Rape in the Eighteenth-Century Metropolis: Part 2’, *Journal for Eighteenth-Century Studies*, 29.1 (March 2006) p.15.

⁵⁶ Walker, ‘Rereading Rape’, p.19.

⁵⁷ Estrich, p.75.

⁵⁸ Walker, ‘Rereading Rape’, p.20.

⁵⁹ Ward, *Print Culture*, p. 102. Voltaire cited the story of a queen who ‘frustrated an accusation of rape. She took a scabbard and, constantly shaking it, she made the complainant see that it was then impossible to put a sword in the scabbard’ (cited in Georges Vigarello, *A History of Rape: Sexual Violence in France from the 16th to the 20th Century*, trans. by Jean Birrell (Cambridge: Polity Press, 2001) p.43). The author of *The Case of the Ld. John Drummond* commented that ‘the perpetration of [rape] on Adult Persons [is] so very difficult, that it requires something of an implicit Belief to be credited’ (p.3).

⁶⁰ In the report of the rape trial of John Holliday, *The Newgate Calendar* comments that Holliday’s victim ‘being no Lucretia, to value her chastity at the loss of her life, was forced to submit’

woman's accusations is a constant issue in the period's rape narratives.⁶¹ Frequently male responsibility for the sexual violation is mitigated by the victim's subsequent conception⁶², perceptions of her character,⁶³ or her relationship with her attacker as a wife or servant, all of which were taken to imply her consent to the act.⁶⁴

The representation of a complainant's 'voice' in rape trials poses another problem for critics working on historical rape. The records of rape trials cannot be assumed to report the testimony verbatim nor can it be certain that the judgment passed was accurate or not. Further difficulty is introduced by the nature of the act as explained by Jocelyn Catty, who describes it as 'very much a *represented* crime, whether it is represented in the testimony of a complainant or defendant, or in a 'literary' text'.⁶⁵ Rape is a physical invasion of the female body that has an emotional, psychological and physical effect on the victim. In a rape trial these multiple experiences must somehow be turned into words, as it is only through verbalization that the alleged act can be defined as a crime. The act that is experienced as a rape by the woman may not, however, be perceived as such by men.⁶⁶ As Solga notes '[r]ape can only be made real, and made a legal and social matter, as an artificial construction, a codified representation of an inaccessible event whose occurrence has to be proved by the victim

(*The Newgate Calendar*, ed. by Pascal Bonenfant

<http://www.pascalbonenfant.com/18c/newgatecalendar/nc1700_1800.html> [accessed 1 July 2014]).

William Blackstone later commented that prostitutes' allegations of rape could not be credited because they 'hath indeed no chastity at all, or at least no regard to it' (Blackstone, *Commentaries*, p.213).

⁶¹ As Victor Tadros demonstrates, consent continues to be a contested issue in rape law and trials to this day. See Victor Tadros, 'Rape Without Consent', *Oxford Journal of Legal Studies* (Autumn 2006) 26.3 pp.515-543.

⁶² After Lominia's first rape, enacted by Lysanor, she conceives, thereby allowing the reader to interpret her implicit consent. (*The Forced Virgin*, p.17.)

⁶³ See chapter four for further discussion of this.

⁶⁴ Marital rape was deemed permissible by law. It is discussed in relation to the Castlehaven case in chapter four. For a fictional example see Lominia's second rape by her husband, Arestes (*The Forced Virgin*, p.28). See chapter four for a discussion of Amy's rape in Daniel Defoe's *Roxana* that is an example of a servant's violation by her master. This issue is also explored through the trial of Francis Charteris who was convicted of the rape of his servant, Anne Bond, in chapter two. See also Mills, 'Rape in Early Eighteenth-Century London'.

⁶⁵ Jocelyn Catty, *Writing Rape, Writing Women in Early Modern England: Unbridled Speech* (New York: St. Martin's Press, 1999) p.11.

⁶⁶ See Linda Higgins and Brenda Silver, *Rape and Representation* (New York: Columbia University Press, 1991) p.2.

herself, who has first to demonstrate her own sexual innocence'.⁶⁷ For rape victims in the early modern period it was extremely difficult to provide sufficient testimony to support their claim whilst demonstrating their own virtue. Walker comments that:

It is grimly ironic that in juridical discourse women's accusations of rape epitomized the lightness and wantonness of female speech [...]. Penetrative sex was constructed as an engagement of male will and female submission. Talking about rape as sex (a legal imperative) therefore implied the very submission, or consent, that was necessarily absent in rape.⁶⁸

As has been noted by critics such as MacKinnon and Estrich, the trial process thus became a reenactment of the rape in which the victim's privacy has been violated. In their analysis of early modern legal records Patricia Crawford and Laura Gowing contend that such testimonies were

constructed to be plausible, to make sense to contemporary ears. Seeking to justify, explain, complain, confess, or deny, women in court played on familiar themes, established knowledge, and common fears or assumptions, and gave texture to their picture with a wealth of local, circumstantial detail.⁶⁹

These ideas are still evident in the trial records between 1700 and 1765. In the later discussions of trials and rape scenes, I will show that the conventional phrases and themes of rape victims were published in trial reports and alluded to in 'rape' scenes to characterize women as victims or malicious prosecutrices, thus influencing readers' perceptions of the act. However, the heterogeneity of phrasing or themes introduced into rape allegations produces a disconnection between the female experience of being raped and the description of the event. As Donatella Pallotti asserts, the report of the event 'is a discursive (re)construction filtered by a frame of reference and an axiology that are in tune with the ethos and goals of contemporary culture'.⁷⁰ For Susan Ehrlich

⁶⁷ Kim Solga, 'Rape's Metatheatrical Return: Rehearsing Sexual Violence Among the Early Moderns', *Theatre Journal*, 58.1 (2006) pp.56-57.

⁶⁸ Walker, *Crime, Gender and Social Order*, pp.55-56 Other critical studies that support the idea that the language of sexual violence implicated women in the act include: Gowing, *Domestic Dangers*, chapter three; Walker, 'Rereading Rape', x (1998); Simpson, 'The "Blackmail Myth"', p.lxxvii.

⁶⁹ *Women's Worlds in Seventeenth-Century England: A Sourcebook*, ed. by Patricia Crawford and Laura Gowing (London and New York: Routledge, 2000) p.11.

⁷⁰ Donatella Pallotti, 'Maps of Woe: Narratives of Rape in Early Modern England', *Journal of Early Modern Studies*, 2 (2013) p.213.

this renders the task of reconstructing rape trials ‘opaque and partial’.⁷¹ As we will see, fictional explorations of rape are further separated from the female experience of rape by authorial deference to the conventions of ‘polite’ society, the limitations of language to express the experience, the gender of the author, and the reader’s interpretation. Ian Ward contends that ‘[t]he problem of rape is a problem of language’.⁷² The language is inadequate to describe the experience. It is the language of sex not crime and as such it implies consent rather than violence. Furthermore, as Andrea Dworkin argues, it is a language that is determined by men that oppresses women and female experience.⁷³ I will test this theory against the male-authored ‘rape’ scenes discussed in part II of this thesis. However, it should be noted that male authorship introduces a further disconnection between the female experience of rape and the male ability to imagine the impact of the act. For Linda Higgins and Brenda Silver the act of writing rape contributes to the difficulties faced by a woman trying to express her experience because ‘the “inscription” of rape in culture displaces the trauma’.⁷⁴ Nicola Gavey develops this argument to suggest that narration ‘renders rape appealing’.⁷⁵ I will consider whether Higgins’, Silver’s and Gavey’s arguments are compounded by the issue of male authorship.

An examination of the print market reveals a gulf between the definition of rape in the legal and non-legal texts prompting Gravdal to comment that ‘the term rape does not necessarily refer to the same signified, or signify in the same way each time it is used’.⁷⁶ Narratives that focus on forceful rape committed against the will of the woman

⁷¹ Susan Ehrlich, *Representing Rape: Language and sexual consent* (London and New York: Routledge, 2001) p.1.

⁷² Ward, *Law and Literature*, p.137.

⁷³ Andrea Dworkin, *Intercourse* (New York: Basic Books, 1987) p.170.

⁷⁴ Higgins and Silver, p.4. This idea is prevalent in Baines’ discussion of effacement in Renaissance representations of rape. She suggests that they always ‘effect, a double effacement: not only is the personal reality of rape always already rewritten into some other narrative, but the victim of the rape is herself also effaced.’ (p.261).

⁷⁵ Nicola Gavey, *Just Sex? The Cultural Scaffolding of Rape* (East Sussex and New York: Routledge, 2005) p.37.

⁷⁶ Gravdal, p.2.

and its effect, as found in *The Forced Virgin*, were infrequent and thus atypical in the eighteenth-century print market.⁷⁷ This is partly due to the widespread use of rape rhetoric as a metaphor for political⁷⁸ and economic agendas⁷⁹ that Anita Pacheco suggests was 'endemic' in the print market.⁸⁰ The period's adaptations, and reprinted editions, of classical rape stories encoded erotic appeal in the narratives of male force and female submission, and asserted male prerogative.⁸¹ The frequently depicted victim who was socially inferior to her attacker militated against perceptions of male accountability due to the prevalent idea that such women were 'fair game'.⁸² Critics such as Diana Wolfthal, Suzanne Gossett, Linda Woodbridge and Sharon Beehler suggest that representations of sexual violence are embedded in ideas of masculinity and as such the rape narrative acts as a valorization of the rapist. Through discussion of the Charteris trial in chapter two, I will test this idea and suggest that valorization of the character of the rapist depends on wider social perceptions of their morality. The idea of valorization is, however, counterbalanced by critical readings of fictional rapes as

⁷⁷ Walker argues that people's 'perception of rape was shaped by and reflected in press coverage', which represented the overwhelming number of accusations that were not legally resolved or that resulted in acquittal. The literary 'rapes' that predominated in the eighteenth century print market did not reach a legal resolution regardless of how the act is depicted. When authors did allude to the law it was usually as the result of a false accusation or to critique the law as a corrupt system that was incapable of securing a prosecution and undermined female articulation of the crime. See Walker, 'Rape Acquittal' p.120.

⁷⁸ See Jennifer L. Airey, *The Politics of Rape: Sexual Atrocity, Propaganda Wars, and the Restoration Stage* (Plymouth and Maryland: University of Delaware Press, 2012) pp.33-37, 100-110. Tom Keymer provides an analysis of rape as a political metaphor in Fielding's *True Patriot* and Richardson's *Clarissa* in *Richardson's 'Clarissa' and the Eighteenth-Century Reader* (Cambridge: Cambridge University Press, 1992) p.176.

⁷⁹ See Laura Mandell, *Misogynous Economies: The Business of Literature in Eighteenth-Century Britain* (Kentucky: The University Press of Kentucky, 1999) pp.37-63.

⁸⁰ Anita Pacheco, 'Rape and the Female Subject in Aphra Behn's *The Rover*', *ELH*, 65.2 (Summer 1998) p.323. Baines argues that in narrative 'rape never primarily signifies the loss and suffering of the woman' (p.261).

⁸¹ In *The Orphan* Thomas Otway adopts a style reminiscent of the classics in which men use violence to facilitate possession of a woman whom they desire and the woman is seen as culpable for failing to protect herself against the natural if bestial urges of the man. Otway's Polydore justifies his intent to rape by stating: 'The lusty bull ranges through all the field, / And from the herd, singling his female out, / Enjoys her, and abandons her at will. / It shall be so. I'll yet possess my love.' (*The Orphan: or, the Unhappy Marriage* (London: R. Wellington, 1705) 1.361-67).

⁸² Roy Porter and Leslie Hall, *The Facts of Life: The Creation of Sexual Knowledge in Britain, 1650-1950* (Avon: The Bath Press, 1995) p.23. Kristina Booker also argues that these scenes reflected social anxieties about lower class emulation in 'Richardson's *Pamela*, Defoe's *Roxana*, and Emulation Anxiety in Eighteenth-Century Britain', *Journal for Early Modern Cultural Studies*, 14.2 (Spring 2014) pp.42-62.

subverting the idea of the offender's power, social status and morality.⁸³ Christine M. Rose argues that 'representation of an act of rape by a male author does not constitute valorization of that act or of patriarchal ideology, but may, in fact, offer the possibility of subversion or critique'. In chapter six, I will argue that Richardson subverts the idea of a valorized rapist in his character, Lovelace, and critiques legal and social attitudes towards rape and the rape victim. Karen Bamford offers a model for a subversive reading of rape when she argues that female victims of rape are not always presented as disempowered characters, instead they can be 'invested with an excessive, threatening agency'.⁸⁴ This is a perspective that I will explore in relation to the rape 'victims' of Fielding's and Smollett's comic rape scenes in chapter five.

The interpretation of an act of sexual violation which enabled it to be defined as a rape or a false allegation reflects the interpretive dilemma surrounding narratives of sexual violation at the heart of this research. The lines between permissive and illicit sex were blurred in eighteenth-century literary representations of rape and consequently have received much critical attention. Robertson and Rose contend that 'the rapable body has been woven into the very foundations of Western poetics', yet Gravdal argues that '[i]ts significance is not a given'.⁸⁵ As Deborah Burks notes, there is a distinction in literature between the 'true' rape victims, such as Richardson's *Clarissa*, whose story usually ended in death, and the 'willing victim' who views rape as a 'useful social convention that enables her to overcome the restrictive concern for reputation that would otherwise force her to refuse sex'.⁸⁶ More frequently, however, the distinction between consent and denied consent has proven unclear. Barabara J. Baines remarks that '[g]iven the various means of coercion, the law's increasing reliance upon the

⁸³ See Katherine Eggert, 'Spenser's Ravishment: Rape and Rapture in *The Faerie Queene*', *Representations*, 70 (2000) pp.1-26 and Karen Bamford *Sexual Violence on the Jacobean Stage* (London: Palgrave Macmillan, 2000).

⁸⁴ Bamford, p.2.

⁸⁵ *Representing Rape in Medieval and Early Modern Literature*, ed. by Elizabeth Robertson and Christine Rose (New York: Palgrave, 2001) p.2; Gravdal, p.1.

⁸⁶ Deborah G. Burks, *Horrid Spectacle: Violation in the Theatre of Early Modern England* (Pittsburgh, PA: Duquesnes University Press, 2004,) p.351.

concept of consent during the Renaissance resulted in a tendency to avoid the reality of rape altogether'.⁸⁷ She suggests that this influenced Renaissance rape narratives to 'so authorize sexual violence as to make rape virtually indistinguishable from or an integral part of lovemaking'.⁸⁸ Critics have demonstrated the validity of this argument in a range of genres. Jocelyn Catty argues that '[r]ape is a stock motif in romance' in the early modern period.⁸⁹ Ros Ballaster and Toni Bowers show that in the narratives of amatory seduction these boundaries are blurred by depictions of women who respond to their attackers with the faltering resistance of Eliza Haywood's Belinda or engage in the victim self-blame culture of her Emilia.⁹⁰ As Garthine Walker notes there 'were multiple ways of justifying or excusing men's violence against women'.⁹¹ This process of justification is demonstrated in extreme measures in comic narratives where representations of rape focus on the idea of a malicious prosecutrix and the impossibility of non-consensual coitus resulting in the topic becoming the subject of farce, wry asides and puns.⁹² Accusations of rape in the comic register involve farcical scenes of false allegation resulting from attempted rape, extortion attempts, mistaken identity, excessive or unrestrained female desire, consensual yet illicit sex, male impotence, and female duplicity and vengeance.

II. Thesis structure

This thesis is divided into two parts: part I provides an historical overview of rape in law and legal texts, and then explores rape trials through a focus on the 1730 case of Francis Charteris, who was convicted and then pardoned of raping his maid, Anne

⁸⁷ Baines, p.15.

⁸⁸ Ibid, p.78.

⁸⁹ Catty, p.11.

⁹⁰ Eliza Haywood, *The British Recluse: or, the secret history of Cleomira, suppos'd dead* (London: printed for D. Brown, W. Chetwood, J. Woodman and S. Chapman, 1722) and *The Lucky Rape in Cleomelia: or, the Generous Mistress* (London: J. Millan, 1727). For an analysis of rape in amatory and seduction narratives see Bowers, *Force or Fraud* and Ros Ballaster, *Seductive Forms: Women's Amatory Fiction, 1684 to 1740* (Oxford: Clarendon Press, 1992).

⁹¹ Walker, *Crime, Gender and Social Order*, p.49.

⁹² Simon Dickie, 'Fielding's Rape Jokes', *Review of English Studies*, 61.251 (2010).

Bond; part II focuses on fictional rape scenes. Each chapter will consider the influence of rape myths, characters of widely known rape narratives, the use of symbolic imagery and language, contemporary rapes, and rape law on the central text or texts studied. The analysis considers how these referential structures operate within the discursive context of the law and print market to invite interpretation of the featured rape, complainant, and alleged perpetrator. The study does not provide an analysis of all the rape trials during this period nor does it focus on one specific incident or trial, or reevaluate rape trials in an attempt to establish miscarriages of justice. This is not helpful to the overall aims of this thesis and, in most cases, it is impossible to ascertain because of the historical distance and lack of sources. Instead, the thesis reconstructs the contemporary experience of reading about rape by engaging with the range of discourses about sexual violation that were available.

This research hypothesises that the law and the print market provide the main sources of information about rape between 1700 and 1765, and that readers were well informed about the implications of legislation, legal theory, and rape myths. In doing so it draws on extant research by Erica Sheen, Lorna Hudson, Kathryn Temple, and Keith Dolin into the relationship between the law and print culture. It contributes to this field by exploring how the newly-emerged legal manuals and law dictionaries impacted on contemporary understandings, interpretations, and portrayals of rape. The thesis provides new readings of rape narratives through reconstructing the information about rape that was available to contemporary readers and recovering the questions that this raises. The analyses of rape narratives in this study show that the contemporary legal context, whilst not always immediately evident, is always embedded in the writing and reception of these texts. The research hypothesis invites an approach that incorporates literary and legal sources, and that is aligned with the methodology of Law and Literature studies. This area of study, which has become increasingly popular, has been

transformed in its historical applications to incorporate sources that are considered to be historical and/or cultural, and has a significant overlap with studies of crime narratives. Whilst this thesis draws on rape scenes and allegations of rape as its primary source material for evaluation it informs the analysis through reference to: legislation, unpublished legal records, legal manuals, law dictionaries, legal treatises and theory, trial reports and their associated pamphlets, *The Proceedings* of the Old Bailey, Ordinary's Accounts, newspaper reports, plays, poems, novels, medical treatises and letters. The multiple discourses of rape in the law and the print market meant that there were a range of circumstances in which the term was applied that did not necessarily denote an act of sexual violation. Therefore, incidents or renditions of rape were chosen for investigation based on whether they: involved sexual violation that was committed by physical or psychological force and against the will of the victim expressed physically or verbally; met the period's criteria for legal resolution; involved accusations of rape; contained sexual contact or the threat thereof and were termed an act of rape or ravishment; and/or were perceived as a rape. Secondary sources that particularly inform the argument are complementarily diverse in their disciplinary affiliations, including historical, literary, legal, crime, rape, and Law and Literature studies.

Chapter one investigates how transparent the legal conventions of rape were to contemporary society between 1700 and 1765. It begins by establishing what the rape laws were before exploring how accessible this information was in the print market. Chapter two questions how people learned about the law, the influence of rape trials on contemporary understandings of the crime, and the relationship between judicial and social attitudes towards rape. The case study of Charteris' trial provides insight into the types of information available, how the case was perceived, and how it contributed to contemporary understandings of rape. Accounts of the case provided by critics such as

Norman Milne and Anthony Simpson refer to the volume of publications that were produced in the wake of the case; however, they do not give a sense of when they were published in regards to the trial and each other.⁹³ This study fills this gap by reconstructing the contemporary experience of reading about a sensational rape trial in the 1730s, demonstrating that whilst Charteris' notoriety provoked attention to the trial, it was the scandal of rape rather than a sense of outrage at his pardon that was of interest to readers. The chapter then explores how this information changes analyses of contemporary responses to the case with particular reference to how Charteris' pardon was received. The second half of the chapter focuses on how Charteris and Bond were portrayed in fictional responses to the case. It considers whether these depictions challenged or supported contemporary perceptions of the complainant and the accused, and how this impacted on wider understandings of rape.

Part II considers the relationship between the law and fiction in the eighteenth century. Chapter three explores the relationship between legal and social conventions of rape, and fictional accounts of the act through discussion of how Alexander Pope draws on rape myths, allusions to classical rapes, and the treatment of rape victims in *The Rape of the Lock*. 'Rape myths' are commonly-held cultural and social beliefs about sexual assault that, in many cases, are transhistorical, such as the idea that a woman incited men to rape through immoral or flirtatious behaviour and was therefore responsible for the ensuing act, which continues to be contentious in the modern day.⁹⁴ The majority of eighteenth-century rape myths can also be found in earlier cultures and are evident in the classical rape scenes of authors such as Ovid and Homer. A particularly prevalent belief in eighteenth century and classical rape fictions is the idea that women could not be raped (therefore implying that any allegation of rape was false)

⁹³ Norman Milne, *Libertines and Harlots from 1600-1836* (Bath: Paragon Publishing, 2014) p.95.

⁹⁴ Examples of the list of twelve common twenty-first century rape myths cited by *Rape Crisis* can all be found in eighteenth-century rape scenes and/or trials (See *Rape Crisis*, <<https://rapecrisis.org.uk/mythsvsrealities.php>> [accessed 15 August 2017].)

because a virtuous woman would die rather than allow herself to be violated. Further suspicion was cast upon prosecutrices by the idea that the sexual language in which an accusation of rape is articulated implicated the woman in the act because it demonstrated her knowledge of sex and therefore suggested immorality.⁹⁵

I use the term ‘rape myths’ with some hesitancy in this thesis due to the influence of beliefs such as the pregnant complainant and marital rape exemption, which theoretically have no legal authority, on legal proceedings. Women who became pregnant were viewed with suspicion in the law courts because it was believed that conception required male and female orgasm, therefore it was thought that a woman could not conceive as a result of unwilling and forcible intercourse. Marital rape exemption, on the other hand, was based on the legal premise that a woman was owned by her husband and as such, her body in effect belonged to him entitling him to sex. During eighteenth-century rape trials, understandings of the act, which would now be considered rape myths, frequently gained power equivalent to statutory law, partly due to legal texts which dispersed these ideas, influencing the judgements passed. The fluidity of legal and non-legal definitions surrounding rape requires a considered approach to rape myths, which recognises that, despite an absence of basis in statutory law, they maintained a role in legal attitudes and proceedings that exceeded the usual remit of a myth.

Popular rape myths reinforced systems of thought that cast men in a superior role and subjugated women who were seen as the rightful property of men and/or as consenting to the act that they claimed was rape. Anthony Simpson’s analysis of rape myths demonstrates that these beliefs impacted on legal procedure in rape trials by raising suspicion about the veracity of a woman’s testimony, making it increasingly

⁹⁵ Discussed in further detail in chapters one and two. Also, see chapter 4 for a discussion of marital rape exemption and chapter 5 for a discussion of the idea that rape could not be perpetrated in public locations.

difficult to obtain a conviction.⁹⁶ Chapter three begins by considering how Alexander Pope inscribed the imagery of sexual violence into the seemingly trivial theft of Belinda's hair. It re-reads the poem as a 'mock' rape before suggesting how Pope characterises Belinda through the narrative in accordance with contemporary attitudes to rape. This leads to an examination of how Pope uses references to characters from classical mythology to support, and at times, detract from, the image of Belinda as a rape victim. The chapter concludes with a discussion of how Belinda's and Callisto's transformations from virtuous to immoral women might reflect similar treatment of rape victims in the wider print market. This chapter forms a background for the discussions and analyses of female moral character, rape myth, and allusions to characters in classical rapes, in the remainder of the study.

Chapter four focuses on Amy's rape in Daniel Defoe's novel *Roxana*. Critics are unable to agree on the significance of this scene and most frequently decide that it reflects on Roxana's character: for Terry Castle it reinforces Amy's role as Roxana's 'alter-ego';⁹⁷ for John Richetti it demonstrates Roxana's 'moral superiority' over Amy and the Landlord;⁹⁸ in Kirsten T. Saxton's analysis it is evidence of Roxana's 'increasingly criminal nature';⁹⁹ whilst Leo Abse sees the scene as exploring 'troilism'.¹⁰⁰ However, as Abse notes, the scene contrasts with Defoe's 'usual habit in his novels of leaving us outside the bedroom door of his inamorata, [which] underlines

⁹⁶ Simpson, 'The "Blackmail Myth"', p.116. Kathryn M. Ryan's study of current rape myths shows that they still operate in the same way. She contends that rape myths 'arise from a patriarchal system that accepts and fosters rape' and 'help to foster a climate in which rape is perpetrated and victims blamed for their victimization'. See Kathryn M. Ryan, 'The Relationship between Rape Myths and Sexual Scripts: The Social Construction of Rape', *Sex Roles*, 65 (2011) p.774. See also Nicola Gavey's discussion of the role and impact of rape myths in *Just Sex?*

⁹⁷ Terry Castle, "'Amy, Who Knew My Disease": A Psychosexual Pattern in Defoe's *Roxana*', *ELH* 46.1 (1979) pp.81-96.

⁹⁸ John Richetti, 'The Family, Sex, and Marriage in Defoe's *Moll Flanders* and *Roxana*', *Studies in the Literary Imagination* 15.2 (1982) p.275.

⁹⁹ Kirsten T. Saxton, *Narratives of Women and Murder in England, 1680-1760: Deadly Plots* (Surrey: Ashgate Publishing Limited, 2009) p.12.

¹⁰⁰ Leo Abse, *The Bi-sexuality of Daniel Defoe: A Psychoanalytic Survey of the Man and his Works* (London: Karmac Books, 2006) p.250.

its significance'.¹⁰¹ This study explores how Defoe's *Roxana* interacts with legislation and judicial practice. Defoe's interest in the law has been well documented by academics such as Bernadette Meyler yet the relevance of this to Amy's rape has not been explored.¹⁰² This analysis adopts a new approach to the scene that explores how the narrative interacts with legislation and judicial practice. It reconstructs the legal questions raised by the episode of Amy's rape, suggesting that Defoe, anticipating his readers' knowledge of the law, used legal conventions about rape as a guide to interpreting this scene.

The fifth chapter explores the effect of public spaces on portrayals and interpretations of rape through analysis of Fielding's and Smollett's depictions of the streets at night, the highway, and the highway inn. The study suggests that a rape alleged to have taken place in a public location was met with increased suspicion in the eighteenth century, concluding that the proximity of other people in public spaces always defines an accusation of rape as false. This aspect of judicial procedure is commented on in the contemporary legal manuals yet it has been overlooked in critical studies of rape in the early eighteenth century. Anna Clark contends that it was not until the late eighteenth century that women who entered the public sphere without a chaperone were considered to be immoral and to invite sexual contact, thus meaning that such women were always believed to consent to sex.¹⁰³ However, the legal sources, trials and novels drawn upon in this study demonstrate that in the early to mid-eighteenth century these were the most difficult locations in which a woman could prove that a rape had taken place. Perceptions of what constituted a public setting and, more importantly, a safe public space were ambiguous and depended on how visible and populated the space was. Responses to allegations of rape were differentiated

¹⁰¹ Ibid, p.252.

¹⁰² Bernadette Meyler, 'Daniel Defoe and the Written Constitution', *Cornell Law Review*, 94.1 (November 2008) pp.73-132.

¹⁰³ Clark, p.3.

accordingly: a rape alleged to have occurred in a desolate locale was more likely to be credited than one said to have been perpetrated in a busy environment. The chapter begins with an analysis of the highway in Fielding's *Joseph Andrews* (1742). In *The Adventures of Roderick Random* (1748) and *The Adventures of Peregrine Pickle* (1751) the eighteenth-century inn features as the scene of false allegations of rape. The chapter culminates with analysis of the streets in *Rape upon Rape* (1730).

The study closes with an analysis of Richardson's *Clarissa* in chapter five, which questions how knowledgeable women were about the law and how the competing crimes of rape and ravishment impacted on interpretations of rape. It investigates the experience of the rape victim and their capability of attesting to the crime. This chapter builds upon Frances Ferguson's critical approach to the novel to consider how Clarissa's experience reflects that of prosecutrices in rape trials.¹⁰⁴ While Ferguson argues that Clarissa's psychological state is influenced by the procedure and considerations of a rape trial, she does not evaluate how well informed contemporary women were about the law. This chapter supports Ferguson's contention but asserts that the legal market also influenced Clarissa's response to her rape. It compares the legal discourse of Clarissa and Anna with the information available in a bibliographical history of legal sources available to and aimed at a female audience. Clarissa's command of precise legal terminology falters when faced by her rape, a term that she never uses. The act is more commonly referred to as seduction or ravishment. The analysis adds to original knowledge by showing that the legal knowledge of Richardson's protagonist was reflective of women's understanding of the law in the mid-eighteenth century. The research shows that male authors and their readers expected women to be well informed about the law but those concepts of female modesty and morality detracted from their ability to use this information to legally

¹⁰⁴ Frances Ferguson, 'Rape and the Rise of the Novel', *Representations*, 20 (Fall 1987) pp.88-112.

validate their experience. This leads to a consideration of whether Richardson's reader would have appreciated the other possible legal context of a ravishment charge. Ravishment was a distinct crime from rape yet the terminology was frequently misapplied. Modern critics have continued this trend, which is particularly noticeable in Christine Roulston's analysis of Lovelace's imaginary trial for rape in the 1751 edition of *Clarissa*.¹⁰⁵ Roulston discusses how Lovelace fantasizes about a 'public trial' during which he is prosecuted for rape and suggests that it 'is structured as a form of punishment for the ravished, precisely by reproducing the conditions of ravishment'.¹⁰⁶ As this new reading of *Clarissa* will demonstrate, defining Clarissa's sexual violation as an act of rape or ravishment requires resolving the uncertainty of Clarissa's inheritance. The chapter demonstrates that the use of the conflicting terms of 'rape' and 'ravish', with their attendant meanings, detracted from concepts of male culpability. The chapter closes with an analysis of the treatment of rape in *Letters and Passages Restored From the Original Manuscripts of the History of Clarissa* (1751) and *Collection of Moral and Instructive Sentiments, Maxims, Cautions, and Reflexions, Contained in the Histories of Pamela, Clarissa and Sir Charles Grandison* (1755) that Richardson wrote to supplement *Clarissa*. It explores how these texts alter the meaning of rape as represented in the novel, and how Richardson suggests the rape laws and judicial procedure should be amended to clarify the definition of the crime and to prevent miscarriages of justice.

¹⁰⁵ Christine Roulston, *Virtue, Gender, and the Authentic Self in Eighteenth-Century Fiction: Richardson, Rousseau, and Laclos* (Gainesville: University Press of Florida, 1998).

¹⁰⁶ *Ibid.*, p.68.

Part I

Rape in the Law, Legal Rhetoric and Trial Reports,

1700 – 1765



This section of the thesis, comprising two chapters, investigates how rape was defined in the law and legal practice, how these definitions were influenced by rape myths, and how the legal concepts of rape were conveyed to contemporary society through the print market.

The professional legal market comprised a wide range of texts, which discussed the laws, legal theory, legal practice, and trial precedents and proceedings. At times, these legal publications were virtually indistinguishable from published crime writings, which focused on specific trials, crimes or criminals, of the early eighteenth century. In the early eighteenth century, legal texts were generally produced in the formats of treatises, manuals, dictionaries, statute compilations, trial reports, or case law collections. The diversity of publications reflected the legal profession's need for a methodical organization of the vast statutory and common law, and guides to practice, arising from the lack of a standardized legal education.¹⁰⁷ Legal treatises sought to

¹⁰⁷ See chapter one for details of the changes in legal education.

construct coherent and comprehensive analyses of the law founded on legal theory. With the exception of William Hawkin's *A Treatise of Pleas of the Crown* (1716), the treatises of the early eighteenth century, such as Thomas Woods' *An Institute of the Laws of England* (1720) and Geoffrey Gilbert's *The Law of Evidence* (1754) were not viewed by the legal profession with the same acclaim as their counterparts written in the sixteenth and seventeenth centuries, which remained in print throughout the eighteenth century.¹⁰⁸ Legal manuals, which acted as concise guides to understanding and practising the law, referred to the ideas expressed by the earlier treatise writers such as Henry de Bracton and Sir Matthew Hale.¹⁰⁹ Giles Jacob (1686-1744), who was the secretary to Sir William Blathwayt, had trained previously in the law and was 'the most prolific' and financially successful author in this area.¹¹⁰ Between 1730 and 1764 he wrote twenty-seven distinct legal manuals, many of which ran to subsequent editions, and a popular legal dictionary entitled *A New Law Dictionary* (1729). Law dictionaries were designed to make legal discourse more accessible. First introduced into England by John Rastell's *Expositiones terminorum legume Angliae* (1523), translated into English in 1527 and entitled *Les Termes de la Ley*, law dictionaries became increasingly popular in the seventeenth century. Many of the seventeenth-century examples, including John Cowell's *The Interpreter* (1607) and Thomas Blount's *Non-Lexicon; A Law Dictionary* (1670), were republished in the early eighteenth century. Newly-written additions included Jacob's dictionary and *A Law Grammar* (1744), *The Law-French*

¹⁰⁸ See Julia Rudolph, 'That "Blunderbuss of Law": Giles Jacob, Abridgment and Print Culture', *Studies in Eighteenth Century Culture*, 37 (2008) p.198; W.S. Holdsworth, *A History of English Law*, 12 vols. (London: Methuen, 1924), 6:574; J.H. Baker, *An Introduction to English Legal History* (London: Butterworths, 2002) pp.190–91; A.W.B. Simpson, 'The Rise and Fall of the Legal Treatise: Legal Principles and the Forms of Legal Literature,' *University of Chicago Law Review* 48. 3 (1981) pp.632–79.

¹⁰⁹ For example, see William Lambarde, *Eirenarcha: Or of the Office of the Justices of Peace: In Two Bookes: Gathered. 1579. And Now Revised, and Firste Published, in the. 24. Yeare of the Peaceable Reigne of our Gracious Queene Elizabeth: By William Lambarde of Lincolnes Inne Gent.* (London: Ralph Newbery and H. Bynneman, 1581).

¹¹⁰ David Lemmings, *Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century* (Oxford: Oxford University Press, 2000) p.67, n.18. See Rudolph, 'That "Blunderbuss of Law"', pp.197-215 for details on his legal training.

Dictionary (1701) written by F. O., and the anonymous *The Student's Law-Dictionary* (1740). Definitions of common legal terminology could also be found in the general dictionaries such as Edward Phillip's *The New World of English Words* (1658, 1706).¹¹¹

Legal texts, sold by booksellers, were written for the legal profession but could be purchased by any reader of financial means. From the mid-seventeenth century, legal authors increasingly wrote in the vernacular thus making their works accessible to a wider audience. Literate felons in Newgate prison had access to a library of legal texts and received assistance from law students in interpreting them.¹¹² Jacob's *City Liberties: Or the Rights and Privileges of Freemen* (1732) and his popular *Every Man His Own Lawyer* (1736), which ran to eleven editions and was priced at 5s., aimed to make the legal text accessible to a wider audience outside of the legal profession.

The largest source of information available to readers outside of the legal profession about the crime of rape was nonetheless provided through the period's rape trials. Cases that drew particular attention in society because of the individuals cited or in the law because of an unusual verdict were initially published in isolation and then incorporated in case law collections. *The Proceedings* of the Old Bailey and the *Ordinary's Accounts* are particularly important because they conveyed information about numerous rape trials in print. Trial reports, generally priced between 4d. and 1s., were more accessible than the legal treatises, manuals, and dictionaries. Trials were also reported in the press. The newspapers contained less information about the procedure of the trial and the information presented, focusing more on the verdict, yet they reached a wider audience. The tone in which the details of a case are conveyed in the press ranges from serious and factual to sensational. The press also recorded allegations of rape that were not deemed sufficiently credible to warrant a trial.¹¹³

¹¹¹ See pp.78-81 for more details on law dictionaries and legal terminology in general dictionaries.

¹¹² Swan, p.36.

¹¹³ See Walker's study of rape allegations as they were recorded in the press in 'Rape Acquittal', pp.115-117.

The following chapters show that legal texts and rape trials were important influences on how the legal conventions of rape changed, and how information about rape was conveyed within the legal profession and wider society. Through the exploration of rape law in chapter one and the investigation of the trial of Francis Charteris in chapter two, this section of the thesis provides a contextual overview of rape laws, legal theory, and court proceedings in rape trials that will be drawn upon to aid interpretation of rape in literature in chapters three to six.

Chapter One

‘the King prohibiteth that none do ravish’:

Rape in Legislation, Judicial Practice and Legal Texts



In the eighteenth century the criminal offence of rape was governed by a combination of legislation previously instituted through the Statutes of Westminster I (1275, 3 Edw.I c.13) and II (1285, 13 Edw.1 c.34), and *The Benefit of Clergy Act* (1576, 18 Eliz.I c. 7), the provisions of which remained in force until the *Offences against the Person Act* (1828, 9 Geo.4 c.31 s.16-18). The Statute of Westminster I codified and consolidated existing English laws in 51 chapters.¹¹⁴ Amongst its other provisions, the statute, containing the *Rape Act*, stated that

the King prohibiteth that none do ravish, nor take away for Force, any Maiden within Age (neither by her Consent, nor without) nor any Wife or Maiden of full Age, nor any Woman against her Will; (2) and if any do, at his Suit that will sue within fourty Days, the King shall do common right; (3) and if none commence his Suit within fourty days, the King shall sue; (4) and such as be found culpable, shall have two Years Imprisonment, and after shall fine at the King's Pleasure; (5) and if they have not whereof, they shall be punished by longer Imprisonment, according as the Trespass requireth.¹¹⁵

¹¹⁴ See Bruce A. MacFarlane, 'A Historical Development of the Offence of Rape', *100 Years of the Criminal Code in Canada: Essays Commemorating the Centenary of the Canadian Criminal Code*, ed. by Wood and Peck (Ottawa: Canadian Bar Association, 1993) p.11 for further details of the *Rape Act*.

¹¹⁵ The *Rape Act* cited in MacFarlane, p.11.

This marked an important change in how rape was conceived. In contrast to the crime's earlier definition under the English Common Law, the *Statute of Westminster I* redefined it as statutory law. In doing so, Edward I stipulated that rape was no longer an offence against an individual and family alone; it was now an issue worthy of public and crown interest that required criminal redress by the state. Whilst the 'status' of rape as a criminal offence was increased by this legislation, the punishment of it was reduced from mutilation to imprisonment.¹¹⁶ In contrast to the earlier Common Law provisions for rape, statutory law did not distinguish between a virgin and non-virgin in the concept of the crime or its punishment. It was now an offence, in policy at least, to rape *any* woman without her consent, or *any* girl under age with or without her consent. The statute also increased the length of time during which a victim could make their accusation, made no distinction in judgment between actions brought by the victim or the crown in terms of punishment, and ensured that a jury tried cases. The 1285 *Statute of Westminster II* altered little of the provisions of this legislation beyond increasing the penalty for committing rape from imprisonment to execution. The *Benefit of Clergy Act* confirmed this legislation but abolished the benefit of clergy for this crime. The death sentence for rape remained in effect until 1841.

Legislative continuity over such a long period of time means that rape laws should have been clear and reflected in consistent legal practice between 1700 and 1765. Anthony Simpson, however, notes that during the 1700s 'this branch of the law

¹¹⁶ Prior to the Norman Conquest of 1066, the penalty for a man convicted of rape was death and dismemberment. The law covered different degrees of the act, from assault through to penetration and enforced punishments in proportion to the offence. Henri de Bracton states that during this period if a man threw a woman 'upon the ground against her will, he forfeits the King's grace; if he shamelessly disrobes her and places himself upon her, he incurs the loss of all his possessions; and if he lies with her he incurs the loss of his life and members'.¹¹⁶ Rape law was reevaluated under William the Conqueror's reign in 1066 and redefined rape as a great misdemeanor that was punishable by loss of eyes and penis. In both of the laws the woman needed to prove her virginity to obtain legal retribution for the crime because the act of 'defil[ing] a virgin' and 'l[y]ing with one defiled' are different '[a]nd since the deeds are different it is evident that the same punishment ought not to follow in both cases'.¹¹⁶ The required 'proof' was obtained through a trial of combat in which the woman named a champion to fight her cause.¹¹⁶ See *Bracton on the Laws and Customs of England*, ed. by George E. Woodbine, trans. by Samuel E. Thorne, vol.II (Cambridge: Harvard University Press, 1968) pp.414-418.

was transformed, through the re-interpretation of common law principles.’¹¹⁷ The legislation demanded that the law recognize the offence of rape when it was committed against *any* woman if force and lack of consent could be proved. In practice, legal professionals struggled to determine what criteria met the requirements of force and consent, and proof of a complainant’s immorality or subsequent pregnancy was sufficient to disprove her claims. To complicate this further, evidence of penetration and, at times, emission of semen was required by the court to support a prosecution.

The disjunction between statutory rape laws and legal practice in rape trials is the subject of this chapter, which questions what rape signified in the law between 1700 and 1765 and whether the contemporary audience was aware of this context. The chapter begins by asking, in section one, how rape law was practised. This leads in section two to a study of how texts written about the law impacted on the transformation of rape law from statutory legislation into legal practice by influencing legal training and verdicts as expected. Section three investigates published legal treatises and manuals to reconstruct how and why legal practice in rape cases changed. The chapter concludes with a discussion of how accessible the legal concept of rape was to the non-legal professional. The concluding comments will support the discussion of authors’ and readers’ knowledge of rape law in Part Two of this thesis, and lead onto the investigation of how rape trials were presented in the market in chapter two.

I. Rape trial procedure

After a woman was raped she was entitled to forty days in which to file a charge against her attacker after which point her claims would not receive legal attention. In practice, however, the judiciary considered a woman’s credibility to reduce the longer she waited to make her claims known to the judiciary within that forty day period.¹¹⁸ If

¹¹⁷ Simpson, ‘The “Blackmail Myth”, p.103.

¹¹⁸ Sir Matthew Hale, *History of the Pleas of the Crown*, vol I (London: 1736) p.633.

the recipient of the accusation believed it to be valid, an appeal of rape would be made to one of the courts that heard criminal cases. In theory, negotiation between the parties to privately settle the case could not be conducted after an accusation had been accepted and an appeal lodged.¹¹⁹ Simpson, however, provides significant evidence to suggest that the practice of ‘making up’ a case through financial recompense occurred at any stage in the legal process.¹²⁰

An appeal of rape involved ‘a lawful Declaration of another Man’s Crime (being Felony at least) before a competent Judge, by one that sets his Name to the Declaration, and undertakes to prove it’.¹²¹ The accusation could be made against the alleged rapist and/or an aider and abettor in the commission of the rape who would be charged with the principal crime.¹²² The case then entered a phase of ‘Inquisition’ during which evidence, obtained from and by the prosecutrix, was compiled for consideration by a Grand Jury, which consisted of over 12 jurors of an elevated social status, or a Justice of the Peace who determined if there was sufficient evidence for a trial. If the evidence was insufficient the case was labeled *ignoramus* and dismissed, a process called *denunciation*. If vaginal penetration had not occurred, or insufficient proof existed of it, but the Jury believed that a crime had occurred the accused was charged with assault with intent, an offence classified as a misdemeanour, as opposed to rape. Misdemeanours, which were tried before a Presentment Jury consisting of middle class jurors, carried the possible punishments of a fine, whipping, pillory, imprisonment, and/or the provision of sureties for good behavior. In contrast, convicted rapists were condemned to be hanged. When the evidence was sufficient to warrant a trial, a solicitor

¹¹⁹ The practice of the accused offering financial recompense to the complainant, known as ‘making up’ a case, is well documented in the period’s court records. See the trial of Jacob Wykes and John Johnson (9 July 1718) for an example of this (*The Proceedings*, t17180709-37).

¹²⁰ Simpson, ‘The “Blackmail Myth”’, p.115.

¹²¹ Giles Jacob, *The Laws of Appeals and Murder* (London: s.n., 1719) p.2.

¹²² The law held that ‘the Aiders and Abettors in committing a Rape, may be indicted as principle Felons’ (Jacob, *Every Man*, p.442).

or clerk drafted a bill of Indictment that detailed the charges laid against the accused.¹²³ At this point the case was labeled a true bill.

When a true bill was instigated the defendant was formally charged, able to enter a plea of guilty or not guilty, and, in the case of a felony, generally imprisoned without bail until the hearing.¹²⁴ Julie Peakman notes that ‘the authorities were more cautious about immediately apprehending a man of any standing or taking him into custody for fear it might go against them and that they would gain a powerful enemy’.¹²⁵ It was a frequent occurrence for wealthy men accused of rape to avoid trial by disappearing. When Lord Lateran was accused of rape, *The Weekly Journal* reported on 5 August 1727 that ‘rather than facing trial he also absconded’.¹²⁶ If a defendant pleaded guilty the case was passed to a judge for a verdict; however, with a plea of not guilty the case was heard before a trial jury. Jurors were believed to pass impartial judgments on a case. They were bound by a ruling made by Justice Scroggs in 1680 to determine a case based on which party provided the most credible version of events. In the early eighteenth century the compilation of juries was bound by the 1692 Jury Act that required a minimum income of at least £10 per year from copyhold or freehold land or owned goods worth £40 or more per juror. The qualification criteria of the 1692 Act were thought to have reduced the ‘quality’ of the jurors and made them amenable to bribery. In response to this in 1730, after five months deliberation in the Houses of Lords and Commons, the *Act for the Better Regulation of Juries* was passed that increased the eligibility criteria to cover all men aged between 21 and 70 who leased or owned land worth a minimum of £20 per annum, a sum that was considered to insure the jurors were intellectually and educationally competent enough to make just

¹²³ As the century progressed increasing numbers of books containing samples of Indictments that could be filled in by laypersons were published.

¹²⁴ Simpson notes that according to certain interpretations the defendant could be bailed (58). In practice this rarely happened. In the case of Leeson, referred to in the Introduction, the judge commented that he did not believe the allegations but still refused bail.

¹²⁵ Peakman, p.306.

¹²⁶ *The Weekly Journal* (5 August 1727).

decisions, and to prevent jurors from accepting bribes due to their more substantial wealth. In the counties, a list of eligible men would be drawn up from which the jurors were selected. The 1730 Act required that this list be published for the public's scrutiny. In London, sheriffs summoned eligible men to appear at the court from which twenty-five were selected. These formed the basis of the Grand Jury, Trial Jury and reserve jurors.¹²⁷

Rape trials were held in an open court and often attracted a large audience because of the sensational nature of the crime. The modern presumption of innocence until proven guilty and the right to remain silent did not exist. The defendant and prosecution were kept in close physical proximity to one another and were able to cross-examine each other and the witnesses called by each party. The prosecution and its witnesses would provide evidence for the prosecution under oath. The defendant and his witnesses would then respond. The defence was only required to provide evidence under oath after 1702. Friends, relatives, occupants of a building in which a rape was alleged to have taken place, or passers-by, were amongst the most frequently called witnesses in the rape cases heard at the Old Bailey, and under the laws of coverture the wife of the accused could not be called to give evidence against her husband.¹²⁸ Medical practitioners such as surgeons and midwives were also frequently called upon to act as witnesses for the prosecution. During the trial the veracity of the complainant's claims were interrogated. She needed to provide evidence of the force exerted on her and her lack of consent to satisfy the statutory criteria. To fulfil the demands of legal convention she also needed proof of penetration, emission of semen, circumstantial evidence supporting her claims, and evidence of her good moral character.

¹²⁷ Criminal prosecutions for minor offences were usually heard by a trial jury consisting of only four jurors, however, more serious offences were heard by the full twelve members. See *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800*, ed. by J. S. Cockburn and Thomas A. Green (Princeton: Princeton University Press, 1988) for further details.

¹²⁸ William Blackstone, *Commentaries on the Laws of England*, vol. I (London: William Strahan, 1765) pp.442-3.

In cases of rape involving an upper class victim or defendant the higher courts of Common Pleas or King's Bench could hear the trial. Rapes perpetrated in London were, however, usually prosecuted at the Old Bailey whilst those committed in other districts were brought before the equivalent assizes court sessions, which were held twice a year in the spring and late summer. Two royal judges who were members of one of the central London courts (the Court of King's (or Queen's) Bench, the Court of Common Pleas, or the Court of the Exchequer) would ride each of the six assize circuits, holding civil and criminal trials over the period of a few weeks. The Old Bailey on the other hand heard cases over the period of three to four days eight times a year. The trials were recorded in short hand and then edited and compressed to form the Old Bailey Sessions Papers. The trials took place sequentially in a single courtroom and were presided over by the Recorder of London and two or three royal judges.¹²⁹

Capital trials were generally short; Beattie comments that one lasting for hours would be 'a matter for comment'.¹³⁰ Simpson contends that a lack of counsel for the prosecution and defence was often responsible for that short duration, noting that 'the judge was commonly the only lawyer in the courtroom'.¹³¹ Prior to the eighteenth century, the defence counsel was not permitted in rape trials involving a defendant who pleaded not guilty to a charge of felony, although for a fee an attorney or solicitor could be consulted in the pre-trial process. William Hawkins commented that this doctrine arose from the belief that the defendant 'may as properly speak to a Matter of Fact, as if he were the best Lawyer [...] it requires no manner of Skill to make a plain and honest

¹²⁹ Recorders, who were employed in London from the twelfth century, and in the boroughs from the fourteenth, were required to be competent lawyers prior to obtaining the role. A Recorder acted as an *ex officio* JP for the respective borough, held the role of a judge at each Quarter session, and was often present at the hearings of minor offences. They were also responsible for managing the court lists, and providing legal advice. See Sir Thomas Skyrme, *The History of the Justices of the Peace*, vol.1 (Chicester: BPCC Wheatons, 1991) p.293 for further information.

¹³⁰ J. M. Beattie, *Crime and the Courts in England, 1600-1800* (Oxford: Oxford University Press, 1986) p.376.

¹³¹ Simpson, 'Popular Perceptions', p.58. As previously discussed, however, rape trials were rarely heard by a single judge. In the assizes session at least two judges were present whilst at the Old Bailey the Recorder of London usually officiated in addition to the judge or judges.

Defense.’¹³² The only exception to this rule was in a trial in which ‘some Point of Law arise, proper to be debated’.¹³³ Sir Edward Coke’s view that ‘the Court ought to be [...] of counsel for the prisoner’ was, however, often cited in opposition to this.¹³⁴ Even when defence counsel was allowed, their capacity was limited to examining and cross-examining the witnesses, and advising on points of law. They were not allowed to present the defendant’s case or to address the jury.¹³⁵ The presence of counsel for the defence or prosecution remained unusual throughout the early eighteenth century because of the cost of obtaining legal services, and it was common practice for the prosecution to be conducted by the victim. The trial of Francis Charteris in 1730, discussed in the next chapter, is one of the earliest examples of the ‘defence counsel [...] at work’.¹³⁶

A man convicted of rape or an individual convicted of aiding and abetting in rape were sentenced to execution by hanging and imprisoned to await their sentence. An Act of Attainder that constituted the convict’s forfeiture of personal estates, wealth, rank and legal rights usually accompanied the sentence of execution. The term ‘attainder’ literally constituted the legal expression of a person’s ‘corruption of blood’ and could be passed by the King without a judicial trial. In the case of an individual convicted of treason or felony, however, it was referred to as ‘*Attainder by Verdict*’ and was

¹³² William Hawkins, *A Treatise of the Pleas of the Crown*, vol.2 (London: s.n., 1716, 1721) p.400.

¹³³ Ibid.

¹³⁴ Edward Coke, *The Third Part of the Institutions of the Laws of England: Concerning High Treason, and Other Pleas of the Crown, and Criminal Causes* (London: 1644) p.29. See John H. Langbein, ‘The Prosecutorial Origins of Defence Counsel in the Eighteenth Century: The Appearance of Solicitors’, *Cambridge Law Journal*, 58.2 (July 1999) pp.314-316.

¹³⁵ See J. M. Beattie, ‘Scales of Justice: Defence Counsel and the English Criminal Trial in the Eighteenth and Nineteenth Centuries’, *Law and History Review*, 9 (1991) pp.221-267 for further discussion of the defence counsel in this period.

¹³⁶ Five lawyers were present at Charteris’ hearing. Mr. Kettleby was the counsel for the prosecution and Mr. Strange was the counsel for the defence. Three judges, Justice Price, Justice Probyn, and Mr. Baron Thompson, the Recorder of London, presided over the case. For further details on the role of legal counsel see Simpson, ‘Popular Perceptions’, p.58; John H. Langbein, *The Origins of Adversary Criminal Trial* (New York: Oxford University Press, 2003) pp.106-178; Langbein, ‘Prosecutorial Origins’, pp.314-65.

supplementary to the verdict.¹³⁷ A trial resulting in an order for execution made in any court was subject to scrutiny by the King or Queen who retained the power to pardon convicts. The convict, or a person acting on their behalf, could petition the monarch for a pardon. A pardon did not, however, revoke an act of attainder: this required a further suit at the instigation of the plaintiff.¹³⁸ If successful the suit ensured that any forfeited goods, money, estates, titles, and legal privileges were returned.

The legal procedure of rape allegations was stringent. Allegations of rape that reached a trial contained sufficient evidence to convince a Grand Jury of the veracity of the prosecutrix's claims and to meet the criteria of rape as opposed to assault with intent. Despite this, the period's trial records show low conviction rates for the crime. Clive Emsley, Tim Hitchcock and Robert Shoemaker note that the conviction rates for rape at the Old Bailey 'fell as low as 5% in some decades'.¹³⁹ Overall between 1700 and 1765 only 22 of the 154 rape trials heard at Old Bailey resulted in a conviction, a rate of 14.3%. Simpson argues that this was caused by the 'confusion over what the law [of rape] was', which originated from the introduction of supplementary criteria (such as the claimant's morality) to the statutory legislation, making 'both rape and attempted rape much more difficult to prosecute'.¹⁴⁰ In her recent study of rape trials reported in the contemporary press, Garthine Walker shows that the guilt or innocence of the accused was not reliant on legal validation. Instead, Walker suggests that an acquittal was more frequently viewed in the contemporary press as evidence of insufficient proof of the incident of rape according to legislative requirements, rather than as supporting the defendant's innocence.¹⁴¹

¹³⁷ Jacob explains that an '*Attainder* by Verdict is when the Prisoner at the Bar pleadeth Not guilty, and is found guilty by the Verdict of the Jury of Life and Death.' See Giles Jacob, '*Attainder*', *New Law Dictionary*, p.633.

¹³⁸ See chapter two for an example of this in the case of Francis Charteris.

¹³⁹ 'Crimes Tried at the Old Bailey', *Old Bailey Proceedings Online* [accessed 21 September 2011].

¹⁴⁰ Simpson, 'The "Blackmail Myth"', p.103.

¹⁴¹ Walker, 'Rereading Rape', x; Walker, 'Rape Acquittal', pp.115-117.

II. *Stare decisis*, legal training and legal texts

Rape law transformed in the early eighteenth century, making it an increasingly difficult crime to prosecute partly due to the increased concern about malicious prosecutions.¹⁴² Simpson attributes the changes in legal practice during the 1700s to the legal doctrine of *stare decisis* or precedence, which was ‘regarded as a guide to the judge’s actions and not as a binding constraint’ and caused interpretative confusion about key issues such as what constituted carnal knowledge.¹⁴³ In theory, judges in the lower courts were bound by rulings made in the higher courts such as the Court of King’s (or Queen’s) Bench. Simpson comments that the ‘flexible interpretation’ of precedence meant that the definition of terms such as carnal knowledge, which was integral to a rape prosecution, could vary between the courts and judiciary.¹⁴⁴ The shifting understanding of key legal terminology such as this was partly responsible for the transformation of how the rape laws were implemented in the court that Simpson refers to.¹⁴⁵

The disorganized, and increasingly fractured, nature of the legal profession during the early to mid-eighteenth century reduced the coherence of the judiciary and contributed to a growing confusion about the nature of rape law. There were three branches of legal professionals who were involved in the common law in the eighteenth century and each received different levels of legal training: Justices of the Peace, barristers and attorneys.¹⁴⁶ Justices of the Peace were unpaid and received no formal legal training.¹⁴⁷ This is particularly pertinent to rape cases because women frequently

¹⁴² Simpson, ‘The “Blackmail Myth”’, p.102.

¹⁴³ Ibid, p.103.

¹⁴⁴ Ibid, p.103.

¹⁴⁵ Evaluating why and how the usage of related terms altered and the impact of this on popular and legal attitudes towards rape is of course central to this thesis and will be reflected on in greater detail in chapter six.

¹⁴⁶ Christopher W. Brooks, ‘Apprenticeship and Legal Training in England, 1700-1850’, *Lawyers, Litigation and English Society since 1450* (London: the Hambledon Press, 1998) pp.149-179.

¹⁴⁷ In 1700 all Members of Parliament were automatically appointed to the role of JP. Until 1715 they were also usually members of the landed gentry so the lack of a salary was not usually an issue. In London, however, this was not always the case and led to the term ‘trading justices’ because of the number of JPs who were purported to charge for their services. JPs were not involved in the central courts however an Act passed in 1361 stipulated that JPs must hear judicial business four times a year which led

made their initial complaints of rape to a Justice of the Peace who would determine whether there was sufficient information for the case to proceed to court. A Justice of the Peace with little knowledge of rape law would be forced to rely on their own interpretation of rape formed from wide-spread cultural attitudes, or rape myths, and any personal experiences, and reading of rape scenes in wider literature.

The most highly regarded, and highly paid, members of the legal profession were the barristers who provided counsel and acted in court cases.¹⁴⁸ Prospective barristers joined the Inns of Court, yet the lecture series, moots and formal instruction, traditionally offered by way of training, lapsed during the eighteenth century.¹⁴⁹ A trainee was only required to pay for admission to one of the Inns of Court, to study for a total of four years, and to attend a set number of meals in order to gain qualifications to practice at the Bar. There was no formal bar examination or guidance on the level of skill and knowledge required by a barrister. Many trainee barristers sought pupillage in Barristers' Chambers, attended trials in the courts, and were encouraged to rely on self-study to supplement their education. They also undertook independent study to learn the historical foundations of the common law before familiarizing themselves with its modern applications through observing trials and reading case law, culminating in their production of a legal text.¹⁵⁰ The self-directed instruction of barristers meant that they would only be knowledgeable in rape laws if they had chosen this area of study.

Attorneys, or the emerging class of solicitors, could advise a client on the pretrial process and prepare them for trial but could not plead on their behalf in court. In the sixteenth century, the Inns of Court, which had previously provided an educative

to the establishment of the Quarter Sessions. They were also responsible for the upkeep of gaols, highways and bridges, peace keeping, overseeing apprenticeships, and implementing the Poor Laws.

¹⁴⁸ There were three classes of barrister. The ordinary barrister was the lowest rank followed by the King's or Queen's Counsel. Of the highest status were the Serjeants at Law who pleaded cases heard in the Court of Common Pleas and from whose ranks Judges were selected.

¹⁴⁹ During a moot the hall of the Inns of Court was set up to resemble a courtroom where practice trials were held.

¹⁵⁰ See Penelope J. Corfield, 'Eighteenth-Century Lawyers and the Advent of the Professional Ethos', *Law and Society in France and England*, ed. by P. Chassaing and J-P. Genet (Paris: Sorbonne Publications, 2003) pp.103-26.

institution for all trainee lawyers interested in practicing criminal law, began to exclude attorneys.¹⁵¹ By the eighteenth century, the Inns of Court would not enroll any attorneys or solicitors. They were able to join the Inns of Chancery, which offered a basic training in the writ system, but were more frequently trained through informal apprenticeships, yet received little, if any, instruction in criminal offences such as rape. The 1729 *Act for the Better Regulation of Attorneys and Solicitors*, however, stipulated that all attorneys and solicitors must join ‘the Society of Gentleman Practisers in the Courts of Law and Equity’.¹⁵² This involved registering with one of the central courts that regulated the profession. A record of enrolment was required before an attorney or solicitor could act on any suit in court. Despite this, David Friedman notes that the so-called ‘Newgate solicitors’ who solicited business from desperate convicts at the gaol were ‘often unqualified’.¹⁵³

The decline of the instructive role of the Inns of Court in preparing the next generation of lawyers coincided, perhaps unsurprisingly, with an expansion in the legal print market.¹⁵⁴ The evolving and escalating legal market of the 1700s provided unprecedented access to information about historic and current rape legislation, practice, and trials through a wide range of texts. The publications held in the highest regard by the legal profession during the period and that became standard reading for aspiring lawyers were the legal treatises. The most influential of these were written prior to the eighteenth century and either published posthumously or reprinted during the era. Authors of the texts were generally members of the judiciary who had attained a high status and later authors frequently cited their works to support discussions of laws or judicial procedure. Notable authors of legal treatises that discussed rape law

¹⁵¹ Civil and canon law was taught at Cambridge and Oxford Universities during the eighteenth century.

¹⁵² See Penelope J. Corfield, *Power and the Professions in Britain 1700-1850* (London and New York: Routledge, 1995) p.76 for further details.

¹⁵³ David Friedman, ‘Making Sense of English Law Enforcement in the 18th Century’, <http://www.daviddfriedman.com/Academic/England_18thc./England_18thc.html> [accessed 18 April 2016].

¹⁵⁴ For the purpose of this study, the legal print market is considered to encompass only texts written by legal professionals or that significantly interacted with issues of the law in a non-fictional style.

include: Henry de Bracton (1210-1268), author of *De Legibus et consuetudinibus Angliae* (c.1235); Sir Edward Coke (1552-1634), author of *Institutes of the Lawes of England* (1628); Michael Dalton (1564-1644), author of *The Countrey Justice* (1618); and Sir Matthew Hale (1609-1676), author of *A History and Analysis of the Common Law* (1713) and *The History of the Pleas of the Crown* (1736).¹⁵⁵ Eighteenth-century legal authors frequently cited the comments on rape law found in Bracton's, Coke's, Dalton's, and Hale's texts.¹⁵⁶ Hale's perceptions of rape, expressed in *The History of the Pleas of the Crown* (1736), are particularly pertinent for their effect on eighteenth-century rape myths. Hale perpetuated the rape myth that women often lie about being raped when he advised the legal profession to view a woman's allegations of rape with caution, arguing that the allegation was easily made and 'harder to be defended by the party accused, tho' never so innocent'.¹⁵⁷ He also formalized the marital rape exemption myth in law, stating that 'the husband cannot be guilty of a rape committed by himself upon his lawful wife'.¹⁵⁸

With the exception of William Hawkins, author of *A Treatise of Pleas of the Crown* (1716), modern critics have dismissed the legal authors of the early eighteenth century as 'hacks' because the market lacked new systematic and sustained treatises of the quality of those produced by earlier writers and later found in William Blackstone's *Commentaries on the Laws of England* (1765-1769).¹⁵⁹ In doing so, scholars have underestimated the influence of these works on contemporary understandings of the law. The legal market covered a range of works including the reprinted treatises and the

¹⁵⁵ Other notable authors of legal treatises who did not write about rape law but whose works are important to this thesis for their discussion of legal procedures include Ranulf de Glanville (b. unknown – 1190), author of *Tractatus de Legibus et Consuetudinibus Regni Angliae* (c.1188), the earliest treatise on English law, and William Sheppard (b. unknown – 1675). Sheppard, whose most notable publication was *England's Balme: Or, Proposals by way of Grievance and Remedy; Humbly Presented to his Highness and the Parliament: Towards the Regulation of the Law and Better Administration of Justice* (1657), became renowned when Cromwell decided to employ his services as a legal consultant to propose solutions to problems of legal reform.

¹⁵⁶ See Jacob, *Every Man*, for examples.

¹⁵⁷ Hale, p.635.

¹⁵⁸ Ibid, p.331.

¹⁵⁹ Rudolph, 'That "Blunderbuss of Law"', p.3.

newly-styled legal manuals, law dictionaries, case law collections, and trial reports. The style of the legal manuals and law dictionaries, however, emerged in response to the growing volume of material necessary to legal practice. They were structured in such a way as to categorize and classify the law for ease of management and were published in the vernacular. Alphabetical ordering, categories of crimes, and indexes meant that the reader was able to peruse them selectively or in their entirety. The most ‘prolific’ and successful of these authors was Giles Jacob (1686-1744)¹⁶⁰ who had the benefit of legal training.¹⁶¹ Between 1730 and 1764 he published 30 distinct legal texts, many of which were republished throughout the eighteenth and nineteenth centuries. Some of the publications were designed as guides to a specific role within the justice system such as Jacob’s *The Compleat Chancery-Practiser* (1730), to provide an overview of entire branches of the laws, or, as is the case with *The Student’s Companion: or, Reason of the Law* (1743), to educate prospective lawyers. His entries on rape were closely referenced to statutory law and to the earlier acclaimed legal treatises as can be seen in the following extract from *A Treatise of Laws: or, a General Introduction to the Common, Civil, and Canon Law* (1721):

Rape is the carnal Knowledge of the Body of a Woman by Force. And the carnal Knowledge of a Woman-child above the Age of ten Years against her Will, or of a Female under the Age of ten Years, either with or against her Consent, is Rape and Felony without Benefit of Clergy. 3 Inst 60. 18 Eliz.

There must be Penetration and Emission, otherwise ’twill be only Assault and Battery: Emission may be Evidence of Penetration, tho’ not full Evidence. If a Woman yields to the Violence, and such her Consent was forced by Fear of Death, or of Duress, this does not mitigate the Crime in the Ravisher; nor is it any Excuse that she consented after the Fact, or that she was a common Strumpet, (tho’ some Consideration may be had in this Case) for she is still under the Protection of the Law, and may be forced. Dalt. 105. Bract. 147.

¹⁶⁰ Lemmings, p.67, n.18.

¹⁶¹ Rudolph, ‘That “Blunderbuss of Law”’, pp.197-215, for details on his legal training.

Figure 1. Giles Jacob, *A Treatise of Laws* (London: T. Woodward and J. Peele, 1721) p.172.

Notably Jacob distinguishes between the provisions of rape legislation, referenced here as ‘3 *Inst* 60. 18 *Eliz*’, and the additional considerations of penetration and emission, which he attributes to the treatises of Dalton and Bracton.¹⁶²

The books relating to the law available through the market were an important source of information about rape laws to the legal profession. Lawyers, who were influenced by the recommendations made in the legal treatises or as they were paraphrased in the legal manuals, implemented these in practice, allowing non-statutory ideas about rape to infiltrate legal practice. This was further enhanced by the doctrine of *stare decisis*, supported by the publication of trial reports and case law collections. Throughout his publications, Jacob’s entries on rape discriminate between statutory legislation and legal theory as the two components of legal practice in rape trials.¹⁶³ As the next section shows, his texts prioritize legal authors as instigators of the changes in rape law, demonstrate the role of the legal market in conveying these ideas, and provide insight into how and why rape law was transformed.

III. Transformations in judicial practice

The legal questions that were asked about rape in legal texts encompassed the statutory required evidence of force and consent, and the non-statutory considerations of: evidence of penetration and emission, resultant pregnancy, and the moral character of the complainant. The statutory criteria of force and consent were usually expressed by legal authors of the early eighteenth century in the words of Coke who stated that ‘Rape is the unlawful carnal knowledge of a woman *by force* and against her will.’¹⁶⁴ Force was interpreted literally as a physical force rather than a psychological threat

¹⁶² Giles Jacob, *A Treatise of Laws* (London: T. Woodward and J. Peele, 1721) p.172.

¹⁶³ For example, see Giles Jacob, *Lex Constitutionis* (London: R. Nutt and R. Gosling, 1719).

¹⁶⁴ Coke, *Institutes*, p.60

although it was accepted that evidence of it could appear in a number of ways. Witness statements testifying to torn or disordered clothing, and marks of injuries sustained during the act on other areas of the body were considered as acceptable proof of force. In the trial of Jacob Wykes and John Johnson (1718), witnesses for the prosecution testified that the clothes of the complainant, Ann Cooper, ‘were much rumpled’, her ‘Gown was torn, all the Sleeve off, her Apron and her Smock torn’.¹⁶⁵ Medical evidence testifying to inflammation of the vulva, such as appeared in the case of *Milton v. Booty* (1722) when the report of a surgeon, Mr. Kighley, noted that Milton’s ‘Privities were inflamed and ulcerated’, also contributed to the prosecution’s claims.¹⁶⁶ Proof of a woman’s will or consent was more ambiguous because the victim was usually the only witness to her refusal to engage in the act. In one sense the issue of a woman’s consent was considered collectively with that of force. To be plausible in court the woman’s denied consent needed to have been expressed verbally and physically. Therefore, to secure the conviction of her rapists, John Sullivan, William Caswell and William Fitzgerald, the complainant, Ann Ward testified to her verbal and physical resistance to her rape:

when I made any resistance, he held me. I arose up, and thought I was got clear of them, but Caswell knocked me down on the floor; and when I cried out for assistance, he beat me about the head and arms, and told me nobody would come to my assistance.¹⁶⁷

Significant evidence of force resulting in physical markers of violence such as bruises could act as proof of lack of consent.¹⁶⁸ It was complicated further by the legislative statement in *Westminster II* that a woman could consent before, during, or after sexual intercourse.¹⁶⁹ Jacob, however, stated with reference to Hawkins that ‘it is no Excuse or

¹⁶⁵ *The Proceedings*, t17180709-37.

¹⁶⁶ Anon, *Select Trials at the Sessions-House in the Old Bailey* (London: printed by J. Applebee, 1742) p.198.

¹⁶⁷ *The Proceedings*, t17620714-34.

¹⁶⁸ See *The Proceedings*, t17180709-37 and t17801018-40.

¹⁶⁹ Jacob notes however that Statute 11 gave a husband, father, or next of kin, the right to prosecute in circumstances where the woman gave retrospective consent (Jacob, *The Laws of Appeals and Murders*, p.2)

Mitigation of the Crime, that the Woman at last yielded to the Violence, and consented either after the Fact or before, if such her Consent was forced by Fear of Death, or of Imprisonment'.¹⁷⁰

The legal reception of the woman's testified lack of verbal consent was largely dependent on the perceived veracity of her accusation. Legal professionals were notoriously suspicious of female testimony because of a prevalent anxiety about false allegations.¹⁷¹ In *Pleas of the Crown* Hale discusses the validity of the prosecutrix's evidence and observes that

The party ravished may give evidence upon oath, and is in law a competent witness, but the credibility of her testimony, and how far forth she is to be believed, must be left to the jury, and is more or less credible according to the circumstances of fact that concur in that testimony.¹⁷²

To determine the credibility of the prosecutrix the law investigated her moral character.¹⁷³ Trial records demonstrate that defendants in rape cases commonly cast aspersions on their accuser's morality to disprove the claims. In his description of how to assess a woman's credibility Hale states that a woman must prove her moral integrity and, preferably, her virginity. Cases involving a woman who was not a virgin prior to the rape resulted in an evaluation of her sexual history. Promiscuous women, it was believed, were more likely to consent to sex. It was considered to be evidence of consent if she had had previous sexual contact with the accused. Susan M. Edwards comments that this attitude is

founded on a belief that a woman who once consents to a man's advances will do so again, and by the same token it is believed that it is a man's right to sexual consortium *ad infinitum* with a woman he has 'won'. In addition, her credibility

¹⁷⁰ Jacob, *Every Man*, p.442.

¹⁷¹ See Simpson, 'Popular Perceptions' and 'The "Blackmail Myth"'.

¹⁷² Hale, p.633.

¹⁷³ In cases involving a child under the age of consent the issue of credibility was applied to her parent(s) or guardian(s). See *Lockwood v. Weston* as reported in Anon, *Select Trials for Murders, Robberies, Rapes, Sodomy, Coining, Frauds, And Other Offences: At the Sessions-House in the Old Bailey* (London: printed for J. Wilford, 1734-5) p.97.

is immediately affected and it becomes difficult to 'organize the text' in any other way except to believe that she consented.¹⁷⁴

Although the legislation extended legal protection to all women, prostitutes claiming to have been raped were also viewed with suspicion. Hale stated 'that the woman was a common strumpet, or the concubine of the ravisher is no excuse' to permit the perpetration of a rape.¹⁷⁵ In 1736 Jacob commented that 'it is said by some to be Evidence of a Woman's Consent, that she was a common Whore'.¹⁷⁶ By the 1760s, however, Blackstone argued that prostitutes are not credible witnesses because they 'hath indeed no chastity at all, or at least no regard to it'.¹⁷⁷

A woman's testimony was deliberated on as much as, if not more, than that of the defendant. Whilst evidence of her good moral character was crucial to establishing the veracity of her allegations, the court would also take into account the length of time it took for the complaint to be made and the plausibility of the location in which the rape was attested to have occurred. Hale observed of the time taken to lodge a complaint of rape that, despite the legal allowance of forty days, if the woman 'concealed the injury for any considerable time after she had opportunity to complain [...it] carr[ied] a strong presumption, that her testimony is false or feigned'.¹⁷⁸ This sentiment was repeated in the eighteenth-century legal manuals, which made comments such as: 'And it is a strong presumption against a Woman. That she made no Complaint in a reasonable Time after the Fact. If she conceals it for any long Time, it may argue a Consent.'¹⁷⁹ While the location of the alleged crime did not factor in the Statutes of Westminster or 18 Eliz, a number of judges required evidence that a rape could be

¹⁷⁴ Susan S. M. Edwards, *Female Sexuality and the Law* (Oxford: Martin Robertson, 1981) p.66. Edwards' observation covers the law of rape after 1800. However, this train of thought was in evidence throughout the 1700s.

¹⁷⁵ Hale, p.633.

¹⁷⁶ Jacob, *Every Man*, p.442.

¹⁷⁷ Blackstone, *Commentaries*, vol. 4, p.213.

¹⁷⁸ Hale, p.633.

¹⁷⁹ Jacob, *Every Man*, p.442.

perpetrated at the cited place, a notion discussed in greater depth in chapter five.¹⁸⁰ Jacob observes that ‘a Woman’s positive Oath of a Rape, without concurring Circumstances, is seldom credited: If a Man can prove himself to be in another Place, or in other Company, at the Time she charges him with committing the Fact, this will invalidate her Oath.’¹⁸¹ The ‘Description of the Place where done’, in cases of woman above the age of consent or children who were below this, must provide the circumstantial evidence to support the woman’s claims.¹⁸² This included the likelihood of the man being present in this location, and his ability to forcibly penetrate the woman without being stopped by an external party. Proof that the man could not have accessed the site of the alleged crime at the time attested was accepted as demonstration of his innocence. A consideration questioned in a number of the cases concerned whether the woman had taken sufficient precautions to prevent being raped such as avoiding isolated locations that might permit perpetration of the crime.

Ideas concerning female consent incorporated the belief that a subsequent pregnancy invalidated a woman’s claim of rape. 18 Eliz. 2 *Inst.* 190. stated that if a woman conceived as a direct result of the act it was not a rape. In *Plees del Coron* (1557) William Staunforde, commenting on English law, observed that ‘if at the time of the rape the woman conceives a child of the rapist, it is not rape, because no woman can conceive if she does not consent’.¹⁸³ The belief that conception denotes female consent was prevalent in the English criminal justice system with the result that the testimony of a pregnant woman who claimed to have been raped was viewed with great suspicion. This is surprising because Hale and Hawkins disregarded this idea, with Hale dismissively stating that it ‘seems to be no law at all’, whilst Hawkins observed that

¹⁸⁰ See chapter five for further details.

¹⁸¹ Jacob, *Every Man*, p.442.

¹⁸² *Ibid.*

¹⁸³ William Staunforde, *Plees del Coron* (1557) qtd. in MacFarlane, p.29.

‘this Opinion seems very questionable’.¹⁸⁴ Hawkins did, however, reflect that if pregnancy was to be considered as evidence for or against rape the accused should ‘not be tried till such Time as it might appear whether she did or did not’.¹⁸⁵ Despite Hale’s and Hawkins’s misgivings the numerous legal publications and dictionaries of the early eighteenth century, particularly those printed in the vernacular, conveyed the belief that the pregnant complainant had consented. Jacob noted in his popular *The Student’s Companion* (1725) that ‘[t]he Law supposes a Woman cannot Conceive, except she Consent to the Man; without which, she may not have Enjoyment to Conceive’.¹⁸⁶ This perspective was supported in the wider print market. In *Cyclopaedia: Or, An Universal Dictionary of Arts and Sciences; Containing The Definitions of the Terms, And Accounts of The Things Signify’d* (1728) Ephraim Chambers remarked that: ‘If the Woman conceive the Law esteems it no *Rape*; for an Opinion that she cannot conceive unless she consent.’¹⁸⁷ The interrelation of conception, consent, and ‘Enjoyment’ that are demonstrated in the legal attitude towards the pregnant complainant echoes Galen’s ‘one sex’ model medical theory that dominated concepts of male and female reproductive organs from 2 A.D. Galen proposed that the vagina was an inverted penis, held inside the body to keep it warm because they lacked the ‘vital heat – of perfection’ of men.¹⁸⁸ In order to conceive, he claimed that both the male and female seed, which was emitted during orgasm, were ejaculated into the womb where they would fuse and

¹⁸⁴ Hale, p.731. William Hawkins, *Treatise of the Pleas of the Crown*, vol.1 (London: s.n., 1716) p.108.

¹⁸⁵ Hawkins, p.108.

¹⁸⁶ Giles Jacob, *The Student’s Companion: Or, The Reason of the Laws of England* (London: printed by E. And R. Nutt, and R. Gosling, 1725) p.166.

¹⁸⁷ Ephraim Chambers, *Cyclopaedia: Or, An Universal Dictionary of Arts and Sciences; Containing The Definitions of the Terms, And Accounts of The Things Signify’d* (London: printed for James and John Knapton; John Darby; Daniel Midwinter; Arthur Bettesworth; John Senex; Robert Gosling; John Pemberton; William and John Innys; John Oshorn and Tho. Longman; Charles Rivington; John Hooke; Ranew Robinson; Francis Clay; Aaron Ward; Edward Symon; Daniel Browne; Andrew Johnston; Thomas Osborn, 1728) p.374.

¹⁸⁸ T. Laqueur, *Making Sex: Body and Gender from the Greeks to Freud* (Cambridge: Harvard University Press, 1990) p.4. See chapter one, ‘Of the Language of Flesh’ for a more detailed description of the ‘one sex’ model, pp.2-24.

eventually develop into a foetus. This implied that a woman must reach orgasm in order to conceive, and must consent to sexual intercourse in order to orgasm.

The requirement for proof of vaginal penetration of the prosecutrix by the defendant's penis and his subsequent emission of semen was a logical extension of the statutory rape laws that sought to distinguish between rape and assault with intent. The legal theorists, however, disagreed on whether evidence of emission was required. Whilst Hawkins stated that emission was *prima facie* evidence of penetration and must be proved, Hale stated that it was not a necessary criterion to support the prosecution's case.¹⁸⁹ The idea was conveyed in the legal manuals, with Jacob stating that '[u]nless there be Penetration the Body is not so abus'd as to be Rape, and without Emission, a Woman is not Defiled'.¹⁹⁰ In practice, however, *stare decisis* was a critical component of developing the concept of penetration and emission as evidence in a rape trial. The courts struggled to determine what extent of evidence was required to fulfil these criteria. The various courts were unanimous in determining that proof of penetration was essential to convict the accused. Satisfactory evidence was often accepted in the form of medical reports attesting to marks seen on or around the woman's vagina that were believed to be consistent with forceful penetration.¹⁹¹ The judiciary disagreed on the subject of emission and its necessity. In the Court of King's Bench three key cases demonstrate the lack of credit given to the consideration of ejaculation during rape. In the case of *R v. Duffin* (1721), the judges were divided on whether emission had occurred but Duffin was convicted. In *R v. Sheridan* (1761) it was believed that emission had not occurred but the case still concluded with a conviction. Similarly, in *R v. Russen* (1771) the presiding judges were uncertain as to whether emission had occurred but again Russen was convicted. It was only in 1781 in the case of *R v. Hill*

¹⁸⁹ Hawkins, p.108; Hale, p.628.

¹⁹⁰ Jacob, *Student's Companion*, p.166.

¹⁹¹ In the trial of Milton v. Booty the evidence of penetration appeared in the form of a statement from a Midwife claiming to have seen 'the Mark of an Impression' (cited in Jacob, *Student's Companion*, p.198).

that the judges ruled that proof of injection seminis, or ejaculation, was essential to a conviction.¹⁹²

Hale's idea of marital rape exemption is one particularly notable example of legal theory transforming rape laws. During the eighteenth century it was widely accepted in legal convention that abusive husbands who raped their wives could not be prosecuted, yet this was not evidenced in legislation. The credence for this exemption is generally attributed to Hale who stated in *Pleas of the Crown*:

the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract.¹⁹³

Despite the fact Hale did not cite any authority other than his own, his belief transformed into practice and then common law. It was not until the case of *R v R* in 1991 that the marital rape exemption clause was overruled in England. The belief that marital ties exempted a man from a charge of rape covered only his own intercourse with his wife and did not extend to situations in which a husband acted as an accessory to another man's rape of his wife.

The definition of rape provided by legal texts published in the early eighteenth century suggests that an allegation of rape containing evidence to satisfy the statutory criteria of rape was, in itself, insufficient to result in a conviction. It was vital for the prosecutrix to be of a good moral character, to demonstrate corroborating circumstantial evidence, and to 'prove' that penetration had occurred. The beliefs that subsequent pregnancy proved her consent to the act, and that evidence of emission was necessary to support her claims, contributed to legal ideas of rape but were accorded less significance. Rape within marriage was exempt from prosecution. The works of the acclaimed legal theorists Hale, Bracton, Hawkins, and Dalton particularly influenced the transformations in the legal conventions of rape. The legal manuals and law

¹⁹² See MacFarlane, pp.41-42 for further detail on these trials.

¹⁹³ Hale, p.331.

dictionaries produced during the early eighteenth century were important to the circulation of these governing ideas about rape.



The legal conventions of rape and the legal questions asked in rape trials in the early to mid-eighteenth century altered the statutory definition of the crime by introducing an increased focus on the victim's morality, consent, conception, location during the act, and social status. In legal practice rape signified the forcible vaginal penetration of a victim of good moral character by the defendant's penis and his emission of semen therein without a resulting conception. To be designated as a crime, the act must have been perpetrated in a location that was accessible yet secluded enough to prevent interruption of the crime, and the commission of the crime made known to legal authorities with haste. The stringent procedural forms of the law meant that allegations of rape that were heard in court contained sufficient evidence to have already convinced a Grand Jury of the veracity of the prosecutrix's claims. Despite this, the period's trial records show low conviction rates for the cases heard in court as a result of the complex concept of rape and the difficulty of obtaining evidence to satisfy the criteria.

The legal understanding of rape changed for a number of reasons. The increasing reliance on the ideas expressed by legal theorists such as Hale due to the newly disorganized climate of the legal profession was an important instigator of the changes. The increased use of professional legal texts to educate the legal profession, and *stare decisis* influenced judicial procedure and ideas of rape. Reports of rape trials also contributed to the legal profession and contemporary understandings of the crime, however, it was not necessary to have legal training to author these reports. The

following chapter considers whether pamphlets and newspapers reporting on rape adhered to or deviated from the rape conventions discussed here.

Chapter Two

The '*Rape-Master-General of Great Britain*':

Published Records of the Charteris Trial in the 1730s



The ideas about rape, disseminated by the legal authors discussed in the previous chapter, influenced how the legal profession viewed the crime but, due to the expense of purchasing texts about legal theory and the law, and the specialized terminology employed, these books were not widely accessible outside the profession.¹⁹⁴ Nonetheless, the criminal offence of rape was a topic of interest in contemporary society and, as Garthine Walker's study of rape allegations and trial coverage in the press demonstrates, authors and publishers responded to this demand.¹⁹⁵ Rape trials were widely attended by individuals across the social strata. The visibility of these trials, and the issues remarked on and considered by the judiciary, increased public understanding of the changes in statutory rape laws and trial procedure. In response to readers' interest in rape trials, the publishing industry commented on the cases in the press, and recorded the events of the trials, usually in pamphlet form. The more famous

¹⁹⁴ In recognition of the interest in the law outside of the legal profession Giles Jacob published *Every Man His Own Lawyer* in 1736. The text was popular, running to eleven editions, yet it was priced at 5s. meaning that its audience was likely to be wealthy. See 'July 1736', *London Magazine and Monthly Chronologer*, vol.5 (London, C. Ackers, 1736) p.403 for details of the text's price that was not noted on the imprint.

¹⁹⁵ See Walker, 'Rape Acquittal', pp.115-117.

trials, such as the 1730 case of Francis Charteris (1675-1732) discussed in this chapter, prompted the publication of numerous newspaper reports, trial reports, and associated plays, poems and prose which further increased access to information about the offence of rape. This chapter investigates how famous cases informed, and were informed by, contemporary understandings of rape by analyzing the conviction and subsequent pardon of Charteris for the rape of his maid, Anne Bond. The research focuses on how Charteris' trial was presented to readers, the types of issues that were raised, and the interpretations it invited.

Rape trials, as Cynthia Herrup comments, 'offered entertaining, even salacious, material, that could be sold with a claim to educate and to admonish'.¹⁹⁶ Details of rape cases were published for a wide audience in the contemporary newspapers whilst reports of the trial, biographies of the accused, and execution confessions or assertions of innocence written by the accused following the outcome of the trial or a pardon, were published in pamphlets. The trial reports are of particular importance to this research for the information that they contained about trial procedure. *The Proceedings of the Old Bailey*, also known as the Old Bailey's *Sessions Papers* or *Proceedings*, were published from the late seventeenth century and formed the largest repository of 'official' trial information. Initially written in a style that closely approximated the popular trial reports, the *Proceedings* were licensed by the City of London in 1680 and subsidized by the City in 1787.¹⁹⁷ By the eighteenth century, as they became increasingly popular, the *Proceedings* were published immediately after each of the eight annual court sessions as

¹⁹⁶ Cynthia Herrup, *A House in Gross Disorder: Sex, Law, and the 2nd Earl of Castlehaven* (Oxford: Oxford University Press, 1999) p.134.

¹⁹⁷ Simon Devereaux comments that the subsidy changed the reporting style of the *Proceedings*, noting that: 'Until 1775, the publisher of the Sessions Paper paid the lord mayor of London a fee for the privilege of publishing a nominally "official" account of trial at the Old Bailey. From 1778 however, the City insisted that the Sessions Paper should provide a "true, fair, and perfect narrative of all the trials at the Old Bailey." It was after this year that the length of most trial accounts began to increase substantially.' (p.468). Simon Devereaux, 'The City and the Sessions Paper: "Public Justice" in London, 1770-1800', *Journal of British Studies* 35.4 (October 1996) pp.466-503.

a periodical.¹⁹⁸ Whilst trial reports were initially produced to aid the judiciary in implementing the law in practice through practical examples and evidence to support the doctrine of precedent, they became increasingly popular outside of the legal profession. From the late seventeenth century, Langbein notes,

major trials were transcribed in shorthand by professional scribes, promptly published in pamphlet editions represented to be accurate and complete, and scrutinized by contemporary audiences that included many of the official participants.¹⁹⁹

By the eighteenth century, and particularly in the case of sensational trials, the ‘official’ trial reports were often accompanied by ‘unofficial’ salacious reports.²⁰⁰ Trials reported for a non-legal audience generally sensationalized the material, selecting information that would appeal to the reader, and adopting a moralizing tone in comparison to the factual style of the legal transcripts. The popular appeal of trial reports, R. A. Melikan suggests, was recognized in the late seventeenth century when ‘commercial publishers began producing accounts of trials in pamphlet form’.²⁰¹

The material published about rape trials demonstrates that some cases held greater appeal than others. The increased interest in specific trials was usually caused by the salacious appeal of the events of the case or the notoriety of the accused or complainant. The popularity of the Charteris case was unprecedented. It captured the attention of the market, prompting what Simon Dickie terms ‘an extended silly season in the London press’.²⁰² The trial, which was immediately reported in the press, trial reports, and biographical accounts of his life, also featured in other forms of printed crime writing including ballads, pamphlets and poetry, and plays and artwork, making it

¹⁹⁸ See Langbein, *Origins* and ‘The Old Bailey and its Proceedings in the Public Sphere: Selection, Bias, and Possible Influence’ in *Crime, Courtrooms and the Public Sphere in Britain, 1700-1850*, ed. by David Lemmings (Surrey: Ashgate Publishing Ltd, 2013) chapter three.

¹⁹⁹ John H. Langbein, ‘The Criminal Trial Before the Lawyers’, *The University of Chicago Law Review*, 45.2 (1978) p.265.

²⁰⁰ Laurence Stone suggests that modern critics need to be aware of the distinction between transcripts of court proceedings that were written for lawyers, the ‘official’ reports and the salacious reports produced for a wider audience. L. Stone, *Road to Divorce 1530-1987* (Oxford: Clarendon Press, 1990) pp.248-253.

²⁰¹ R. A. Melikan, *Domestic and International Trials, 1700-2000: The Trial in History*, ed. by R. A.

Melikan, vol.II (Manchester and New York: Manchester University Press, 2003) p.3.

²⁰² Dickie, p.574.

the most documented trial of the 1730s.²⁰³ Popular interest in the case revived again in 1732 after Charteris' death, whilst reports of the trial published for a legal audience remained in publication throughout the eighteenth century. The Charteris case was atypical for the volume of materials published in response, yet the reasons for its appeal are evident and have drawn critical attention that largely focuses on the character of the accused.²⁰⁴ Anthony E. Simpson argues that it was due to the original verdict that 'appeared to demonstrate that the law could hold the rich accountable' and outrage at the destruction of this 'image of legal impartiality' that was effected by his pardon.²⁰⁵ However, he also notes the importance of Charteris' 'style and activities [that] made him hated by all the classes'.²⁰⁶ In Simon Dickie's analysis 'Charteris was convicted not because he had raped someone, but because he was a swindler, South-Sea profiteer and political opportunist who had made too many enemies.'²⁰⁷

When Bond accused Charteris of rape, he was already infamous in London for engaging in illegal and immoral activities.²⁰⁸ As Alexander Pope notes in *An Epistle to Lord Bathurst* (1732), Charteris was well known to the law.²⁰⁹ It was rumored that he was fined £80 for assault and a further £50 for contempt of court in 1705.²¹⁰ During his

²⁰³ *The Fall of Mortimer. An Historical Play. Revis'd from Mountfort with Alterations, As it is now acted at the New Theatre in the Hay-Market* (London: J. Millan, 1731) refers to Walpole's aid in securing Charteris' pardon (p.20). Charteris appears as Francisco in Michael Clancy's *The Sharper* (1738). He is also referred to by Lovelace in Richardson's *Clarissa* when he recommends 'A fine strapping Bona Roba, in the Chartres-taste' to Belford (p.328).

²⁰⁴ See Langbein, *Origins*, p.57 for discussion of the importance of the character of the accused in determining the outcome of criminal trials.

²⁰⁵ Simpson, 'Popular Perceptions', p.6.

²⁰⁶ *Ibid*, p.16.

²⁰⁷ Dickie, p.574.

²⁰⁸ See Fergus Linnane, *The Lives of the English Rakes* (London: Portrait, 2006) p.97 and E. Beresford Chancellor, 'Col. Charteris and the Duke of Wharton', *The Lives of the Rakes*, vol.3 (London: Philip Allan & Co., 1925) p.25 for further details.

²⁰⁹ Alexander Pope wrote that Charteris was 'a man infamous for all manner of vices. When he was drummed out of the regiment for a cheat; he was next banished to Brussels, and drummed out of Ghent on the same account. After a hundred tricks at the gaming tables, he took to lending of money at exorbitant interest and on great penalties, accumulating premium, interest, and capital into a new capital, and seizing to a minute when the payments became due; in a word, by constant attention to the vices, wants and follies of mankind, he amassed an immense fortune.' Pope, 'Of the Use of Riches, To Allen Lord Bathurst' *Ethic Epistles, Satires, &c. With the Author's Notes. Written by Mr. Pope* (London: printed for the Company, 1735) p.177.

²¹⁰ Impartial Hand, *Some Authentick Memoirs of the Life of Colonel Ch-----s, Rape-Master-General of Great Britain* (London: printed, and sold by the booksellers of London and Westminster, 1730) p.28.

checkered career in the army he was brought before the Court Martial for extortion and decommissioned. According to the sensational biographies of his life, he also received military disciplinary action for theft on two occasions.²¹¹ In 1711, having purchased another army commission, he was investigated by the House of Lords on other accounts of extortion, the events of which were extensively covered in pamphlets.²¹² He was fined £500 and prevented from holding any further positions in the military. Charteris then embarked on a career in gambling and extortion during which he was cited in nineteen cases heard in the Court of Chancery between 1713 and 1729 as the defendant or, less frequently, the prosecutor.²¹³ Despite the legal costs pertaining to these cases Charteris avoided severe penalty and amassed a significant fortune. He was an expert in using bribes to avoid severe legal repercussions for his actions. It is also likely that his interactions with the law were influenced by his connections within the legal profession.²¹⁴ Dan Cruickshank therefore comments that Charteris offended ‘the obligations of his caste. Gentlemen were not expected to be moral examples but they were expected to be brave and just.’²¹⁵

Charteris was also notorious for his sexual exploits, leading the Duke of Argyll to label him ‘a Monster of Wickednesse’ in 1702.²¹⁶ He employed procuresses, including the infamous Elizabeth Needham, and a man nicknamed ‘Handy Jack’

²¹¹ *Scotch Gallantry Display'd; Or, The Life and Adventures of the Unparallel'd Col. Francis Charteris, impartially related. With some remarks on other writers on this subject.* (London: printed for, and sold by the booksellers in town and country, 1730) p.2.

²¹² See Hurly, Patrick, *An Answer to Col. Charteris's Second Libel, which he calls, His Humble Representation, &c.* (S.I.: s.n., 1711); Hurly, Patrick, *An Answer to the Affidavits Lately Procur'd by Lieutenant Colonel Charteris, about False Musters* (S.I.: s.n., 1711); Hurly, Patrick, *An answer to the false and scandalous libel, lately stol'n into the world, under the title of The Memorial for Lieutenant Colonel Charteris* (S.I.: s.n., 1711).; Hurly, Patrick, *The Case of Several Persons from whom Lieutenant Colonel Charteris Extorted Money for Protecting them from their Creditors* (S.I.: s.n., 1711).

²¹³ See TNA: PRO: C 104/196, C 11/644/36, C 11/228/37, C 11/752/11, C 11/2745/7, C 11/2369/3, C 11/1419/10, C 11/1994/19, C 11/2169/44, C 11/1719/38, C 11/1430/17, C 11/2005/26, C 11/2358/60, C 11/1441/15, C 11/1477/15, C 11/1203/19, C 11/1478/22 for further details.

²¹⁴ He was born into a family of lawyers who were important within Edinburgh's legal community. He also developed a close relationship with the eminent Scottish lawyer Duncan Forbes who he allowed to stay in his house at Stoney Hill.

²¹⁵ Dan Cruickshank, *The Secret History of Georgian England* (London: Random House, 2010) p.203.

²¹⁶ Scottish National Archives Church Papers, CG1/2/3/2, f.226 v.

Gourlay, to obtain ‘likely’ women to satisfy his desires.²¹⁷ Among his many conquests was the infamous prostitute Sally Salisbury, who Burford asserts was introduced to Charteris by Needham around 1708.²¹⁸ Norman Milne suggests that in 1720 Charteris established a branch of the Hell Fire Club in Edinburgh.²¹⁹ Most notably, Charteris was a habitual rapist. As Philip Beaufoy Barry explains ‘[n]ot to many men has it been given to be tried and sentenced to death for a serious crime, and at a later time to be tried again for the same offense and once more sentenced. Charteris gained this distinction.’²²⁰ Charteris was investigated as the result of rape accusations on four separate occasions prior to the incident with Bond. In 1702 he was called before the General Assembly of the National Church on charges of gross immorality occasioned by three allegations of rape and formally rebuked.²²¹ In 1721 he was convicted of the crime at the High Court of Justiciary in Edinburgh however the King pardoned him on New Year’s Day 1722. He was found innocent of a second case heard in Edinburgh. The third case, heard in 1728, prompted *Fog’s Weekly* to remark that this was ‘a Misfortune’ that he seemed ‘very liable to’.²²² Linda Stratman therefore concludes that the public appeal of the case lay in the prosecution of a man whose actions were ‘long overdue’ legal reprisal.

The present chapter reconstructs the contemporary experience of learning about the case by recounting the details provided to readers as they appeared in chronological order in the press. Section one addresses reports of the trial in the contemporary press, considering the aspects of the case that were documented and therefore perceived to be of interest to readers. Section two evaluates the trial reports later published about

²¹⁷ Cruikshank provides an excellent analysis of the methods by which procurers obtained these women in his Prologue.

²¹⁸ E. J. Burford, *Wits, Wantons and Wenchers – London’s Low Life: Covent Garden in the Eighteenth Century* (London: Hale, 1986) p.47.

²¹⁹ Milne, p.92.

²²⁰ Philip Beaufoy Barry, *Sinners Down the Centuries* (Plymouth: The Mayflower Press, 1929) p.158. Pope also comments on this in ‘Of the Use of Riches’, stating that ‘He was twice condemned for rapes and pardoned; but the last not without imprisonment in Newgate, and large confiscations.’ (p.177)

²²¹ Scottish National Archives Church Papers, CG1/2/3/2, f.226 v.

²²² *Fog’s Weekly Journal*, 20 December 1729 (65).

Charteris' hearing and conviction by comparing and contrasting the different information presented by 'official' and 'unofficial' sources. Section three discusses Charteris' appeal and pardon, providing details of the legal process and the limited information about it that was made available in print. Contrary to the perspective proposed by Simpson that Charteris' pardon drew attention as evidence of the political and legal favoritism of the wealthy, the scarcity of published details of Charteris' suit against his conviction and attainder suggests that it held limited appeal to readers.²²³ The final section focuses on Charteris' alleged impotence as an unusual aspect of the case, and one which contributed to its popular appeal. Whilst Charteris' wealth, social notoriety, conviction and pardon have all been cited as causes of the trial's popularity in the press, the role of his impotence has not, as yet, received critical attention.

I. Events of the trial in the press

Reports of criminal activity were prominent in the early eighteenth-century press. Newspapers provided the largest source of information about rape, reporting trials and accusations that did not reach trial, either because they were 'made up' or the evidence was not deemed sufficient to warrant legal investigation.²²⁴ The production speed of the press, and the fact that rape trials were often reported from the moment of accusation through to the legal resolution, meant that the newspapers provided the earliest published information about rape cases.²²⁵ The first record of Bond's accusations against Charteris appears in the press seventeen days after the incident was alleged to have been perpetrated. Despite the delay between the rape and the printed report, the press provides the earliest record of Bond's allegations, the Bill that was drawn up against Charteris, the trial, and the sentence. The newspaper reports also capture pertinent information about other events coinciding with the trial that help to

²²³ See Walker's research on this in 'Rape Acquittal', pp.115-117.

²²⁴ Ibid.

²²⁵ See Ward's discussion of crime reporting in newspapers in *Print Culture*, p.133.

inform an analysis of how Charteris was perceived by the public and why the case was so appealing to authors, publishers, and readers.

On 27 November 1729 the *London Evening Post* published the first report of Bond's allegations against Charteris: 'Yesterday the Grand Jury for the County of Middlesex found a Bill of Indictment against Col. Chartres, for an Assault with Intent to ravish a Maid Servant who came to him to be hired.'²²⁶ The Bill of Indictment marks an important stage in the judicial process, implying a measure of legal endorsement of Bond's claims. On 10 December 1730 the *Daily Post* reported the Grand Jury's decision to rephrase the offence as a rape, signifying that the evidence supplied by Bond was considered to exceed the requirements of the original charge of assault with intent:

At the last Sessions of the Peace held at Hick's-Hall for the County of Middlesex, a Bill of Indictment was found by the Grand Jury (one having been found before at Westminster, for an Assault with an Intent to Ravish, &c.) against a *certain Colonel* for Felony, in committing a Rape on the Body of Anne Bond, Spinster, a Person of good Character.²²⁷

Given the popular perceptions of a prosecutrix's testimony in rape cases discussed in the previous chapter, the comment in the newspaper report that Bond is 'a Person of good Character' emphasizes the legal endorsement of her claims. The reference to Charteris as a '*certain Colonel*' assumes that readers will be able to infer his identity, possibly signifying that the case was already popular knowledge. The news of Charteris' indictment certainly spread quickly across the country. It was reported in Edinburgh by the *Echo*, the first newspaper to name the defendant, on 10 December 1729: "[t]is said that a Bill of Indictment was found Yesterday by the Grand Jury of Middlesex, against

²²⁶ *London Evening Post*, 27 November 1729 (308). However, the records of the County of Middlesex Sessions only record this action as pending. London Metropolitan Archives MJ/SB/B/0086.

²²⁷ *Daily Post*, 9 December 1729. This extract is reprinted in *Fog's Weekly Journal*, 20 December 1729 (65); *Universal Spectator*, 20 December 1729 (LXIII); *Weekly Journal or British Gazeteer*, 20 December 1729 (238), *Echo or Edinburgh Weekly Journal*, 31 December 1729 (LII).

Col. Charters, for attempting to commit a Rape on a Maid Servant who came to be hired to him'.²²⁸

Charteris was not imprisoned after the Bill of Indictment was passed as commonly occurred. Instead, he embarked on a journey to Brussels via France, departing from Dover on 9th December 1729.²²⁹ Charteris' trip was occasioned by his litigation against Francis Child, an Alderman of London.²³⁰ Charteris claimed that Child had paid him with a forged Bill of Exchange for the sum of five thousand pounds.²³¹ The case was complicated when Child accused Charteris of defamation.²³² The trial, that was due to be heard at the Guildhall on 15 November 1729, was deferred 'because some of the Colonel's most material Witnesses *are a little out of the Way*'.²³³ Charteris set out 'for Brussels to bring over two Material Witnesses in the Cause depending between him and Mr. Alderman Child, relating to the 5000l'.²³⁴ It is likely that Charteris was unable to secure his witnesses because when he returned to London he submitted a motion, subsequently denied, to stop the proceedings against Child.²³⁵ Instead, Charteris 'made up' the case by paying the sum of the Bill and court costs to Child.²³⁶ The public, it appears, eagerly awaited Charteris' return. The *Daily Post* reported on 7 January 1730 that 'Col. Charteris is every Day expected here from

²²⁸ *Echo or Edinburgh Weekly Journal*, 10 December 1729 (XLIX).

²²⁹ The *Daily Post* remarks that 'On Saturday last Col. Chartres set out with a great Retinue for Brussels.' (8 December 1729, 3188). See also *Daily Journal*, 12 December 1729 (2787); *Universal Spectator*, 20 December 1729 (LXIII); *Daily Post*, 19 December 1729 (3198); *Weekly Journal or British Gazetteer*, 13 December 1729 (237).

²³⁰ TNA: C 11/1477/15.

²³¹ *Grub Street Journal*, 15 January 1730 (II); *Universal Spectator*, 15 November 1729 (lvIII); *Monthly Chronicle*, November 1729; *Daily Post*, 10 November 1729, (3164); *British Journal or The Censor*, 15 November 1729 (98); *The Craftsman*, 15 November 1729 (176).

²³² *Universal Spectator*, 13 December 1729 (lxii): 'On Friday Night last Week Colonel Chartres was serv'd with the Copy of a Writ for Defamatory Words spoken at the Rainbow Coffee-House in Fleetstreet against Mr. Alderman Child.'

²³³ *British Journal*, 27 January 1729 (104); *Grub Street Journal*, 15 January 1730 (II).

²³⁴ *Ibid.*

²³⁵ *Daily Post*, 21 January 1730 (3226); *Fogs Weekly Journal*, 24 January 1730 (70); *Universal Spectator*, 24 January 1730 (lxviii); *Country Journal or The Craftsman*, 24 January 1730 (186).

²³⁶ *London Evening Post*, 22 January 1730 (332); *Daily Post*, 24 January 1730 (3229). Impartial Hand implied that this demonstrated Charteris' guilt and commented that 'the Colonel not caring to stand to a Jury, (which always prov'd fatal to him) paid the Alderman the Money, and the Charges' (*Authentick Memoirs*, p.51). Similar remarks are expressed in Anon, *The Life of Colonel Don Francisco* (London: printed for the author, 1730) pp.51-53; *Scotch Gallantry Display'd*, p.6; Anon, *The History of Colonel Francis Ch-Rtr-s*, 2nd edn., (London: printed for the author, 1730) pp.43-44.

Brussels.²³⁷ ‘Country News’, dated 16 January 1730 and echoed in the *London Evening Post*, *Daily Journal*, *Grub Street Journal*, *British Journal* and *Universal Spectator*, reported that, having returned to Dover the previous night, Charteris ‘set out this Morning early for London’.²³⁸

On 26 February 1730 Charteris appeared at the Court of the Old Bailey to answer Bond’s accusation.²³⁹ *The Proceedings*, which did not record the trial until 28 February, provided only sparse details of the case:

Francis Charteris, of St. George’s Hanover-Square, Esq; was indicted, for that he, not having the Fear of God before his Eyes, but being moved by the Instigation of the Devil, did on the 10th of November last, Ravish, and Carnally know Anne Bond, Spinster, against the Will of the said Anne Bond, against the Peace of our Sovereign Lord the King, his Crown and Dignity, and against the Statute in that Case made and provided.

To this Indictment, the prisoner pleaded not Guilty; and for his Trial, put himself upon God and his Country, &c.

After a long Hearing he was found Guilty of the Indictment. Death.²⁴⁰

The lack of information about the trial’s events is surprising in comparison to other rape trials reported in *The Proceedings*, especially because the proceedings took so long.²⁴¹ Charteris’ case lasted for four hours and the jury deliberated on the verdict for between 15 and 45 minutes.²⁴² Simpson contends that this was due to the unusual presence of counsel for the prosecution and the defence.²⁴³ The trial was unique as one of the

²³⁷ *Daily Post*, 7 January 1730 (3214). Also reported in *London Evening Post* 6 January 1730-8 January 1730 (325).

²³⁸ *London Evening Post*, 17 January 1730 (330); *Daily Journal*, 20 January 1730 (2820); *Grub Street Journal*, 22 January 1730 (III); *British Journal*, 24 January 1730 (108); *Universal Spectator*, 24 January 1730 (lxviii).

²³⁹ *Daily Post*, 26 January 1730 (3257): ‘This Day a certain noted Colonel is to be try’d at the Old Bailey for a Rape.’

²⁴⁰ *The Proceedings*, t17300228-69.

²⁴¹ Examples of the length of rape trials in the 1730s that resulted in conviction include the trial of John Canon, 12 September 1733, t17330912-55 (1279 words), and Samuel Gregory, 22 May 1735, t17350522-20 (2229 words). Rape trials that resulted in acquittal appear slightly shorter. See Trial of William West, 4 July 1730, t17300704-62 (1368 words); Trial of John Collier, 14 October 1730 (964 words); Trial of Alexander Reyton, 4 December 1730, t17301204-23 (600 words) (*The Proceedings*).

²⁴² Simpson contends that ‘the jury deliberations took fifteen minutes’ (‘Popular Perceptions’, p.58. Payne states that ‘After a very short Stay, (of about a Quarter of an Hour,) the Jury found the Prisoner guilty,’ p.16). The *London Journal* comments that the jury deliberated for ‘about Three Quarters of an Hour’ (28 February 1730, 552). This is also noted in the *Weekly Journal or British Gazetteer*, 28 February 1730 (248). See Beattie, *Crime and the Courts*, p.376.

²⁴³ See Simpson, ‘Popular Perceptions’, p.58. It was unusual for any counsel to be present at a trial likely due to the cost of obtaining legal services. It was therefore common practice for the prosecution to be conducted by the victim. However, five lawyers were present at Charteris’ hearing. Mr. Kettleby was the

earliest examples of the ‘defence counsel [...] at work’.²⁴⁴ The first account of Charteris’ trial and conviction, published the day of the trial in the *London Evening Post*, provides significantly more information than *The Proceedings*. It reports that:

Col. Chartres surrendered himself to the Court at the Old Bailey, a Bill of Indictment having been found against him at Hick’s-Hall, for ravishing Anne Bond, Spinster, his Servant Maid, of which he was convicted capitally; he brought several Witnesses on his Defence, who were his Servants, but their Depositions contain’d many Contradictions and Inconsistencies; several Persons appear’d on Behalf of the young Woman, who gave her the Character of a very honest and virtuous Person. It appears, among other Things, that to prevent her crying out he cramm’d his Handkerchief down her Throat, and almost choak’d her: His chief Defence was a sham Letter, sworn to by his Footman to come from her, which was prov’d to be a Forgery.²⁴⁵

The veracity of the statements made by the witnesses for the defence is depicted as questionable because of the bias introduced by the master-servant relationship. In contrast to Charteris, Bond’s role as a victim is emphasized by reports of the force used on her and descriptions of her good character. The version of events found in this account is supported by those published in London’s other newspapers on 27 and 28 February, which mirror the verdict of Charteris’ guilt.²⁴⁶ These reports omit details of the ‘inconsistencies’ in Charteris’ defence, remarked on by the *London Evening Post*, that might have allowed readers to question the verdict and comment only on the ‘Letter’ that is proven to be false. The *London Journal* and the *British Gazetteer*, which provide the fullest record of Bond’s deposition about her rape, call further attention to the force exerted on her by Charteris who ‘threw her on a Couch, and she crying out, he pull’d off his Cap and stopp’d her Mouth, and then did the Crime for which he was indicted’.²⁴⁷

After his conviction Charteris was taken to Newgate to await sentence, which

counsel for the prosecution and Mr. Strange was the counsel for the defence. Three judges, Justice Price, Justice Probyn, and Mr. Baron Thompson, the Recorder of London, presided over the case.

²⁴⁴ Langbein, *Origins*, p.178. See Langbein, ‘Prosecutorial Origins’, pp.314-65 for further details.

²⁴⁵ *London Evening Post*, 26 February 1730 (347).

²⁴⁶ *Daily Courant*, 27 February 1730 (8856); *Daily Post*, 27 February 1730 (3258); *British Journal*, 26 February 1730 (113); *Monthly Chronicle*, February 1730; *London Journal*, 28 February 1730 (552); *Universal Spectator and Weekly Journal*, 28 February 1730 (LXXIII); *Weekly Journal or British Gazetteer*, 28 February 1730 (248).

²⁴⁷ *London Journal*, 28 February 1730 (552).

was passed on 28 February 1730.²⁴⁸ He was sentenced to execution and was attainted.²⁴⁹ The High Bailiff seized Charteris' property from his house in Hanover Square that evening and orders were sent to the Sheriff of Lancashire to implement the process at his three estates in the county.²⁵⁰ Newspapers published on 28 February reported that 'after he was cast for his Life [...] he was carried up to Newgate, and seem'd greatly dispirited'.²⁵¹ Imprisonment, for a rich man, was not quite the horrific prospect it was for the poor: for 2s. 6d. a week, he would have been able to purchase a private room with a bed and clean bedding.²⁵² According to *The Newgate Calendar* Charteris not only availed himself of this but also exchanged his fetters for 'a lighter pair' and paid for 'a man to attend him'.²⁵³

Newspaper reports of the Charteris case were brief, in accordance with the type of publication. Although the press documented the key aspects of the Charteris case, the reports did not record the full judicial process or the range of arguments made by the prosecution and defence, information that was later provided by the pamphlets discussed in the next section. The volume of entries published in the various newspapers that referred to the Charteris trial indicates the appeal of the case and signals a readership interested in information about the legal proceedings and Charteris' exploits.

²⁴⁸ *Daily Post*, 2 March 1730 (3260); *Grub Street Journal*, 5 March 1730 (IX); *The Craftsman*, 7 March 1730 (192). It was common practice for sentence to be passed at once on all those deemed guilty at the end of the Sessions heard at the Old Bailey.

²⁴⁹ An attainder could be passed by the King without a judicial trial. In the case of a convict an attainder was supplementary to the verdict and was used in serious crimes such as Treason or Felony. Charteris was Attainted by Verdict. Jacob explains that an 'Attainder by Verdict is when the Prisoner at the Bar pleadeth Not guilty, and is found guilty by the Verdict of the Jury of Life and Death.' See Jacob 'Attainder', *New Law Dictionary*, p.633.

²⁵⁰ *Monthly Chronicle*, February 1730; *London Journal*, 28 February 1730 (552); *Weekly Journal or British Gazetteer*, 28 February 1730 (248); *Universal Spectator and Weekly Journal*, 28 February 1730 (LXXIII).

²⁵¹ *London Journal*, 28 February 1730 (552); *Universal Spectator and Weekly Journal*, 28 February 1730 (LXXIII).

²⁵² See Anon, *A Report from the Committee Appointed to Enquire into the State of the Goals of this Kingdom* (London: printed for Robert Knaplock, 1729) p.16.

²⁵³ *The Malefactor's Register; Or, the Newgate and Tyburn Calendar* (London: printed, by authority, for Alexander Hogg, 1779) p.215.

II. Reading the trial

Although the newspaper reports provide the earliest details about the Charteris trial they are only one source of the published information in circulation. Pamphlets supplemented the shorter records found in the press with details about the arguments made by the prosecution and defence. By the eighteenth century, and particularly in the case of sensational trials, the ‘official’ trial reports were often accompanied by ‘unofficial’ salacious accounts of the proceedings. Laurence Stone suggests that critics must appreciate the distinction between official and unofficial records of court proceedings.²⁵⁴ ‘Official’ trial reports, as Langbein notes, were written for a legal and non-legal audience and were considered to represent an accurate portrayal of the case. In contrast, the ‘unofficial’ accounts of court cases, written for an audience outside of the legal profession, generally sensationalized the material, selecting information that would appeal to the reader, and were interested in the moral messages conveyed by the case. The different intentions behind these forms of trial reports meant that the messages implied by the authors about the same trial could differ, increasing the trial’s interpretive possibilities and the ideas about rape that were conveyed. This section explores the types of information and ideas about the Charteris case, and about rape more widely, that were distributed by the ‘official’ and ‘unofficial’ trial reports, and how these different accounts complemented and contrasted with one another. The trial is particularly interesting because publication of the ‘official’ report was delayed by two months meaning that readers were reliant in the first instance on ‘unofficial’ sources to obtain details of the case.

The first account of the trial in pamphlet form was anonymously written and published by A. Moore on 2 March 1730, entitled *The Tryal of Colonel Francis*

²⁵⁴ Stone, pp.248-253.

*Chartres, for a Rape Committed by him on the Body of Mrs. Anne Bond.*²⁵⁵ Priced at 6d. the pamphlet was accessible to a wide audience. Moore's account of the case was reprinted in J. Morgan's *The New Political State of Great Britain*, a work that noted key events of 1730 including legislative and political changes, deaths, and trials.²⁵⁶ Adverts in the newspapers suggest that two further accounts of the trial were published in pamphlets in March but these texts have not survived to the present day.²⁵⁷ Three reports of the trial were published in April in pamphlets priced between 4d. and 6d.²⁵⁸ The most detailed of these was the long awaited 'official' report, which was published by T. Payne on 30 April 1730 and sold for 6d, entitled

*The Proceedings at the Sessions of the Peace, and Oyer and Terminer, for the City of London, and Country of Middlesex, held at Justice-Hall in the Old-Bailey, on Friday the 27th of February last, before the Right Honourable Sir Richard Bocas, Knt. Lord Mayor of the City of LONDON; the Honourable Mr. Justice Price, Mr. Justice Probyn, and Mr. Baron Thompson, upon a Bill of Indictment found against Francis Charteris, Esq; for committing a Rape on the Body of Anne Bond, of which he was found Guilty.*²⁵⁹

Tryal, published by Moore, and Payne's *Proceedings*, are generally consistent in the key facts of the case but some discrepancies arise. They note that the rape occurred on 10 November 1729 yet the recorded date of the trial is strikingly inconsistent in Moore's, Payne's and Morgan's accounts. Moore's title page declares that the case was

²⁵⁵ *The Tryal of Colonel Francis Chartres, for a Rape Committed by him on the Body of Mrs. Anne Bond.* (London: Printed for A. Moore, 1730). The publisher's name is fictitious. Sylvanus Pepyat published a text under the same title in Dublin but the contents were a reproduction of Payne's pamphlet. See Anon, *The Tryal of Colonel Francis Charteris. For a Rape Committed on the Body of Anne Bond; who was Tried and found Guilty at Justice-Hall in the Old Bailey, on Fryday the 27th of February 1729/30* (Dublin: London printed, Dublin reprinted by and for Sylvanus Pepyat, 1730).

²⁵⁶ Anon, *A Collection of Remarkable Cases, for the Instruction of Both Sexes, in the Business of Love and Gallantry* (London: printed by J. W. For J. Catturns, 1730); J. Morgan, *The New Political State of Great Britain* (London: A. Campbell, 1730) pp.117-126, 265 & 279. Morgan's *Political State* was not exclusively a case law compilation however it did document key cases that were of public interest.

²⁵⁷ The *Daily Post* advertises the sale of 'A Collection of Remarkable Cases' that contains the trial of Charteris on 7 March 1730 (3265). The *Daily Journal* records that 'There having been several scandalous Pamphlets printed since the Trial of Col. Chartres, in common Justice to the Publick, as well as to the Colonel, several Persons have voluntarily made their Affidavits, upon hearing what was sworn by Anne Bond, which will be printed and published on Friday next. (17 March 1730, 1868; also printed in the *Daily Post*, 17 March 1730, 3273).

²⁵⁸ On 29 April Charteris' trial was published in volume I of *The History of Executions* that was priced at 4d. Volume II of the text, which also included the case and was priced at 4d., appeared the following day. See *Daily Journal*, 29 April 1730 (2905) and *Grub Street Journal*, 30 April 1730 (17) for adverts of these texts.

²⁵⁹ *The Proceedings at the Sessions of the Peace, and Oyer and Terminer* (London: T. Payne, 1730).

heard ‘At the Sessions held at *Justice-Hall* in the *Old Bailey*, on *Thursday* the 26th of February, 1729-1730’.²⁶⁰ This appears to be verified by the newspaper articles but in Payne’s ‘official’ publication the case is dated ‘the 27th of February’.²⁶¹ Notably, Morgan’s *Political State*, which generally reproduces Moore’s account of the trial, adds further confusion by claiming that the trial took place on 25 February.²⁶² It is possible that the date was altered as a correction of Moore’s pamphlet yet at the end of the entry Morgan comments that ‘These Tryals of Mr. *Lyddel*, Mr. *Ward*, and Colonel *Charteris*, are taken from Papers already printed, and we can no otherwise vouch for their Genuineness.’²⁶³

The content of the indictment, as it was read against Charteris when the trial began, and the style in which it is reported differs between the publications. *Tryal* informs us that Charteris:

*violently and feloniously assault[ed] Anne Bond, Spinster, and by Compulsion and against the Will and Consent of the said Anne Bond, did force the said Anne Bond, so that you had carnal Knowledge of her Body, or, as the Law expresses it, Penetravit corpus ejecit in corpore, that you forcibly enter’d her Body, and satisfied you lustful Desires, contrary to the Peace of our Sovereign Lord the King.*²⁶⁴

The terminology used to describe Charteris’ offence in *Tryal* focuses on sexual and physical characteristics and, in its biological explicitness, appears almost licentious. It documents a forceful material act of carnal lust, of sexual penetration and the ejaculation of semen. In contrast, Payne provides a staid and factual report that defines Bond’s rape in legal terminology as an ideological offence against the king and the law, stating that Charteris:

Did on the 10th of *November* last, Ravish, and Carnally know *Anne Bond*, Spinster, against the Will of the said *Anne Bond*, against the Peace of our

²⁶⁰ Moore, title page, p.2.

²⁶¹ Payne, title page, p.2.

²⁶² Morgan, p.117.

²⁶³ Ibid, p.126.

²⁶⁴ Moore, p.4.

Sovereign Lord the King, his Crown and Dignity, and against the Statute in that Case made and provided.²⁶⁵

The sensational, scandalous tone of *Tryal* is emphasized in comparison with Payne's sombre and legalistic phrasing. 'Carnal knowledge' was a commonly used term in rape cases and understood to encompass penetration and emission. The explicit physicality of Moore's description reflects the wider character of trial publications as 'the most scandalous literature in London'.²⁶⁶

The prosecution's case began on 24 October 1729 when 'a Woman, who was a Stranger to her', approached Bond in London.²⁶⁷ The woman, who was later revealed to be Elizabeth Needham, an infamous eighteenth-century procuress who obtained women for Charteris, offered her employment with 'a very honest Gentleman, one Colonel Harvey'.²⁶⁸ Needham accompanied Bond to Charteris' house in George Street where she was received by him and offered a position as a maid for which she was to be paid five pounds per annum.²⁶⁹ The Colonel also offered to provide her with 'a clean Shift every Day' but Bond 'modestly refus'd'.²⁷⁰ Shortly after Bond began her new position, Charteris 'began to be very free and familiar with her; and [...] made her a Present of a fine Snuff-Box'.²⁷¹ Bond refused the gift but he insisted that she should keep it safe for him. Moore comments that, at this point, Charteris had made no 'rude, uncivil or immodest Action[s]' towards Bond and therefore she 'never harbour'd a thought that her Master had any dishonourable Design, or Intent to ruin her'.²⁷² This account removes blame from Bond because, with no precedent, she had no indication that she needed to take action to guard herself against Charteris. Payne's pamphlet contradicts

²⁶⁵ Payne, p.4.

²⁶⁶ Peter Wagner, 'Pornography in the Courtroom: Trial Reports about Cases of Sexual Crimes and Delinquencies as a Genre of Eighteenth-Century Erotica', *Sexuality in Eighteenth-Century Britain*, ed. by Paul Gabriel Boucé (Manchester: Manchester University Press, 1982) p.20.

²⁶⁷ Moore, p.4 and Payne, p.4.

²⁶⁸ Moore, p.4. Charteris' pseudonym is also noted in Payne, p.4

²⁶⁹ Moore, p.4.

²⁷⁰ Ibid, p.4.

²⁷¹ Ibid, p.4.

²⁷² Ibid, p.4.

this, stating that Charteris ‘tempted her to lye with him, and offer’d her a Purse of Gold [...] and told her, that he would give her fine Clothes and Homely, and a House to live in, and would also get her a Husband’.²⁷³ Although Payne records that Bond refused these offers, his readers may have questioned why she remained in his employ when she was aware of his intentions.

Moore implies that Bond became concerned about her master’s intentions when she was ordered by the Housekeeper to sleep ‘in the Truckle Bed’ in Charteris’ room to attend to him during the night because he was ‘indisposed’.²⁷⁴ Bond agreed after being assured that the curtains around his bed would remain shut to allow her privacy. Later that night however Charteris sent for the Housekeeper to join him in bed and summoned Bond to join them so that he might ‘lye in State’.²⁷⁵ Bond refused to comply, spending the remainder of the night in the kitchen, and declining further bribes offered by Charteris in exchange for sex. He then decreed that ‘since she would not condescend to lye with him, she should have no other Bed’ and ordered his other servants to lock the ‘Street Door’ so as ‘not to let her go’.²⁷⁶

Payne’s pamphlet tells a different story. It states that Bond was imprisoned in the house after discovering her employer’s real identity on the third day of her employment. She exclaimed to the Housekeeper ‘that having heard of his Character, she would not have come to him if she had known his right Name’.²⁷⁷ The narrative also reports that Bond spent four nights in the truckle bed in Charteris’ room before he asked her to join him in his bed.²⁷⁸ The pamphlet records this as a contentious point in the trial. It states the Bond was asked ‘How she came to lie in the Truckle-Bed in the same Room with him after his offers to lie with her? Which she said were so disagreeable to her, that she

²⁷³ Payne, p.4. In Moore’s account, this offer was made to Bond after she refused to have sex with him Bond did not accept the offer and was locked in the house. (Moore, p.5. See next paragraph).

²⁷⁴ Moore, p.4. Payne reports that Bond spent four nights in the truckle bed before Charteris asked her to join him in his bed (p.6. See next paragraph).

²⁷⁵ Ibid, p.4.

²⁷⁶ Payne, p.5.

²⁷⁷ Ibid, p.3.

²⁷⁸ Ibid, p.6.

resolved to get away from the House if in her Power.’²⁷⁹ The questions imply that Bond knowingly placed herself in a compromising situation and as such implicitly suggest her consent.

On the morning of 10 November 1729, ‘the fatal Day specif’y in the Indictment’, Bond was called to attend upon Charteris.²⁸⁰ Moore reports that:

Mr. *Gordon*, Clerk of the Kitchen [...] told this Deponent, that she must go up to her Master which she accordingly did; that as soon as she enter’d the Room, the Prisoner at the Bar bid her stir the Fire, and, in the mean time he lock’d the Door, and suddenly catching her up in his Arms, forcibly threw her on a Couch, which stood by the Fire-side, when by the Violence which he then and there us’d, he had Carnal Knowledge of her.²⁸¹

Moore describes the incident as fact. In contrast, Payne asserts that this is Bond’s testimony as opposed to a verified event by commenting ‘she says’, a perspective that is reinforced throughout *Proceedings*.²⁸²

Moore’s pamphlet describes Bond’s rape in such a way that it meets the legal requirements of a rape. The element of force is asserted ‘by the Violence which he then and there us’d’ when Bond is thrown onto the couch.²⁸³ The question of whether Bond consented is satisfied when she is asked ‘whether she made any Resistance, and whether she cry’d out for Help?’²⁸⁴ Bond replies that ‘she resisted as long as she was able’ but was unable to call for help because Charteris gagged her with ‘his Night-Cap’.²⁸⁵ The proof of penetration and emission is provided when Bond states that Charteris pulled up her clothes and pulled down his breeches after which followed ‘*A great deal of Wet*’.²⁸⁶ In contrast, Payne’s pamphlet, which mentions that Charteris ‘threw’ Bond on the couch and that ‘he stopped her Mouth with his Night-Cap’, does not record evidence of penetration and emission, which had not been verified by the testimony of medical

²⁷⁹ Ibid, p.7.

²⁸⁰ Moore, p.5.

²⁸¹ Ibid, p.5.

²⁸² Payne states ‘She said, she cry’d out’ (p.5), ‘she said, the Room was next the Street’ (p.5) and ‘She said, she went away that Day’ (p.6).

²⁸³ Moore, p.5.

²⁸⁴ Ibid, p.5.

²⁸⁵ Ibid, p.5.

²⁸⁶ Ibid, p.5.

professionals in court.²⁸⁷

Moore's and Payne's pamphlets state that after the rape Bond informed Charteris of her intention to prosecute him. Charteris initially tried to pacify her.²⁸⁸ When that failed he 'took up a Horse-Whip and lash'd her with it very severly'.²⁸⁹ Charteris then charged Bond with the theft of some money and a snuffbox, which he had previously given to her, and turned her out of the house without her belongings.²⁹⁰ Bond sought aid from an acquaintance called Mary Parsons.²⁹¹ In addition to this information, *Tryal* reports that, under Parson's advice, Bond approached Mr. Biss who supported her to seek an indictment against Charteris from Lord Chief Justice Raymond.²⁹² The witness statements of Mary Parsons and Mr. Biss, as reported in *Tryal* and *Proceedings*, verified Bond's testimony, whilst depositions taken from previous employers established her good character.²⁹³

Unsurprisingly, the defence produced an alternative sequence of events that sought to discredit Bond's deposition. Moore's account reports that Charteris claimed that the 'Prosecution was only carry'd on to extort Money from him'.²⁹⁴ Testimony reported by Payne suggested that Bond, who had 'never made the least Complaint of any ill Usage till after her being charged with taking the Money', accused Charteris of rape in retaliation when he suspected her of theft.²⁹⁵ Charteris' 'chief Servant', Jack Gordon, deposed that Charteris called Bond to the room in which the rape was alleged to have occurred to accuse her of stealing the snuffbox and guinea which Bond claims that he

²⁸⁷ Payne, p.5.

²⁸⁸ Moore reports that Charteris 'began to sooth her Temper, and calm her Rage' but found that 'no Offers or Persuasion could prevail on her to put up with his barbarous Treatment' (p.5). Payne states that Charteris 'threaten'd he would be the Death of her, if she told' (p.6).

²⁸⁹ Moore, p.5. Payne reports that 'he whipp'd her with a Horse-whip over her Back and Head' (p.6).

²⁹⁰ Moore, p.6. Payne does not mention the snuff box. He asserts that Charteris stated she had 'Robb'd him of twenty Guineas.' (p.6)

²⁹¹ Moore, p.6. Payne, pp.7-8.

²⁹² Moore, p.6.

²⁹³ Parson's and Bliss' testimony cited in Moore, p.6 and Payne, pp.7-8. For employer's depositions see Moore, p.7 and Payne, p.15.

²⁹⁴ Moore, p.6.

²⁹⁵ Payne, p.9.

gave her.²⁹⁶ Gordon was ordered to search her person but found nothing. However, in Bond's room he discovered 'his Master's Snuff-Box behind the Grate, in which there was one Guinea'.²⁹⁷ He further commented that neither he nor the other servants 'heard any Noise, or crying out' that might suggest a rape was taking place.²⁹⁸

Moore's pamphlet treats the information provided by the defence as false. Rather than recording Charteris' words the account states that the 'Defence, would have insinuated as if *she* had frequently granted him Favours'.²⁹⁹ Charteris' servants Thomas Davis and Margaret White testified to having seen Bond in bed with Charteris of her own volition.³⁰⁰ These statements are discredited in Moore's account. Davis' presence in the bed chamber is portrayed as an unusual and presumptuous 'Liberty' whilst White's character is questioned when she admits to knowing the meaning of the 'Vulgar' expression 'lying in State'.³⁰¹ In Payne's pamphlet Davis' and White's depositions are reported but no comments are attached to them, and similar testimony is provided by Mr. Gordon, Hannah Liscomb (Charteris' housekeeper), Thomas Cooper (the Master of a Ship), and Thomas Vaux (a sadler).³⁰² The witnesses in Payne's account also imply that Charteris was impotent and therefore unable to have committed the rape on Bond. Liscomb testified that she heard Bond say that 'her Master's Instrument was worn out, and as he had a great deal of Money it should be tipp'd with Silver', thus suggesting his inability to copulate.³⁰³ Gordon added that Bond said that Charteris was 'not able to please a Woman'.³⁰⁴ Thomas Vaux reported asking Bond about Charteris' sexual performance to which she replied that he could not penetrate a woman because 'his Affair was no better than a Piece of Pudding', meaning that he

²⁹⁶ Ibid, pp.8-9.

²⁹⁷ Ibid, p.9.

²⁹⁸ Ibid, p.9.

²⁹⁹ Moore, p.6.

³⁰⁰ Ibid, p.7.

³⁰¹ Moore, p.7.

³⁰² Payne, Davis' testimony, p.12; White's testimony, pp.14-15; Gordon's testimony, pp.8-9; Lipscomb's testimony, p.13; Cooper's testimony, p.14; Vaux's testimony, pp.13-14.

³⁰³ Payne, p.13.

³⁰⁴ Ibid, p.9.

could not achieve an erection.³⁰⁵

The method by which Bond was hired was a key point raised by the defence. Moore's pamphlet reports that Bond sent Charteris a letter prior to her employment with him. A 'Gentleman' testified to being present when Bond delivered the letter. Charteris 'order'd her up Stairs [...where] she paid her Respects to the Colonel'.³⁰⁶ Payne's pamphlet expands on this account. It reports that the gentleman, named as Mr. Irving, suggested that Bond was not procured by Needham but had instead approached Charteris herself through the following letter:

Hon. SIR,

I Understand you are in Town, if your Honour pleases, I should be glad to wait on you; I came from Cockeram in Lancashire; I came the next Door to Mr. Jones, and should be glad to wait on you; if your Honour pleases to give me that Liberty, prey pardon this Freedom, I am with humble Submission, and the greatest Respect,

Your Humble Servant.
Anne Bond.

I wait at your Door for

An Answer.³⁰⁷

On receipt of the letter it was alleged that Charteris invited Bond to join him.³⁰⁸ Gordon, who was also present, stated that Bond had been ill which prevented her from working and had been forced to pawn her clothing. Charteris responded to Bond's predicament by redeeming her clothing and offering her employment. Bond denied this version of events.³⁰⁹ When the letter is mentioned briefly in Moore's pamphlet it is noted that it was disproved in court when Bond was asked to write her name because it 'appear'd to be [in] a quite different Hand from the Letter'.³¹⁰

When the evidence was concluded it was 'summ'd up by the Jury' before the Jury withdrew for 'a short stay' to consider the case.³¹¹ Payne's *Proceedings* records that 'the Jury found the Prisoner guilty. Death.' Moore's account is more detailed. It

³⁰⁵ Ibid, p.14. 'Affair' in this context means penis.

³⁰⁶ Moore, p.7.

³⁰⁷ Payne, pp.10-11.

³⁰⁸ Ibid, p.11.

³⁰⁹ Ibid, p.6.

³¹⁰ Moore, p.7.

³¹¹ Ibid, p.7.

comments that, on the jury's return, the Counsel for the defence put forward a motion on Charteris' behalf for the 'Indictment [to] be read in Latin'.³¹² This was unusual because Latin was not frequently used in the courts at this time.³¹³ However, because the trial took place a month before *The Proceedings in the Courts of Justice Act*³¹⁴ its use was still legal and so 'the request was indulged and allowed'.³¹⁵ Nevertheless, Moore reports that 'there being no Flaw in the Indictment to move in Arrest of Judgement, he had Sentence, as usual, pas'd on him, with the rest of the Malefactors'.³¹⁶ The assertion that there was no 'Flaw' in the indictment implies that Bond's story was true and that Charteris' conviction, in the author's perspective, was accurate. The ambivalence with which the sentence is reported in Payne's pamphlet contrasts sharply with this and is reflective of the tone of Charteris' pardon in the legal records.

Whilst 'official' records of trial proceedings generally upheld the legal determination of the defendant's guilt or innocence made in court, Payne's pamphlet differed because it was published twenty days after Charteris' pardon was granted. Payne's *Proceedings* was first advertised 8 April, the same day that his bail was granted and two days before the appeal was confirmed.³¹⁷ Bail was only permitted in serious offences if the judge was certain that the allegations were incorrect so it is likely that the pamphlet was written within the context of his assumed pardon and the idea of an incorrect legal judgment that this, in theory at least, implied. The suspicion with which Bond's testimony and character are viewed, the omission of testimony asserting penetration and emission as provided in Moore's pamphlet to support the legislative requirements in a rape trial, and the weight given to the defence's argument (unusual in

³¹² Payne, p.16.

³¹³ *The Pleading in English Act* (1362) permitted cases to be conducted in English although records were required to be written in Latin.

³¹⁴ *The Proceedings in the Courts of Justice Act* obliged the English courts and the Scottish Court of Exchequer to conduct cases in English. The Act was passed in 1730 but officially came into force on 25 March 1733. It built on the ideas of the Rump Parliament's *Act for turning the Books of Law and All Processes and Proceedings in Court of Justice into the English Tongue* (1650).

³¹⁵ Moore, p.7.

³¹⁶ *Ibid*, p.7.

³¹⁷ *The Proceedings*, o17300408-1.

a case that resulted in a conviction) is explicable within this context. Payne's 'official' report of the trial could not be seen to support a verdict that was about to be overturned with the support of the trial's presiding judges.

Even in a high profile rape case, it was unusual for a large number of works to be published documenting the trial or offering a biography of the criminal. The variety of texts available about the Charteris case, and the delayed publication of the 'official' trial report, transformed the traditionally factual account of court proceedings into something that more closely resembled the fluidity of a fictional narrative. The different, and at times conflicting, information provided by Payne's and Moore's pamphlets invite different interpretations not only of the trial and the subject of rape but also of the characters of the rapist and the rape victim/accuser that Charteris and Bond embodied. 'The powerful images of the Charteris case are of justice triumphant (at least in the courts) and virtue defended' suggests Anthony Simpson.³¹⁸ Certainly, as Moore's pamphlet suggests, in the immediate aftermath of Charteris' conviction, the case contradicted the beliefs that a master was entitled to sexual intercourse with his servants, and that a woman could not be raped, which were prevalent ideas expressed in the popular rape myths. The trial suggested the possibility that a woman could be raped, and that she could seek legal retribution for her violation from an impartial justice system, even when her social superior perpetrated the offence. In contemporary society, the conviction was viewed as retribution for the catalogue of moral and legal crimes which Charteris had committed previously. Drawing upon the political climate of tension between England and Scotland resulting from the Jacobite cause, the case was also viewed as a triumph of English legal proceedings over the Scottish justice system under which Charteris had been prosecuted for rape three times previously.³¹⁹

³¹⁸ Simpson, p.19.

³¹⁹ The theme of national rivalry between England and Scotland was strengthened after Charteris' pardon was granted. His appeal was led by Scottish barrister Duncan Forbes and supported by a number of leading Scottish aristocrats including the prominent Duke of Argyll and his son-in-law, the Earl of

III. Pardoning ‘the devil’

Payne’s pamphlet, however, implies that the ideas about the justice system and rape, expressed by Charteris’ conviction, were contradicted by his pardon. The remainder of this chapter investigates the effect of Charteris’ pardon on published portrayals of the case. The immediate information about Charteris’ appeal and pardon was reported in the press. Details of the legal processes involved were scarce, suggesting that it held a limited appeal to authors, publishers, and readers. This section combines the published information that was available to the contemporary audience with letters and unpublished legal documents to reconstruct the procedure by which Charteris appealed his sentence and revoked his attainder.

On 14 March 1730 the *London Evening Post* contained the first record of Charteris’ emerging appeal against his sentence:

We hear that several Depositions are taking in relation to Anne Bond, the Person who prosecuted Col. Chartres for a Rape the last Sessions at the Old Bailey, in order to be laid before his Majesty in Council, [...] ‘[t]is said Col. Chartres hath wrote to Mr. Gibson, Recorder of Lancaster, to cause an Enquiry to be made into the Character of the said Anne Bond, who was born near that Town, and return the Affidavits into the Hands of the Judges of the Assize, in order to their being transmitted into Town.’³²⁰

The information that Charteris and his supporters gathered to support his appeal was designed to discredit Bond. It is notable, however, that these affidavits were not considered to be sufficient and Charteris was also required to seek aid from the Recorder of Lancaster.³²¹ In his role as a Recorder Gibson’s testimony would have been considered, in law at least, as beyond reproach. Evidence provided by Gibson that

Wemyss. This led the anonymous author of ‘On Colonel Francisco’ to contend that Charteris’ Scottish lineage was influential in procuring his pardon: ‘The National Folks they full wisely agreed, / ‘Twere a Shame that a Loon of the North-Country Breed, / Should be justify’d ever on this Side the Tweed, / Which no body can deny. / Tooth and Nail, one and all, for their Brother they stand, / From your Garters to Pedlars that travel the Land’. ‘On Colonel Francisco, Rape-Master General of Great Britain’, *Two Excellent New Ballads* (London: s.n., 1730) p.5.

³²⁰ *London Evening Post* (14 March 1730) issue 354; *The Daily Post* (16 March 1730) issue 3272; *Daily Journal* (17 March 1730) issue 1868; *Daily Post* (17 March 1730) issue 3273; and *Country Journal; or The Craftsman* (21 March 1730) issue 194. Also note the depositions made in support of Charteris’ pardon.

³²¹ TNA: SP 36/18 pp.1-2.

refuted earlier testimony given in support of Bond's character would be sufficient to disprove the original verdict. When news of Charteris' impending appeal became public the *Grub-Street Journal* noted that people 'generally exclaim against it' and warned that '[t]heir clamours will run much higher, if ever it should happen'.³²²

On 21 March 1730, Charteris' son-in-law, the Earl of 'Weens', or Weymss, visited him at Newgate.³²³ It is notable that the newspapers were more interested at this stage in Weymss' retrieval of Charteris' 'Horses, Chariot, and Berlin' that had been taken from his home immediately following his conviction by the High Bailiff of Westminster.³²⁴ Weymss's visit was an important legal moment in the case. He proceeded to instigate the formal suit that sued the government for a pardon and was supported by Charteris' wife and a number of his close friends and family who held influential positions at court. The petition revolved around the assertion that the original verdict rested on the 'Single Evidence of Ann Bond Contrary to the Sense and Expectation of every Impartial person who were present [...] and as your petitioner is Informed even of the Judges themselves'.³²⁵ It reiterates Charteris' statement during the trial that the allegation of rape was made by Bond in an attempt to extort money and repeated the argument made by the defence that:

your Petitioner proved by the Oaths of several Witnesses particularly by one Mr. Irvine who was then in Company with your Petitioner that the said Ann Bond came of her own Accord to your petitioner's House in Great George Street near Hanover Square and sent a Letter to your petitioner directed to him by the Name of Colonel Charteris wherein she Informed your Petitioner that she came from Cockram an Estate in Lancashire belonging to your Petitioner and that she should be proud to wait on your petitioner if he would give her that Liberty and that there upon the said Ann Bond was called in to your Petitioner's parlour and hired into your Petitioner's family as a Maid Servant which Letter was produced and proved to be delivered by her and used in Court at the said Trial —³²⁶

³²² *Grub-Street Journal* (12 March 1730).

³²³ *London Journal* (21 March 1730).

³²⁴ *Universal Spectator and Weekly Journal* (21 march 1730) issue LXXVI and *Fog's Weekly Journal* (21 march 1730) issue 78. A Berlin was a particularly light and maneuverable type of carriage that was popular in Germany and England in the seventeenth and eighteenth centuries. See Don H. Berkebile, 'Berline', *Carriage Terminology: An Historical Dictionary* (Washington, D.C.: Smithsonian Institute, 1978) p.26 for further details.

³²⁵ TNA: PRO 30/29/3/1/4.

³²⁶ *Ibid.*

New evidence of primary witnesses who would attest to Bond having had ‘Criminal Familiarity [...] with Several other Persons’ was also provided.³²⁷ Charteris’ attempts to discredit Bond were undoubtedly aided by her involvement in the petition. On 3 April she purportedly met with ‘several Persons of Distinction and eminent Lawyers, at the Horn Tavern in the New Palace Yard, Westminster’ who were likely to have been supporters of Charteris.³²⁸ Bond agreed to sign the petition in return for £800.³²⁹

The final point of the petition relies on Charteris’ state of health. It claims that he was seriously ‘Afflicted with Dropsy, Asthma and many other Infirmities and under the Case of Physicians’ that prevented him from being able to copulate.³³⁰ The evidence included reports from Dr. Mead and other medical professionals who argued that Charteris’ health conditions had caused impotency stating that it is ‘altogether Improbable that your Pet[itioner] Could be Guilty of the Fact laid to his claim’.³³¹ As is discussed in greater detail in the following section, it was unusual for the accused to claim impotence in a rape case.³³² To prove, or disprove, a man’s impotence the court required evidence, or lack thereof, of the defendant ‘erecting, entering, and emitting’.³³³

³²⁷ Ibid.

³²⁸ *London Evening Post* (7 April 1730) issue 364; *Daily Post* (8 April 1730) issue 3292; *Grub-street Journal* (9 April 1730) issue 14; *London Journal* (18 April 1730) issue 559. See also Simpson, p.34.

³²⁹ *London Evening Post* (7 April 1730) issue 364; *Daily Post* (8 April 1730) issue 3292; *Grub-street Journal* (9 April 1730) issue 14; *London Journal* (18 April 1730) issue 559. See also Simpson, p.34.

³³⁰ TNA: PRO 30/29/3/1/4.

³³¹ TNA: PRO 30/29/3/1/4.

³³² Two types of impotence were acknowledged by the law. They were defined by Paolo Zacchia as *impotentia coeundi*, meaning the inability to engage in sexual intercourse, and *impotentia generandi*, signifying the incapacity to reproduce. These definitions are evident in the eighteenth-century medical market however the conditions are renamed. Zacchia’s *impotentia coeundi* became known as ‘Anaphrodisia’, defined as ‘unaptness for conjugal Embraces’. Impotence signified *impotentia generandi* or ‘an Insufficiency in the Male to impregnate the Female’. In the gender-neutral form this was known as ‘Agania’. According to the testimony provided by the defence Charteris suffered from *impotentia coeundi* or anaphrodisia that of course led to *impotentia generandi* or impotence through want of penetration. (Paolo Zacchia, *Quaestiones medicolegales* (Lyon: s.n., 1661) pp.10-11).

³³³ Darmon refers to these as ‘the eternal trinity which confirms a man’s virility’ (Pierre Darmon, *Trial by Impotence: Virility and Marriage in Pre-Revolutionary France*, trans. by Paul Keegan (London: Hogarth Press, 1985) p.13). In a case involving a man who was ‘proved’ to be impotent by the medical ‘experts’ the defence could demand a ‘trial by congress’. He would have to prove in front of an audience of matrons that he could achieve and maintain an erection, penetrate, and emit within a woman. These ‘trials by congress’ were sensational events. Darmon notes that ‘all and surrounding ran as if on fire’ to witness the spectacle. The coitus was witnessed by a group of matrons whilst a crowd was permitted to assemble outside the door to the room.

Interestingly, the medical reports submitted to support Charteris' appeal do not specify that he was unable to achieve erection, vaginal penetration, or emission.

Thomas Pelham-Holles, the Duke of Newcastle, who was later involved in the appeal in his official capacity of overseeing the Commission to ascertain the value of Charteris' holdings and to ensure their return, was also influential in the proceedings. He asked the Royal Physician, Dr. R. Mead, to visit Charteris in prison. On 3 April Mead wrote to Newcastle informing him that Charteris was very ill from 'gaol fever' and needed to be removed from the prison urgently to secure his recovery.³³⁴ If Charteris had been a commoner, it is likely that his illness would have been overlooked. Gaol fever was an established problem in Newgate, spreading through the prison population rapidly due to poor sanitation and lack of ventilation, and causing high mortality rates.³³⁵ According to Morgan, Charteris' illness was so infectious and severe that Colonel Edward Ridley and Colonel Richard Ellis, a Justice of the Peace, contracted the disease after visiting him in jail.³³⁶ By 6 April, *The Grub-street Journal* reported that Charteris' illness had progressed: 'Chartres is so ill in Newgate of a Fever, that he hath four Blisters on, and is attended by 3 eminent Physicians'.³³⁷ Dr. Mead's account of Charteris' deteriorating health was presented to the Secretary of State as evidence to support a request for bail from Newgate. Only five days after Mead's letter *The Proceedings* record that he 'was admitted to Bail, upon Security given, that he

³³⁴ TNA: PRO: SP 36/18.

³³⁵ Gaol fever was a type of typhus. It spread rapidly through the jails due to their poor ventilation and unsanitary condition. Mitchel P. Roth asserts that the disease took 'more lives than the gallows'. Mitchel P. Roth, *Prisons and Prison Systems: A Global Encyclopedia* (Westport, CT: Greenwood Press, 2006) p.113.

³³⁶ Morgan wrote: 'Died at his House in *Soho-Square*, Colonel *Edward Ridley*, one of his Majesty's Justices of the Peace for the Liberty of *Westminster*, and Captain of a Company in the third Regiment of Foot Guards. 'Tis said his illness was occasioned by his visiting Colonel *Charteris* in *Newgate*; and 'tis observable that Colonel *Richard Ellis*, another Justice of the Peace, died also of a Fever he took by visiting the said Gentleman in his Confinement, with the aforesaid Colonel; and a third Gentleman who went with them, has been dangerously ill, but is recovered.' p.279.

³³⁷ *Grub-Street Journal* (6 April 1730). Blistering, also known as Vesication, involved a process in which the physician caused blisters on the patient's skin in the belief that they would 'counterirritate underlying pyrogenic inflammatory processes' and relieve the fever. (J. Worth Estes, 'The Therapeutic Crisis of the Eighteenth Century', *The Inside Story of Medicines: A Symposium*, ed. by Gregory J. Higby and Elaine C. Stroud (Madison, WI: American Institute of the History of Pharmacy, 1997) p.33).

should appear at the next Sessions, and plead to His Majesty's most gracious Pardon'.³³⁸ In fact Charteris did not have to await the next Sessions. On 10 April 1730, under the advice of the Privy Council, the King agreed to an Order in Council being passed for his pardon that was preparatory to the Warrant that formalized the pardon 'under the Great Seal of Great Britain' on 15 May 1730.³³⁹ A discrepancy appears here in the legal records. The report of the council meeting states that 'the Justices of Oyer and Terminer and Gaol Delivery of Newgate do forthwith admit him to Bail': something that *The Proceedings* informs us had been in place for two days.³⁴⁰

To overturn the attainder of a wealthy man such as Charteris was a difficult and lengthy process. This was partly because an attainder literally constituted the legal expression of a person's 'corruption of blood' and therefore had serious legal and social implications. It revoked the privileges of rank; hereditary titles and property were forfeited and could not be passed to descendants after death. The property, possessions, and money of the person attainted were seized but often the extent of this was not recorded. To officially overturn an attainder the King needed to know exactly what goods, money, and estates had been forfeited and return them. Charteris held three major estates at this time in Lancaster, Middlesex and Westmoreland, the latter two of which were investigated directly by central government. His holdings in Lancaster were more difficult to examine as they fell into the boundaries of the County Palatine of Lancaster.³⁴¹ After 1715, the role of Chancellor of Lancaster was a political position, usually filled by a peer who spent most of his time in Westminster and had little local

³³⁸ TNA: PRO 30/29/3/1/4.

³³⁹ Morgan reports that 'Francis Charteris should be pardoned, and forthwith admitted to Bail. The Colonel has accordingly given Bail to plead his Pardon at next Sessions.' (p.265). On 21 May 1730 the *Grub-Street Journal* recorded that Charteris' formal pardon was passed on 15 May 1730.

³⁴⁰ TNA: PRO 30/29/3/1/4. *The Proceedings*, o17300408-1.

³⁴¹ To overturn an act of attainder was a difficult and lengthy process particularly if the plaintiff held lands in one of the six County Palatinates of England. The County Palatinates, which were established to secure a 'strong local government in an area which was difficult to administer directly by central government', held a different legal status to other parts of the country. The Palatinates were still required to administer the common law, and in the administration of justice, however, they held the right to select their own Justices of the Peace, a decision that was made in Lancaster by the Chancellor, and to operate commissions as they saw fit. See Skyrme, p.74.

knowledge. When the Duke of Newcastle wrote to the Duke of Rutland (the current Chancellor of Lancaster) on 17 July 1730 requesting that he ‘mak[e] forth so many Commissions as you shall judge necessary’³⁴² to ascertain the extent of Charteris’ estate, it is likely that Rutland was forced to seek local advice thus delaying the process.³⁴³ Rutland responded with a letter to the Attorney General in which he enclosed the names of ‘good and lawfull men’ who were able to fulfill the role of Commissioners.³⁴⁴ In a break from protocol, however, the King ‘authorize[d] and impowere[d]’ Robert Gibson to oversee the task of determining the tithes due to Charteris from his estates in Lancashire on 20 July 1730.³⁴⁵ On 1 August 1730, the evidence secured from the counties in which Charteris held estates was examined by the Court of Chancery.³⁴⁶ His holdings, which amounted to the value of 2,807l. 0s. 3d. in real estate and 63,035l. in personal estate, were returned to him by the Treasury on 5 October 1730.³⁴⁷ His personal effects, excluding the horses and carriages secured by Wemyss that had been seized by the High Bailiff and officers of Westminster from his house on Hanover Square, were not included in this. On 3 September 1730, Charteris paid over 8,000l. to the bailiff and sheriff to have his goods returned.³⁴⁸

Charteris’ pardon did little to alleviate his social condemnation. Whilst, as Payne’s pamphlet demonstrates, published records of the case that focused on the legal procedure altered after Charteris was pardoned, perceptions of his culpability persisted in print and society. He was accosted and beaten on the street and alternately vilified by authors and, as is discussed in the following section, satirized for his alleged impotence

³⁴² TNA: PRO: SP 36/19.

³⁴³ Ibid.

³⁴⁴ Ibid.

³⁴⁵ Ibid.

³⁴⁶ Ibid.

³⁴⁷ See TNA: PRO: C 205/15/7 for details of Charteris’ estates in Lancaster; TNA: PRO: C 205/15/8 for Middlesex; TNA: PRO: C 205/15/9 for Westmoreland.

³⁴⁸ ‘Treasury Books and Papers: October 1730’, *Calendar of Treasury Books and Papers*, Volume 1: 1729-1730 (1897) <<http://www.british-history.ac.uk/report.aspx?compid=87312>> [accessed 16 July 2012] pp.459-470.

in print.³⁴⁹ Commonly, after a rape trial involving notable individuals who were accused of rape and acquitted or pardoned, accounts of the case designed to reinforce the innocence of the accused were published.³⁵⁰ It is of particular relevance to note that no such text was published after the pardon to assert Charteris' innocence. The scarcity of published documents about Charteris' pardon, reflecting a lack of demand for this information, suggests that legal endorsement was not sufficient to convince the public of his innocence.

IV. Charteris' 'sapless carcass'

Despite the comparative lack of interest in Charteris' pardon the case retained its appeal, prompting new publications after 10 April 1730. Garthine Walker suggests that the enduring fascination with the case suggests the presence of other topical issues.³⁵¹ Charteris' alleged impotence is one of the issues that held a topical appeal in contemporary society yet has been neglected in modern criticism of the case. Charteris' impotence, officially supported by his pardon, was not unanimously corroborated in print. *Scotch Gallantry* claimed that Charteris' inability to perpetrate a rape, implied by the pardon, was 'a *Complication of Falsities*' designed to misrepresent 'the *Character of the Person convicted, and of the Circumstances of his Conviction*'.³⁵² Jonathan Swift, subscribing to the belief that Charteris was not impotent, wrote in 'An Excellent Ballad'

³⁴⁹ For accounts of a mob beating Charteris after his release from Newgate see *Fog's Weekly Journal*, 25 April 1730, 83.2 and *The Grub Street Journal*, 23 April 1730, 3. For examples of texts and plays that were hostile to Charteris' pardon, see 'On Colonel Francisco', Henry Fielding, *Rape upon Rape: Or, The Justice Caught in His Own Trap* (London: printed for J. Watts, 1730) and Michael Clancy, *The Sharper* (Dublin: s.n., 1738).

³⁵⁰ See *Capt. Leeson's Case: being an account of his trial for committing a rape upon the body of Mrs. May, a Married Woman of 35 Years of Age; for which he receiv'd sentence of death, on the 30th of April 1715. But has since obtain'd his Majesty's most Gracious Reprieve, in order to a Pardon.* (London: printed for J. Roberts at the Oxford-Arms in Warwick Lane, 1715). The author stated that the intention of the text was 'to set this pretended Rape [Leeson's rape of May] in a true Light' (p.2). Also the author of *The Case of the Ld. John Drummond* (1715) states that he aims 'to submit an Account of as Black a Contrivance, as was ever set on Foot, against the Life of a Gentleman sprung from as good Blood as any in Scotland' (p.4).

³⁵¹ Walker, 'Popular Perceptions', p.116.

³⁵² *Scotch Gallantry*, pp.31-32.

(1730) that ‘he lives, and is ready to ravish again.’³⁵³ *The Universal Spectator and Weekly Journal* reported on 5 September that Charteris had ‘his famous Machine or Couch, on which the Rape of Anne Bond was sworn to be committed [...] a Piece of Workmanship scarce to be equall’d in the Kingdom delivered to his abode at Holland House’.³⁵⁴ There is a sense that the piece of furniture is symbolic of Charteris’ defiance: his public display of the couch that was emphasized in the trial reports acts as a symbol of his virility rather than impotence. Despite this, Charteris’ claims of impotence were frequently commented on by authors and contributed to interest in his case.

The Charteris trial was unique in the early eighteenth century as the only published case of rape prosecuted at the Old Bailey between 1700 and 1730 that involved an appeal in which the convict claimed to be impotent.³⁵⁵ This is unsurprising because, whilst impotence would appear to be a plausible defense against an accusation of rape, as previously discussed the law required extensive investigations to verify the man’s impotence. Trials involving allegations of impotence were, however, popular in the early eighteenth century. Publishers were interested in cases involving allegedly impotent upper class men which, as Peter Wagner comments, ‘attracted much attention, especially if those involved were the high and mighty and if the case had to do with criminal conversation, impotence or sexual perversion’.³⁵⁶

Impotence was more commonly cited in divorce trials to support the prosecutrix’s suit although even these cases occurred infrequently.³⁵⁷ One such case, heard in Paris in 1712, cited the impotency of the Marquis de Gesvres as cause for his wife, Mademoiselle Mascranny, to obtain a divorce and attracted attention throughout

³⁵³ Jonathan Swift, ‘An Excellent New Ballad’, *Jonathan Swift: The Complete Poems*, ed. by Pat Rogers (London: Penguin Books, 1983) p.446.

³⁵⁴ *The Universal Spectator and Weekly Journal*, 5 September 1730.

³⁵⁵ Search terms include ‘impotent’, ‘impotence’, ‘impotency’ and ‘insufficient’, a term often used to refer to impotence.

³⁵⁶ Wagner, p.123.

³⁵⁷ Hoffman asserts that of the 262 divorce cases heard by the London Consistory Court between 1670 and 1837 only seven involved impotence suits. Stephanie B. Hoffman, ‘Behind Closed Doors: Impotence Trials and the Trans-historical Right to Marital Privacy’, *Boston University Law Review*, 89 (2009) p.1727.

Europe. The trial was published in London in 1714 by Edmund Curll as a pamphlet entitled *The Case of Impotency debated, in the late famous trial at Paris; between the Marquis de Gesvres, (son to the Duke de Tresmes, present Governor of Paris) and Mademoiselle de Mascranny, his Lady, who, after three Years Marriage, commenc'd a Suit against him for Impotency*.³⁵⁸ Curll, recognizing the appeal of the topic, then published an account of the historic case between Lady Frances Howard and her husband Lord Robert Devereaux (1613) in a pamphlet entitled *The Case of Impotency as debated in England, in that remarkable trial an. 1613. between Robert, Earl of Essex, and the Lady Frances Howard, who, after eight years marriage, commenc'd a suit against him for impotency* (1715 & 1719).³⁵⁹ It is interesting that in Curll's published versions of the Gesvres and Devereaux cases the anonymous authors also comment on the infamous case of Mervyn Tuchet, Lord Audley and Earl of Castlehaven (1631).³⁶⁰ Castlehaven was tried and executed for sodomy and aiding and abetting in the rape of his second wife, Lady Anne Stanley, perpetrated by his servant. Although Castlehaven was indicted for sexual excess and depravity, Curll, Cynthia Herrup states, 'subsumed the issue of sodomy under the broader umbrella of aristocratic weakness'.³⁶¹ The term impotence was a figurative symbol of Castlehaven's moral weakness and his destruction of class boundaries.

In 1730 the topic of impotence became particularly prominent due to the divorce trial of Weld v. Weld. Catherine Weld sued her husband, Edward Weld, for divorce on

³⁵⁸ François-Joachim-Bernard Potier Gesvres, *The Case of Impotency debated, in the late famous trial at Paris; between the Marquis de Gesvres, (son to the Duke de Tresmes, present Governor of Paris) and Mademoiselle de Mascranny, his Lady, who, after three Years Marriage, commenc'd a Suit against him for Impotency* (London: E. Curll, 1714).

³⁵⁹ *The Case of Impotency as debated in England, in that remarkable trial an. 1613. between Robert, Earl of Essex, and the Lady Frances Howard, who, after eight years marriage, commenc'd a suit against him for impotency* (London: E. Curll, 1715 & 1719). Falsely attributed to George Abbott.

³⁶⁰ See *The Case of Impotency debated, in the late famous trial at Paris, The Case of Impotency as debated in England* and *The Second and Last part of The Case of Impotency, &c. debated*. (London: printed for E. Curll, 1715).

³⁶¹ Anon, *The whole of the Proceedings, in the Arches-Court of Canterbury, between The Honourable Catherine Elizabeth Weld, alias Aston, and her husband Edward Weld, Esq.* (London: Thomas Gammon, 1732) and anon, *A Sequel to the Case of the Honourable Mrs. Weld and her husband, whom she Libeled for Impotency, &c* (London: printed for W. Mears, 1734) p.3.

grounds of impotency after three years of marriage. The prosecution stated that, whilst Edward had sought medical advice and had undergone treatment to correct a '[f]renum too straight', his impotence had persisted and prevented consummation of their marriage.³⁶² It was widely reported that three midwives testified that Catherine was still a virgin and five surgeons reported on the shape, size, and functionality of Edward's genitalia, concluding that he was impotent.³⁶³ Despite evidence to the contrary the court dismissed Catherine's suit on the grounds that Edward's physical defect had been resolved. The case was published in *The whole of the Proceedings, in the Arches-Court of Canterbury, between The Honourable Catherine Elizabeth Weld, alias Aston, and her husband Edward Weld, Esq.* (1732) and *A Sequel to the Case of the Honourable Mrs. Weld and her husband, whom she Libeled for Impotency, &c.* (1734).

The combined topics of rape and impotence that contributed to the appeal of Charteris' case also made it a source of amusement. In published texts, Mueller comments, the impotent male:

is the frequent brunt of jokes in the pamphlet wars [...] he spurs the sexual adventures of the libidinous heroines of bawdy verse; he titillates a voracious readership of divorce court proceedings sold to a large popular audience.³⁶⁴

Charteris' notoriety for illicit sexual excess and the previous allegations of rape made against him made him an increasing target for humiliating attacks on his sexual vigour. The anonymous ballad *The Reprieve* (1730) mocked Charteris' sexual incapacity, claiming that Bond's prosecution was occasioned by his inability to 'wet her', or ejaculate.³⁶⁵ The ballad is nonetheless conflicted in its representation of Charteris:

No thinking Jury cou'd espouse your Cause,
So strong her Evidence, so plain our Laws;
Your Witnesses their Parts did over-act,

³⁶² *The whole of the Proceedings*, p.4.

³⁶³ See *The Case of Impotency debated, The Case of Impotency as debated, The Second and Last part of The Case of Impotency* and *The whole of the Proceedings*.

³⁶⁴ Judith C. Mueller, 'Fallen Men: Representations of Male Impotence in Britain', *Studies in Eighteenth-Century Culture*, 28 (1999) pp.88.

³⁶⁵ Anon, *The Reprieve: An Epistle from J---ck K---ch To C-----l C-----S.* (London: printed for A. Moore, 1730) p.5.

Their Honour, like your Vigour, we suspect.
 Had you [Charteris] resolved to make your Virtue clear
 Your Incapacity shou'd first appear;
 Your shapeless, sapless Carcass there been shewn,
 With all the lifeless Trump'ry of a Drone,
 Undoubted Proofs of Impotence alone:
 Grizzly Threescore in Form had you display'd,
 What Jury cou'd believe you forc'd a Maid?
 Some Things the Law demands she soon might feign,
 But never make your Penetration plain;
 For when you bravely storm'd the Petticoat,
 You only thrust your ---* *Night Cap* in her Throat.

Or did the Honour of the Case provoke,
 To give up Life and Fortune for a Joke?
 Proud of the rampant Ravisher's bright Name,
 Bravely you ventur'd all to fix a Fame;
 How strange your Fate! – such Vengeance is your Due,
 Stripp'd and condemn'd – for what you cou'd not do.³⁶⁶

The extract begins by confirming Charteris' guilt, which is substantiated by the veracity of Bond's evidence and the spurious testimony provided by witnesses for the defence. *The Reprieve* then endorses Charteris' impotence through the description of his nightcap with which he penetrates Bond in the absence of an erection. In the second stanza cited here, however, the author suggests that Charteris did not establish his impotence in court because of a desire to maintain his sexually immoral reputation. The conflicting portrayals of Charteris's guilt and impotence were partly due to perceptions of his culpability for other acts of rape. As John Arbuthnot remarked, Charteris 'having done, every day of his life, / Something worthy of a gibbet, / Was once condemned to one / For what he had not done.'³⁶⁷ *The Reprieve* finally suggests that he was innocent of raping Bond but was viewed as culpable by the jury who, due to his reputation, were unable to believe in his impotence or the veracity of his defence.

In contemporary understanding, Charteris' alleged impotence, when validated by an audience or author, largely contributed to, rather than detracted from, popular perceptions of his character. Limited medical knowledge in the eighteenth century

³⁶⁶ Ibid.

³⁶⁷ John Arbuthnot, 'Epitaph on Don Francisco', *The London Magazine* (April 1732).

meant that the cause of impotence was largely misunderstood. It was an affliction that was widely associated with ideas of pollution, disease, and profligate lifestyles.³⁶⁸ In *The Family Physician, and the House-Apothecary* (1678) Gideon Harvey remarked that 'Disease and Death are marks of the Divine Justice in the punishment of Sin'.³⁶⁹ Mueller explains that '*seed* is often treated as the source of *soul* in the period'.³⁷⁰ Charteris' impotency may have been the result of his underlying and indeterminate health conditions. However, it was largely thought that Charteris' debauched lifestyle contributed to his declining health. Charteris' impotence must then have been perceived as divine justice exacted on his life of debauchery and crime.

The term impotent had multiple and derogatory connotations, denoting physiological, intellectual, mental, social, physical, or economic flaws or impediments in the afflicted male.³⁷¹ Impotence in court, as it was generally cited in divorce cases, signified male 'guilt', resulting in the prosecution 'winning' the case. In a damning statement made in *Gonsologium Novum* John Marten links sexual impotency with all other forms of impediment stating that:

If there be no Erection that Man may certainly be said to be Impotent, and by being Impotent, will always, till that be removed, be Unfruitful, and not able to Generate, and in that respect is a useless Member to the Common-wealth in

³⁶⁸ On 20 April 1730 the *Daily Journal* advertised a 'BALSAMICK HEALING Medicine' priced at 5s. a bottle and produced Dr. R. Nelson who was 'well known' for his study of 'the Cure of SEMINAL and GENITAL Imbecilities'. The notice commented that the elixir was: For Gleet and Weaknesses, the Bane of Virility in the one Sex, and Destroyer of Fertility in the other, whether from ill curs'd Venereal Infections (than which nothing is more common) or from inordinate Coition, or Self-Pollution (that cursed School Wickedness, which spoils all our Youth, by nipping their Manhood in the Bud) or from Falls, Blows, Strains, Wrenches, hard Labours, Miscarriages, or other Causes, which drain and dry up the Seminals, and wither, as it were, the generative Faculties, causing Impotency in Men, the Fluor Albus, and Barenness in Women.' The elixir reputed to cure impotence by restoring the genitals 'to their natural Force, Warmth, and Vigour, by thickening and serrilizing the Seed, which before was thin, waterish, or yellowish, and consequently insufficient, either for Procreation or the Act of it.' Within the context of eighteenth-century concepts of disease and impotence it is notable that Nelson repeatedly associates impotence with destruction, pollution, and disease. It is an affliction that requires the genitals to be 'cleansed' and 'serriliz[ed]', or sterilized.

³⁶⁹ Gideon Harvey, *The Family Physician, and the House-Apothecary* (London: M. R., 1678) p.3.

³⁷⁰ Mueller, p.89.

³⁷¹ Ephraim Chambers describes 'IMPOTENCE, a Want of Strength, Power, or Means to perform anything.' (*Cyclopaedia*, p.273.) B. N. Defoe's *A New Dictionary* (Westminster: John Brindley, 1735), that provides both dictionary style definitions and an early form of thesaurus for each entry, suggests 'unable, weak, infirm, maimed' as alternative words (p.217). When writing on provisions for the poor Jacob notes that some people are 'poor by Impotency, (which takes in the Aged, Decrepit, Lame, Blind, distracted Persons, Infants &c.)'.

which he lives.³⁷²

The concept of the impotent man as an unproductive member of society is accentuated in the eighteenth century by the connection between the penis and male power in the print market. The penis was frequently represented by objects associated with male force such as a sword or the ‘truncheon’ of John Cleland’s *Fanny Hill*.³⁷³ Elizabeth Foyster also notes that male sexual activity was often linked with their economic activity so that ‘the pedlar will “pound spice” and the tailor uses his “piercing Bodkin”’.³⁷⁴ The condition then signifies more than a sexual insufficiency: to be impotent in this period was to be something less than a man with the privilege of masculine power in a physical, sexual, and economic sense. As Judith Mueller notes ‘[t]he label, impotent, relentlessly signifies beyond the unperforming organ to the entire man – his mind, his character, his will, his very manhood’.³⁷⁵ The label of impotence was consequently deeply shameful. Pope remarked that: ‘Dulness with Obscenity must prove/ As Shameful sure as Impotence in Love’.³⁷⁶ The affliction was kept a secret if possible as can be seen in the character of Mr. Pinch in *The Adventures of Mr. Loveill* (1750) who is described as a ‘rich, doating, and (but that must be a secret) impotent fellow’.³⁷⁷ It must then have been a humiliating experience for Charteris when he tried to prove his own impotence during the trial by asking Bond, ‘Did you not tell some of the Family, that since I had so much Silver, I should have my Instrument tipp’d, for it would not please a Woman?’³⁷⁸ She responded in the negative.

Charteris’ alleged impotence secured legal and monarchical endorsement of his innocence through his pardon yet this did not convey a message of his innocence to the

³⁷² John Marten, *Gonsologium Novum* (London: s.n., 1709) p.53.

³⁷³ John Cleland, *Fanny Hill, or Memoirs of a Woman of Pleasure* (London: Penguin Books, 1994) p.63. See also Hal Gladfelder’s discussion of this in *Fanny Hill in in Bombay: The Making and Unmaking of John Cleland* (Baltimore: The John Hopkins University Press, 2012) p.229.

³⁷⁴ Elizabeth Foyster, *Manhood in Early Modern England* (New York: Longman, 1999) p.36.

³⁷⁵ Mueller, p.88.

³⁷⁶ Alexander Pope, ‘An Essay on Criticism’, *Alexander Pope: Pastoral Poetry and An Essay On Criticism*, vol.1, ed. by Aubrey Williams E. Audra (Meuthen: Yale University Press, 1961) p.50.

³⁷⁷ Anon, *The Adventures of Mr. Loveill* (London: M. Cooper, 1750) p.17.

³⁷⁸ Payne, p.13.

public. The affliction, however, was an important aspect of the trial's appeal to publishers, which has not been critically acknowledged, and contributed to the popular perceptions of his immorality. Charteris' 'sapless carcass' was evidence of divine retribution for the sexual crimes he perpetrated that had not been legally resolved.³⁷⁹

V. The 'hapless Maid'?

Bond received a mixed reception in the print market. Social perceptions of her were mutually reliant on the attitudes expressed towards Charteris. The image of an impotent Charteris was usually contrasted with the depiction of Bond as a malicious prosecutrix but, as an innocent victim, she counterbalanced Charteris' culpability. Immediately after the trial Bond featured consistently as a victim: her status was often established by comparison to assertions of Charteris' guilt or through declarations of her good character and the veracity of her evidence against him. This is particularly evident in *Don Francisco* when the author states that Bond's testimony was 'very plain and full' and declares that she 'rejected and refused [Charteris' sexual advances] with great Abhorrence'.³⁸⁰ It is interesting to note that texts involving rape scenes that were published within this context feature female victims rather than the more common false allegations. The anonymous *The Forced Virgin; Or, The Unnatural Mother. A True Secret History* that was published on 14 January 1730 provides an unusually long analysis of the psychological, physical and social effects of rape on the central female character Lominia.³⁸¹ Nicholas Brady's *The Rape: Or, the Innocent Imposters* (1692) was revived by the company at Lincoln's Inn Fields (25-28 November 1729) in response to the case. The play features Genselarick's rape of the virtuous Eurione who is discovered after the act 'gagg'd and bound to a Tree, her hair dishevel'd as newly

³⁷⁹ *The Reprieve*, p.4.

³⁸⁰ *Don Francisco*, p.54.

³⁸¹ The text was advertised for sale in 'A Register of Books Published in January', *Monthly Chronicle* (January 1730); *Daily Post* (21 February 1730) 3253; *Fog's Weekly Journal* (7 March 1730) 76; *Country Journal or The Craftsman* (14 March 1730). For further descriptions of the text see Introduction.

Ravished, a Dagger lying by her'.³⁸² In both of these texts, the victim's lack of consent and the force used by the rapist are emphasized.

The anonymous author of *The Reprieve* suggested that Bond was perceived as a victim because her evidence against Charteris was '[s]o strong'.³⁸³ However, in comparison to other rape cases heard that year at the Old Bailey the prosecution's case was not exceptional.³⁸⁴ Bond fulfilled the criteria required to prove an accusation of rape in court largely through her own testimony. She did not obtain testimony from medical practitioners that attested to evidence of penetration or emission. The supporting witnesses, Parsons and Biss, were only able to provide circumstantial evidence based on her report of the events. In a case involving any other defendant the verdict would have been reliant on evidence of her veracity provided by character references. The witnesses called to testify to Bond's good character were outweighed by the number of depositions provided by the defence that discredited her. However, the trial was unique because the defence's character that 'alone wou'd prove a Rape' was key to the judgment.³⁸⁵ Bond was cast as a victim by default. Similarly, she appears as a secondary character to Charteris in many of the texts published before the pardon, her innocence implied by his guilt. When *Col. Don Francisco's Genuine Letter of Advice to all his Beloved Brethren, the Votaries of Venus* was advertised for sale on 23 March 1730 the advert contained the following satirical inscription:

*Proceed, be bold, and scorning to intreat,
Think all her Struggling's feign'd, her Cries Deceit;
Not creeping like a Cur, that FAWNS to please,*

³⁸² Nicholas Brady, *The Rape; or, The Innocent Imposters* (London, 1692) p.25. Jean I Marsden notes that the disheveled hair and dagger commonly featured in Restoration rape scenes ('Spectacle, horror, and pathos', *The Cambridge Companion to English Restoration Theatre*, ed. by Deborah Payne Fisk (Cambridge: Cambridge University Press, 2000) p.187). The dagger is also symbolic of Lucretia's rape that were perceived by the contemporary audience as the archetypal 'true' rape. See chapters one and three for discussion of Lucretia.

³⁸³ *The Reprieve*, p.2.

³⁸⁴ *The Proceedings*, t17300228-69 for the Charteris trial and t17412251-13 for a comparative case.

³⁸⁵ *The Reprieve*, p.4.

*Nor whine, nor beg, but like a Lyon seize.*³⁸⁶

Notably, the author uses the word ‘think’ rather than ‘know’. In doing so, the stanza becomes a declaration of how to commit a rape within the delusion that it is not a violation of the woman’s sexual autonomy. The victim is declaring her lack of consent through her struggles and cries but is overwhelmed by force. The narrative voice, that claims to be Charteris, idolizes ‘the *Celestial Rape-Master*’³⁸⁷ Jove and recommends to his readers that

if they [women] oppose you strongly, give them a warm Reception, and like a true Warrior, send in a full Charge, beat down their *Batteries*, seize and take Possession [...] lay siege to Citadels that were never before besieged; ’tis there your Glory will be conspicuous.³⁸⁸

The forceful adjectives and militaristic terminology asserts the violence of the act. That the woman’s chastity is envisaged as a fortified stronghold declares her virtue and reinforces that this is an act of rape not consensual passion. This was an unusual perspective considering the period’s prevalent rape myth that a woman could not be raped.³⁸⁹

Charteris’ pardon introduced uncertainty into the representations of Bond’s innocence. Her depiction as a victim was undermined when she added her name to the appeal for Charteris’ pardon. It was not the act of a wronged victim seeking justice. Her reported actions in the weeks following the pardon did not help. A false account of her marriage to Charles Heather emerged on 12 April 1730, possibly as part of a smear campaign.³⁹⁰ On 18 April 1730, readers were informed that Bond and Heather purchased a Tavern in Bloomsbury and ordered ‘a well painted Head of Colonel

³⁸⁶ Anon, *Col. Don Francisco’s Genuine Letter of Advice to all his Beloved Brethren, the Votaries of Venus* (London: s.n. Sold at all Booksellers and Pamphlet-shops in London and Westminster, 1730). Advertised in *Daily Journal* (23 March 1730) 2873.

³⁸⁷ *Votaries*, p.13

³⁸⁸ *Ibid*, p.18.

³⁸⁹ It was more usual for authors to support this rape myth. For example, in Mary Pix’s play, *The Different Widows: Or, Intrigue All-A-Mode*, Lord Bellmont comments that ‘a Woman’s never to be Ravisht against her Will’. (London: printed for Henry Playford, 1703) Act 3, p.34.

³⁹⁰ *London Journal*, the *Weekly Journal or British Gazetteer*, and the *Grub-street Journal*

Chartres for their Sign.’³⁹¹ The report implied that the tavern and sign were financed by the £800 paid to her by Charteris for supporting his petition for a pardon. These rumours portray Bond as revelling in her notoriety and financial triumph, and suggest that she was a malicious prosecutrix. The veracity of these reports was undermined by later notices in the broadsheets that documented her marriage to Major Smith on 20 April 1730:

Some days ago Mr. Major Smith, who marry’d Mrs. Anne Bond, who cast Col. Charteris, was arrested in some sort of actions by persons employed in that affair, viz. one action for 18l. another for 1600l. but the young man says he owes them nothing, and hath given bail to the actions, being resolved to see them out. We are well assured that the Col. Hath no hand in this affair.³⁹²

The *Grub-street Journal* republished the account, remarking, ‘I wounder at the assurance of my Brethren in vindicating the Colonel’s reputation by such an Innuendo.’³⁹³ For Bond, the suit against Smith was a disaster. As his wife she was equally responsible for paying his debts and presumably sacrificed what remained of the money she was paid by Charteris. After Bond gave birth to a son, named Major Smith, on 11 November 1731 her appeal in the newspapers dissipated.³⁹⁴ Whilst she still appeared in new publications after 1731, published accounts of her life remained connected to the trial.

After Charteris’ pardon new portrayals of Bond emerged that represented her allegations as false. When *Phormio*, a play by the Roman comic dramatist Terence, was re-enacted on the stage of the Charterhouse Theatre on 1 May 1730 the adverts rendered it culturally topical through allusions to the Charteris case. The Epilogue, which was spoken by Phormio and printed in the *Universal Spectator and Weekly Journal* on 2

³⁹¹ *London Journal* (18 April 1730) issue 559.

³⁹² *Weekly Journal or British Gazetteer* (18 April 1730) issue 265. See Marriage Licence Allegations, Faculty Office 1701-1850, 20 April 1730 for details of marriage.

³⁹³ *Grub-street Journal* (24 September 1730) issue 38.

³⁹⁴ Linda Stratmann suggests that Bond died on 23 January 1732. See Stratmann, *Notorious Blasted Rascal: Colonel Charteris and the Servant Girl’s Revenge* (Gloucestershire: The History Press, 2008) p.148 for further details.

May as part of the advertising strategy, drew comparisons between the revelation of the character Chremes' adultery and Charteris' rape of Bond:³⁹⁵

Could at so cheap a Rate *Francisco* 'scape
His bare Intention to commit a Rape,
Still would *Anne Bond* have been a Name unknown.
Some Commentators say, t'excuse his Folly,
She was th'*Athenian* Prototype of *Polly*.³⁹⁶

The declaration that Bond was perceived as the '*Athenian* Prototype of *Polly*' alludes to the myth of Hercules' ninth labour to retrieve the girdle of Hippolyta, the Queen of the Amazons. Popular versions of the myth state that Hippolyta voluntarily gave Hercules the girdle. The goddess Hera then appeared disguised as an Amazon and told Hippolyta's subjects that Hercules was abducting their queen. They attacked and in the fray Hercules killed Hippolyta and took her girdle. Bond, as a 'Prototype' of Hippolyta, is portrayed as a consensual participant in sexual intercourse with Charteris. This is further supported by the term 'folly'. Phormio, the narrative voice here, is identified in the play as a lawyer. His analysis of Charteris' actions is dismissive of their severity: it does not support a perception of the case as involving a sexual crime. Phormio suggests that the trial only becomes popular in society because Charteris was unable to bribe officials at a 'cheap [...] rate' resulting in the protracted appeal process and the hefty 800l. that he reportedly paid Bond to support his pardon.

³⁹⁵ *Phormio* advertised in *Universal Spectator and Weekly Journal* (1 May 1730). In the play, Antipho, the son of Demipho and nephew of Chremes, falls in love with a girl whose mother has recently died. Phormio, meaning parasite, is a lawyer who aids Antipho in declaring to the court that he is the girl's next of kin and obtaining a court order for them to marry. Demipho is furious when he discovers the marriage and pays Phormio to take the girl and marry her himself. Phormio, however, gives the money to Chremes' son, Phaedria to purchase a slave girl he has fallen in love with. The fathers are furious at this turn of events but discover that the wife of Antipho is actually the daughter of Chremes by a bigamous second marriage. Chremes, desperate to keep knowledge of his second marriage from his legitimate Athenian wife, eventually persuades his brother Demipho to acknowledge the marriage. The two fathers however attempt to recover the money paid to Phormio who then unveils the events to Chremes' first wife.

³⁹⁶ *Ibid.*

The anonymously authored *Knowing Women* was published on 11 November 1730 in the aftermath of Charteris' pardon and the reversal of his attainder. It creates a diatribe against 'friendly' women, stating their characteristics to be

To sacrifice the Laws, Justice and Truth to Self-Interest; to neglect the Duties of Society when we are involved in Distress; to fawn, to flatter, to sport with Calumny and Deceit; to prefer a worthless Minion of Fortune to a Man of Honour; to praise and dispraise inconsiderately; to revenge the least Injury; to promise and seldom perform; to be civil, but without Sincerity; to kiss the Man you would betray; to mispresent the most candid Virtue under the hypocritical Pretence of Austerity.³⁹⁷

The deceitful, self-interested woman of *Knowing Women's* description closely aligns with Henry Fielding's Hilaret in *Rape upon Rape* (1730) who 'sacrifice[s] the Laws, Justice and Truth' when she falsely accuses Ramble and Squeezum of rape to preserve her own interests. In the case of Ramble, her allegations are prompted by Ramble's declaration that 'If you don't consent, I'll ravish you', and her ensuing desire to avoid being raped.³⁹⁸ However, when she accuses Squeezum of a rape it is an act of extortion to secure the freedom of Constant with whom she is in love and who has been imprisoned by Squeezum on false allegations of rape.³⁹⁹

Fielding's play was written in response to the Charteris trial, first appearing on stage on 23 June 1730.⁴⁰⁰ It is notable that *Rape upon Rape* remains firmly within the comic register thus implying through the allusions to the case that Bond was not raped. As such, the dialogue engages with the discourses of rape found in the period's comic forms that emphasised the popular rape myth that women could not be raped. This idea was commonly found in jest books such as William Hicks *Oxford Jests* (1720) which contained two retellings of rape accusations. In each joke, the woman consents to the act and later complains of rape to a Justice of the Peace. In the first jest, it transpires that the man has 'ravish'd' his accuser 'at least twenty times before now' and he is therefore

³⁹⁷ François Bruys, *The Art of Knowing Women* (London: s.n., 1730) p.107.

³⁹⁸ *Rape upon Rape*, Act I, Sc. IX, p.13.

³⁹⁹ *Ibid*, Act IV, Sc. VI, p.53.

⁴⁰⁰ Dickie, p.573.

portrayed as being innocent. In the second, the man ties the woman's hands and attempts to tie her legs together prior to penetration but is prevented from this because she 'had the Wit to keep them far enough asunder' implying her consent.⁴⁰¹ The Prologue to the 1730 publication of *Rape upon Rape* asserts the significance of this rape myth when Fielding clarifies that it contains no incidents of rape:

RAPE upon RAPE! *what Author ever chose*
A Name so sure to make the Fair his Foes!
But pray, confess, does all this Fury fall,
Because these Scenes Rape upon Rape we call?
*Or is it – that we have no Rape at all?*⁴⁰²

The audience and readers may well have been surprised at this declaration when the title promised a multitude of rapes. Yet Fielding's is a play of contradictions, in which numerous accusations of rape are made yet the act does not occur even by inference. Dickie argues that the lack of any rape refers to a deep seated belief in the eighteenth century that a virtuous woman would fight off her attackers thereby preventing a rape, and the paradox by which the level of anatomical detail required by the law to secure a rape conviction left society believing her to be unchaste.⁴⁰³ The play is certainly full of enough tongue in cheek jokes that support this assertion.

It is interesting to note that in many of the fictional and malicious Bond-inspired prosecutrixes, the authors suggest that the character is not culpable for her loss of innocence, and invite readers or audiences to sympathize with her actions. In *A Harlot's Progress* (1732), William Hogarth depicts Needham and Charteris preying on the innocence of the young Moll Hackabout who has recently arrived in London. Similarly, in the *Jew Decoy'd; Or, The Progress of a Harlot* (1733), Bond features as Moll

⁴⁰¹ William Hicks, *Oxford Jests, refined and enlarged: Being a Collection of Witty Jests, Merry Tales, Pleasant Tales* (London: T. Norris, 1720) p.68.

⁴⁰² Ibid, p.1 of Epilogue.

⁴⁰³ See Dickie, p.581.

Hackabout, an innocent young girl who arrives in London on a waggon from the North. She is met by Mistress Lurewell, a procuress who works for the Charteris-esque character Colonel Goatish. She is introduced into the play as ‘a lass that’s blith and young, / Wha’ll struggle and fight I’ th’ storming’.⁴⁰⁴ However, by Scene V Moll’s innocence has been destroyed and the narrative voice informs the audience that

In hands like these you’ll easily believe
Moll quickly learnt each method to deceive;
 With each alluring, each seducing grace,
 Her innocence quite lost – but in her face,
 There still with study’d care its look she wore
 But with a purpose to deceive the more.
 Numbers the lightnings of her eyes subdue,
 But more her art to love and ruin drew.⁴⁰⁵

Moll has been taught to become deceitful and malicious by the actions of Lurewell and Goatish who bear responsibility for her moral degeneration.

John Breval’s characterization of Bond as the ‘harmless Maid’ in his ‘Heroi-Comical’ poem *The Lure of Venus* (1733) makes a similar but more detailed transition through the poem.⁴⁰⁶ Breval associates the poem with the Charteris case by inserting prints of William Hogarth’s *A Harlot’s Progress* at the beginning of each canto with an accompanying inscription. Under Plate 1 he comments: ‘*See sneering Chartres stand to view the Prey, / Of Rural Innocence decoy’d away*’.⁴⁰⁷

⁴⁰⁴ Anon, *The Jew Decoy’d; Or The Progress of a Harlot* (London: printed by E. Rayner, 1733) Act I, Sc. II, p.12.

⁴⁰⁵ Ibid, sc.v, p.17.

⁴⁰⁶ *The Jew Decoy’d; Or The Progress of a Harlot* also uses plate 2 of *A Harlot’s Progress* to reinforce the play’s associations with case. In this play Charteris is implied by the character of Colonel Goatish who instructs Mother Lurewell, a procuress, to find him a ‘brau bonny sound lass’. (Act I, Sc.1, p.9).

⁴⁰⁷ John Breval, *The Lure of Venus: Or, A Harlot’s Progress* (London: s.n., 1733) p.1.



Figure 2. John Breval, *The Lure of Venus: Or, A Harlot's Progress* (London: s.n., 1733) p.1.

Breval's first canto portrays Charteris as a villainous hunter and violator of women. The 'harmless Maid' is approached by Bentley, a procuress who is described as '[t]his Load of Lust, this Lump of deadly Sin'.⁴⁰⁸ She is promised 'Garments rich and gay' and told that she will live 'in State and Splendor' if she accompanies Bentley; however, she refuses. In the background, Charteris, once again named as *Francisco*, 'ply'd/ With his known *Pander*, and the Quarry ey'd'.⁴⁰⁹

In the second canto, that begins with Plate 2 of *A Harlot's Progress*, the Maid appears as 'the Prostitute [who] with saucy Pride, / Spurn at her Keeper and his Gifts deride'.⁴¹⁰

⁴⁰⁸ Ibid, p.8.

⁴⁰⁹ Ibid.

⁴¹⁰ Ibid, p.10.



Figure 3. John Breval, *The Lure of Venus: Or, A Harlot's Progress* (London: s.n., 1733) p.10.

Breval's Maid has already lost her virginity through the intercession of Bentley and work as a prostitute. She approaches Francisco in search of a 'proper Station' and he agrees to pay 'her stated Price'. Francisco quickly loses interest in her physical attractions and soon 'treats his late-lov'd Mistress as his Slave'.⁴¹¹ Enraged the Maid initially decides to leave his home but is persuaded otherwise by 'a good round Sum'.⁴¹² Francisco continues to avoid sexual intercourse with her and eventually she hires 'a base Wretch to quench her wanton Flame'.⁴¹³ On discovering this, Francisco turns 'her out of Doors'.⁴¹⁴

In *The Jew Decoy'd* and *The Lure of Venus*, the Bond-inspired character is socially and financially ruined by the close of the text. *The Lure of Venus* incorporates Plate 2 of *A Harlot's Progress* with the accompanying inscription: 'She is suppos'd

⁴¹¹ Ibid, p.15.

⁴¹² Ibid, p.16.

⁴¹³ Ibid, p.21.

⁴¹⁴ Ibid, p.22.

*Cashier'd her service is then seen in grand keeping with a Jew and soon after turned upon the Common for misbehaviour.*⁴¹⁵



The is suppos'd Cashier'd her service is then seen in grand keeping with a Jew and soon after turned upon the Common for misbehaviour

Figure 4. John Breval, *The Lure of Venus: Or, A Harlot's Progress* (London: s.n., 1733) p.16.

Breval depicts his Maid's profession as a prostitute and documents her steady decline through Plate 3 of *A Harlot's Progress*, commenting in the inscription that '*The Harlot dwindles to an humbler Strain, / Survey the Equipage of Drury-Lane.*'⁴¹⁶



The Harlot dwindles to an humbler Strain, Survey the Equipage of Drury-Lane !

⁴¹⁵ Ibid, p.16. The word 'Common' as it is used here means the Court of Doctor's Common.

⁴¹⁶ Ibid, p.22.

Figure 5. John Breval, *The Lure of Venus: Or, A Harlot's Progress* (London: s.n., 1733) p.22.

Breval's Maid is imprisoned in Bridewell Prison in Canto 4. Finally, in Canto 5, she is 'Extinguish'd in her Bloom and Native Fire' and he commands his readers to 'View the Poor Wretch in pungent Pains expire'.⁴¹⁷



Figure 6. John Breval, *The Lure of Venus: Or, A Harlot's Progress* (London: s.n., 1733) p.23.

Breval portrays his Maid as a figure of pity and suffering. Her innocence, beauty, and passion have been destroyed by male lust. In his text and the *Jew Decoy'd*, the Charteris inspired character is a disreputable figure of jest who is respectively cuckolded and the object of vengeance.⁴¹⁸ The authors imply through their associations with Charteris and Bond that, while his prosecution was false, it was a justly deserved punishment for his other exploits.

⁴¹⁷ Ibid, p.23.

⁴¹⁸ Fielding creates a similar impression in *Rape upon Rape* through Squeezum who is cuckolded and falsely prosecuted.



The appeal of the Charteris case is indicated by the numerous entries about it found in the contemporary newspapers. The chronological order of reports published about the case demonstrates that readers were heavily dependent on ‘unofficial’, and often sensationalized, versions of the case. The content of the newspaper entries and trial reports suggests a demand for details similar to those required to support an accusation of rape such as female consent, or lack thereof, force, penetration and emission, circumstantial evidence, and the moral character of the complainant. Incorporating the details used to determine the verdict in the ‘unofficial’ report implies readers’ awareness of, and interest in, the statutory and non-statutory requirements investigated during rape cases. Whilst the Charteris case was atypical in the volume of information produced about it, it contributed to popular understandings of the offence of rape by supporting, and widely publicizing, rape trial procedure.

Unsurprisingly, given Charteris’ reputation, his pardon was not portrayed in the print market as an assertion of his innocence. The case confirms Walker’s contention that the ‘general suspicions about women’s false allegations were matched by a willingness to believe that men in particular cases were guilty’.⁴¹⁹ Charteris’ notorious reputation certainly met these criteria. His pardon did very little to dispel the image that he had built over the years as a ‘notorious blasted rascal’ which reached its proverbial climax in this prosecution. That it took the extent of Charteris’ notoriety for the majority to view him as a rapist and to believe Bond’s claims demonstrates the difficulties faced by a woman prosecuting a rape in this period. Despite his varied portrayals as a rapist, a whoremonger, or as an infirm and impotent old man who had been falsely accused, Charteris was consistently envisaged as a criminal whose crimes merited retribution.

⁴¹⁹ Garthine Walker, ‘Rape Acquittal’, p.118.

Charteris' pardon instead confirmed popular interpretations of legal and political corruption: he was simply rich enough to bribe his way off the gallows. The lack of interest in Charteris' pardon suggests an acceptance of political and legal corruption and an acknowledgment that legal endorsement was not required to confirm a rapist's guilt. His self-professed impotence, and the popular understanding of impotence, allowed the medical infliction to be viewed as a form of divine justice for his crimes. It is therefore unsurprising that Charteris' impotence was a salacious aspect of the case, drawing interest from publishers and authors. The influence of the comic portrayals of Charteris, as a now weak and impotent man condemned for crimes committed prior to Bond's rape, can be seen in later fictional characterizations of 'rapists' such as Tobias Smollett's character, Isaac Rapine, discussed in chapter five.

Bond's transformations in the print market from a virtuous victim to a malicious prosecutrix are unsurprising given the negative legal and social attitudes towards complainants in rape cases. However, it is interesting that her 'innocence' was initially acknowledged. This challenge to the common suspicion with which women who claimed to have been raped were treated was likely to have been influenced by Charteris' reputation. This suggests that the representations of, and attitudes towards, the complainant and the defendant in rape trials or scenes of rape were mutually reliant: in this case, Bond's 'virtue' is only permitted through reference to Charteris' guilt.

Part Two

Rape and the Law in Fiction, 1712 – 1751



The second section of this thesis contains four chapters that focus on case studies of novels, and investigates the relationship between fictional rape and legal conventions of rape. It asks to what extent contemporary writers were interested in the legal conventions of rape, how they were presented in the author's fiction, and what types of interpretation of rape the author invited.

Keith Dolin asserts that 'the relationship between law and literature was an integral part' of the eighteenth-century print market.⁴²⁰ The expansion of the print market had already 'transformed law from an oral to a written culture', increasing access to legal information and producing a culture in which authors and readers were likely to be aware of legal contexts to narrative crises.⁴²¹ The influence of the law on eighteenth-century novels has been widely established in critical studies. Based on his assertion that individuals identified with, and were motivated by, legal principles, John Zomchick argues that novelists could 'no more imagine character without law than they could imagine a society without conflicts'.⁴²² Zomchick's vision of the law's influence on the creation of fictional characters suggests that readers would also struggle to envisage

⁴²⁰ Dolin, *A Critical Introduction*, p.11. Erica Sheen and Lorna Hudson also note 'how closely identified were the cultural spaces of both legal and literary writing' in *Literature, Politics and Law*, ed. by Erica Sheen and Lorna Hudson (Basingstoke: Palgrave Macmillan, 2005) p.3.

⁴²¹ Temple, p.12.

⁴²² John Zomchick, *Family and the Law in Eighteenth-Century Fiction: The Public Conscience in the Private Sphere* (Cambridge: Cambridge University Press, 1993) p.2.

characters that were not influenced by the law. That is not to say that all characters are described as law abiding, but rather that the law's view of their behavior, emotions and speech is in some way evident in the character. As can be seen in chapter six, a character's identification with legal principles is particularly evident in fictional rape victims who are often conflicted in their responses to the rape, demonstrating concerns over their own culpability in the act. Similarly, as discussed in chapter five, it is possible to recognize how concerns about false and malicious prosecutions were reflected in, and potentially emphasised by, female characters who, motivated by revenge or financial gain, fabricated allegations of rape.

The authors studied in the following chapters all interacted with the law in their writing and personal lives or careers, enabling them to create informed representations of legal issues in their novels. The most obvious legal influence is found in the works of Henry Fielding who was a legal professional, legal reformer, legal author and the founder of the Bow Street Runners in addition to his work as a literary writer.⁴²³ Whilst Samuel Richardson was not legally trained, as the printer of legal texts for the House of Commons he had a greater access to legal knowledge than most.⁴²⁴ In addition to this, he had legal connections including a close friendship with Thomas Edwards, a trained lawyer and the son and grandson of barristers.⁴²⁵ Alexander Pope, who was also connected to Edwards, maintained a notable friendship with William Fortescue, a lawyer who held the roles of Baron of the Exchequer and Master of the Rolls, and who was purported to have offered Pope legal advice on his works.⁴²⁶ In addition to his legal standing, Fortescue was a member of the Scriblerian Club and worked in collaboration with Alexander Pope on *Straddling versus Styles*, a text that satirised the judiciary and

⁴²³ Fielding was a barrister and a Justice of the Peace. He held the title of Court Justice for the city of Westminster. See chapter four for further discussion of this.

⁴²⁴ See Thomas Cary Duncan Eaves and Ben D. Kimpel, *Samuel Richardson: A Biography* (London: Clarendon Press, 1971) pp.55-56 for further details.

⁴²⁵ *Encyclopedia of British Writers: 16th, 17th, and 18th Centuries*, edited by Alan Hager (New York: Book Builders LLC, 2005) p.91.

⁴²⁶ Andrew Chambers, 'Aland, Sir John Fortescue', *General Biographical Dictionary* (London: T. Chambers, 1807) pp.173-174.

was targeted at the general public. In contrast, Daniel Defoe and Tobias Smollett experienced an opposing perspective of the law through the time that each spent in jail. It is likely that these experiences would have contributed to their legal acumen through the construction of their defence cases, discussion with fellow inmates, and access to the extensive law libraries of London's prisons.⁴²⁷

⁴²⁷ Defoe was arrested for debts of £700 in 1692. In 1702 he spent three days in pillory before being committed to Newgate Prison for libel. Smollett was committed to the King's Bench Prison for libel, an experience that contributed to the detailed descriptions of jail in his novel *Sir Launcelot Greaves*. See Alice Parker, 'Tobias Smollett and the Law', *Studies in Philology*, 39.3 (1942) pp.545-558 for further details on Smollett's conviction.

Chapter Three

‘painted fragments’:

Sexual Imagery, Rape Myths and Transformations in Alexander Pope’s *The Rape of the Lock* (1712)



The Rape of the Lock was inspired by the most famous haircut in literary history. In 1711 Lord Petre caused great offence to Arabella Fermor, a young woman whom he had been courting, and her family, by cutting a lock of her hair. A mutual friend of the Petres and Fermors, John Caryll, commissioned Alexander Pope to write a humorous poem to dispel the perceived severity of the incident and alleviate the feud between the two families. This resulted in Pope’s mock-heroic poem, *The Rape of the Lock*, initially published as two cantos in 1712, and expanded into five cantos in 1714, and amended again with the addition of Clarissa’s speech on good humour in 1717.⁴²⁸ Pope’s attempt was less successful as a form of reconciliation than perhaps hoped, since the Fermor family took offence at the poem, believing it to insinuate Arabella’s lack of virtue.⁴²⁹ Pope therefore added an introductory letter to the poem that was designed to placate the family by assuring them that Belinda was only loosely modeled on Arabella:

⁴²⁸ This chapter uses the 1717 edition except where otherwise stated.

⁴²⁹ See Pope’s comment that ‘Sir Plume blusters, I hear; nay, the celebrated lady herself is offended, not at herself, but me’ in his letter to John Caryll, junior, on 8th November 1712 in *The Correspondence of Alexander Pope*, ed. by George Sherburn, vol.I (Oxford and London: The Clarendon Press, 1956) p.151.

As to the following Cantos, all the Passages of them are as Fabulous, as the Vision at the Beginning, or the Transformation at the End; (except the Loss of your Hair, which I always name with Reverence.) The Human Persons are as Fictitious as the Airy Ones; and the Character of *Belinda*, as it is now manag'd, resembles You in nothing but in Beauty.⁴³⁰

The sexual connotations of the poem are frequently noted by critics, however, the context of rape is less discussed. When read as a symbolic rape, critical responses contest the representation of rape. David B. Morris, who envisages the theft of Belinda's lock as a 'symbolic sexual assault', contends that Belinda herself is 'unaware' of 'the sexual content to her speech'.⁴³¹ However, Belinda's naivety is essential to the poem's reading as a symbolic sexual assault; if Belinda was conscious of the sexual connotations of her speech, she would be perceived as inviting sexual contact, rather than as a victim. Belinda's 'rape' is often interpreted as facilitating a critique of materialism in eighteenth-century society,⁴³² whilst Anne Leah Greenfield features the rape as a 'topic of irreverence and wit' that is representative of the period's 'trope of sexual violence'.⁴³³

This study argues that Pope's poem reveals his interest in the interactions between perceptions of rape in the law, fiction and social convention. It suggests that *The Rape of the Lock* invites the reader to interpret the theft of Belinda's lock through the conventions of legal rape, rape myths, and classical rape tales, and to explore the conflicts that these different conventions raise. As such, the discussion of sexual imagery, and female consent and morality, draws on the questions raised about rape and rape prosecutions as explored in chapters one and two. The chapter begins by considering Pope's use of the unmistakable imagery of sexual violence to represent the

⁴³⁰ Alexander Pope, 'The Rape of the Lock', *The Twickenham Edition of the Poems of Alexander Pope*, ed. by John Butt et al., vol. 2, 3rd edn., ed. by Geoffrey Tillotson (London; Methuen & New Haven, CT: Yale University Press, 1962) pp.xxxii-xxxiii.

⁴³¹ David B. Morris, *Alexander Pope: The Genius of Sense* (Cambridge, MA: Harvard University Press, 1984) p.91 & 93.

⁴³² See Paul Baines, *The Complete Critical Guide to Alexander Pope* (London: Routledge, 2000) p.68 and Christa Knellwolfe, *A Contradiction Still: Representations of women in the poetry of Alexander Pope* (Manchester and New York: Manchester University Press, 1998) p.70.

⁴³³ Anne Leah Greenfield, *Interpreting Sexual Violence, 1660-1800* (New York: Pickering & Chatto, 2013) p.3.

severance of Belinda's hair, implying that the act holds the significance of a sexual rape as it was defined in law. In section two, Belinda's questionable morality and consent are examined in relation to rape myths, which were prevalent between 1700 and 1730. Section three investigates how the poem invites a reading of Belinda's virtue, or lack thereof, through reference to classical rape tales. A fourth section explores the significance of the transformation of Belinda's lock into a star and its allusion to the myth of Callisto, an unacknowledged but pervasive presence in *The Rape of the Lock*. The chapter concludes with a consideration of how Belinda's and Callisto's transformations conform to an eighteenth-century trope of classical rape tales, and suggests that their legacy is apparent in publishers' responses to the Abergavenny and Charteris trials in 1730.

I. The 'rape' of Belinda

The Rape of the Lock focuses, as the title indicates, on a lock of hair that Pope's beautiful and vain protagonist Belinda prizes above all her other physical features; the lock is desired by the Baron who schemes to obtain it. Pope inscribes the idea of sexual violation into his poem from the outset through his title and invokes it in the second stanza when he questions 'what strange Motive, Goddess! Cou'd compel / A well-bred Lord t'assault a gentle Belle?'⁴³⁴ The term 'assault' was closely associated with rape in the period's legal discourse.⁴³⁵ Indeed, the idea of sexual rape is re-inscribed in Canto II when the Baron first beholds Belinda's 'bright Locks'.⁴³⁶ Whilst Belinda's hair is the

⁴³⁴ 'The Rape of the Lock', I.7-8.

⁴³⁵ In *The Proceedings* Leonard Bate's rape of Dorothy England was termed 'the grand assault' (t16851209-28). See also *The Proceedings*, t16860114-16, t16890516-78, t16940418-7, t16940830-9 and t17070423-34. Allegations of rape that lacked sufficient evidence to be deemed a rape in court but nonetheless involved forcible coitus perpetrated against the will of the victim were prosecuted as 'assault with intent' (*The Proceedings*, t17071210-45 and t1710112-21.) Also, see chapter two which discusses the amendment to Bond's original prosecution against Charteris which added 'assault with intent' to the final prosecution as rape.

⁴³⁶ 'The Rape of the Lock', II.29-34.

subject framed in the first line of the stanza, the remaining lines are ambiguous as to whether this is a rape:

He saw, he wish'd, and to the Prize aspir'd:
Resolv'd to win, he meditates the way,
By Force to ravish, or by Fraud betray;
For when Success a Lover's Toil attends,
Few ask, if Fraud or Force attain'd his Ends.⁴³⁷

The sexual connotations of this stanza should not be overlooked.⁴³⁸ 'Force to ravish' directly implies a forcible and non-consensual sexual violation, synonymous with the law's definition of rape.⁴³⁹ The alternative of fraud suggests the use of deceit to accomplish goals such as is encountered in Jove's rape of Europa when he disguises himself as a bull.⁴⁴⁰

As the narrative draws towards the 'rape' scene, the imagery of sexual violence becomes increasingly prominent. Belinda, described as a 'Nymph', is guarded by the 'Inhabitants of the Air' and placed under the protection of Ariel, 'a watchful sprite'.⁴⁴¹ Ariel has a premonition of 'impending Woe' that will befall his charge and 'summons straight his Denizens of Air' to safeguard her:

This Day, black Omens threat the brightest Fair
That e'er deserv'd a watchful Spirit's Care;
Some dire Disaster, or by Force or Slight,
But what, or where, the Fates have wrapt in Night.
Whether the Nymph shall break *Diana's* law,
Or some frail *China* jar receive a Flaw.⁴⁴²

Ariel's list of possible disasters is structured hierarchically with the most fearsome outcome appearing first. The worst disaster he could imagine is for Belinda to 'break *Diana's* law'. Diana was the Roman virgin goddess of the hunt, the moon, and birth. According to myth she surrounded herself with a virgin train of young women from

⁴³⁷ Ibid, II.30-34.

⁴³⁸ In *The Adventure of Eovaii*, Eliza Haywood's character Yximillia uses the phrase 'Nor Force, nor Fraud' when she denies the sexual advances of Broscomin. Eliza Haywood, *The Adventures of Eovaii*, ed. by Earla Wilputte (Peterborough, Ont.: Broadview Press, 1999) p.86.

⁴³⁹ See chapter five for a discussion of eighteenth-century uses and interpretations of the term 'ravish'.

⁴⁴⁰ See section III of this chapter for further information.

⁴⁴¹ 'The Rape of the Lock', I.123; I.28; I.106.

⁴⁴² Ibid, II.101-107.

whom she demanded chastity. Ariel's consideration of '[w]hether the Nymph shall break *Diana's* law' questions Belinda's chastity, suggesting that she might actively engage in sexual intercourse. The 'frail *China* jar' listed second is symbolic of Belinda's chastity. Descriptions of vessels, jars, or bottles were frequently used as a polite symbol of female sexuality and virginity during this period. The fragility and origin of Belinda's metaphorical maidenhood denotes her social status as rare, beautiful and wealthy. The use of the word 'receive' which denotes something given rather than actively engaged in or sought, implies that Ariel fears Belinda will be faced with unwanted, rather than consensual, sexual attentions that will destroy her chastity.

In Canto III Belinda and the Baron enact a parody, and precursor, of her assault through their game of ombre:

The *Knave* of *Diamonds* tries his wily Arts,
And wins (oh shameful Chance!) the *Queen* of *Hearts*.
At this, the Blood the Virgin's Cheek forsook,
A livid Paleness spreads o'er all her Look;
She sees, and trembles at th' approaching Ill,
Just in the Jaws of Ruin, and *Codille*.⁴⁴³

Belinda secures a reprieve with her '*King*' who 'springs to Vengeance with an eager Pace, / And falls like Thunder on the prostate *Ace*'.⁴⁴⁴ Whilst she is elated at her success Pope emphasizes that this game anticipates, and is a 'mock' version of the 'rape' to come:

Oh thoughtless Mortals! Ever blind to Fate,
Too soon dejected, and too soon elate!
Sudden these Honours shall be snatch'd away,
And curs'd for ever this Victorious Day.⁴⁴⁵

The curse soon to be placed on Belinda's memory of her victory is an inappropriately severe response to a game, implying that this scene is a prelude to the 'rape', serving as a preparatory warning to Belinda.

⁴⁴³ Ibid, III.87-92.

⁴⁴⁴ Ibid, III. 94-95.

⁴⁴⁵ Ibid, III.101-104.

Two stanzas later, as the Baron's schemes to violate Belinda begin to reach their conclusion, he is aided and abetted by Clarissa who draws

[...]with tempting Grace
A two-edg'd Weapon from her shining Case;
So Ladies in Romance assist their Knight,
Present the Spear, and arm him for the Fight.⁴⁴⁶

These lines are loaded with connotations. Pope emphasizes the 'mock' sexual nature of the act through the reference to 'Romance' and the phallic imagery of the spear. The proximity of the themes of sexual desire and violent romance allude to the difficulty of distinguishing between permitted and illicit sexual contact in the period and foreshadow the forceful and deceitful assault of Belinda:⁴⁴⁷

The *Peer* now spread the glittering *Forfex* wide,
T'inclose the Lock; now joins it, to divide.
Ev'n then, before the fatal Engine clos'd,
A wretched *Sylph* too fondly interpos'd
Fate urged the Sheers, and cut the *Sylph* in twain,
(But Airy Substance soon unites again)
The meeting Points the sacred Hair dissever
From the fair Head, for ever and for ever!⁴⁴⁸

The terms used in this stanza are incongruent with the action. The words 'divide', 'fatal', 'dissever' suggest an irrevocable destruction that is inconsistent with the act of cutting hair that will in time grow back. Belinda's lock itself is described as something more than just hair: it is a 'sacred' artifact. The words that Pope selects transform the simple act of cutting hair into a ritual that is replete with the imagery and phrasing of sexual violence. The *forfex*, or scissors are portrayed as symbolic of both genders. Initially they invoke the female role as they suggest a woman's thighs that are 'spread [...] wide' but swiftly transform into a male weapon as they become the phallic 'fatal Engine'.⁴⁴⁹ The masculine *forfex* violently severs the *sylph*, the insubstantial and

⁴⁴⁶ Ibid, III.127.

⁴⁴⁷ See further discussion of this in the Introduction.

⁴⁴⁸ 'The Rape of the Lock', III.152-155.

⁴⁴⁹ Thomas Alan King in *The Gendering of Men, 1600-1750: Queer Articulations* notes that during the eighteenth century the penis was called 'the "engine" of pleasure'. (Wisconsin: University of Wisconsin Press, 2008) p.405.

ultimately inadequate protector of Belinda's virtue, in 'twain', in a metaphorical parting of the hymen. The lock is then 'inclose[d]', suggesting confinement from which it cannot escape, and 'ravish'd', a term that was frequently used in contemporary texts to signify rape. Pope thus portrays the non-consensual and forceful severance of Belinda's lock as a 'mock' act of rape. Belinda's lock, or virginity, can never be replaced and so Pope writes that her 'ravish'd' lock is thus severed from the 'fair Head, for ever and for ever!'⁴⁵⁰

Christa Knellwolf argues that Belinda's 'lock itself is a homonym which is, on the one hand, a device for closing and, on the other, a part of the human body'.⁴⁵¹ She notes that Shakespeare describes locks as a physical barrier that protect women from sexual violation and that, when broken, act as visible proof of the crime. Pope's metaphorical lock, representative of Belinda's virginity, thus denotes the locked, or closed hymen. The lock, as hair, has further symbolic meaning. Locks of hair had a ritualistic role in heterosexual relationships during the eighteenth century. In 'Tokens of Imperfect Affection' Kristen Miller Zohn notes that hair 'symbolized captivating sexuality and has been associated with intimacy, leading lovers throughout recorded time to give and receive locks of hair'.⁴⁵² A fashion arose during the seventeenth century of commissioning a lock of hair to be woven into a pendant, locket, chain, or ring, to be given as a love token or used to remember the dead. Hair does not decay and so acts as a lasting memento. Miller Zohn comments that 'rules about the exchange of hair jewelry were strictly respected [...] a young unmarried woman could receive such a memento from male and female relatives [...] female friends [and...] a man to whom she was betrothed'.⁴⁵³ When the exchange of hair is viewed as the precursor to marriage and therefore nuptial relations, it takes on a sexual connotation as the promise of sexual

⁴⁵⁰ 'The Rape of the Lock', III.154.

⁴⁵¹ Knellwolfe, p.192.

⁴⁵² Kristen Miller Zohn, 'Tokens of Imperfect Affection: Portrait Miniatures and Hairwork in *Sense and Sensibility*', *Persuasions*, 32.1 (Winter 2011) 8.

⁴⁵³ *Ibid.*, 9.

intercourse. When the rules respecting hair exchange between unrelated men and women were not respected, it held social consequences as is emphasized by the conflict between the Fermor and Petre families. The contention over the incident between Arabella and Lord Petre was due to Arabella's lack of consent and the absence of a formal betrothal between the pair. The non-consensual appropriation of female hair also plays a role in the records of rape trials during the period. In its most obvious use, hair provided a male attacker with a means of restraining their victim. In the case of John Stevens who was found guilty of raping Elizabeth Humphreys, it was deposed that he 'pulled' Humphreys 'by the hair of the head' into position in order to commit the rape.⁴⁵⁴ Female hair is also often cited as an indicator of the act of sexual intercourse. In the trial of an anonymous 'Master Carpenter' accused of raping Betteridge May it was the state of her hair that was offered by witnesses as evidence of the crime. Her son noted that 'when my Mother came in she had a high Colour, her Cap was tumbled, and her Hair about her Ears'.⁴⁵⁵ During a case of rape heard in 1757 Christian Streeter claimed that following her violation Daniel Lackey 'ordered his man to cut my hair and put it by'.⁴⁵⁶

Belinda's response to the loss of the lock strengthens the poem's imagery of a violated virginity:

Then flash'd the living Lightnings from her Eyes
And Screams of Horror rend th'affrighted Skies.
Not louder Shrieks to pitying Heav'n are cast,
When Husbands, or when Lapdogs breath their last,
Or when rich *China* Vessels, fal'n from high,
In glitt'ring Dust and painted Fragments lie!⁴⁵⁷

Belinda has indeed 'fal'n from high'. When we first encountered her she was symbolically 'rob'd in White' as a virgin whose 'heav'nly Image' was deified.⁴⁵⁸ After

⁴⁵⁴ *The Proceedings*, t17520408-19.

⁴⁵⁵ *Ibid*, t17340710-33.

⁴⁵⁶ *Ibid*, t17570420-42.

⁴⁵⁷ 'The Rape of the Lock', III.155-160.

⁴⁵⁸ *Ibid*, I.123; I.125.

the Baron's assault, Umbriel visits the cave of Spleen, seeking a potion to fuel Belinda's melancholy. Pope describes how a 'vapour' overhangs the cave, causing visions of 'Strange Phantoms' that are described as ranging from 'Dreadful, as Hermits' Dreams in haunted Shades,' to as 'bright, as Visions of expiring Maids'.⁴⁵⁹ These evocative descriptions are suggestive of Belinda's emotions, which will be heightened by Umbriel's application of the potion, and imply that she will consider death preferable to a solitary existence, isolated by social censure. These visions recall the classical rape narratives that frequently ended in female suicide either as a method of preventing sexual violence or in response to it. It is notable that the description of the visions ends with 'Maids turn'd Bottels, [who] call aloud for Corks'.⁴⁶⁰ The transformation of the rare and expensive vessels that were symbolic of Belinda's prized chastity into common and easily accessible bottles symbolizes Belinda's degraded social status. She is now associated with a common place rather than a fragile luxury item. The maids' calls for 'Corks' could imply their awakened sexual desires which they cannot suppress or indicate impotent attempts to recover their violated chastity that mirror Belinda's desire to recover her lock. Belinda's request is rebuffed by the Baron who declares that 'this sacred Lock I swear, / Which never more shall join its parted Hair; / Which never more its Honours shall renew'.⁴⁶¹

As the Baron revels in his victory exclaiming, 'Let Wreaths of Triumph now my Temples twine', the narrative voice bewails a female naivety that has allowed the 'rape' to be perpetrated:

What Time would spare, from Steel receives its date,
And Monuments, like Men submit to Fate!
Steel cou'd the Labour of the Gods destroy,
And strike to Dust th'Imperial Tow'rs of *Troy*:
Steel cou'd the Works of mortal Pride confound,
And hew Triumphal Arches to the Ground.
What Wonder then, fair Nymph! thy Hair shou'd feel

⁴⁵⁹ Ibid, IV.40-42.

⁴⁶⁰ Ibid, IV.54.

⁴⁶¹ Ibid, IV.133-136.

The conqu'ring Force of unresisted Steel?⁴⁶²

In the context of the metaphors relating to sexual violence it is entirely possible that Pope's sudden and unprecedented use of the term 'steel', referring literally to the scissors that effect the Baron's desires, is the concluding metaphor for sexual assault.

The poem's contextual allusions to mythical rape victims and the pairing with the reference to Troy is revisited in Pope's later poem "To BELINDA on the RAPE OF THE LOCK" (1717) when he writes:

Pleas'd in these lines, *Belinda*, you may view
How things are priz'd, which once belong'd to you: [...]
Thus *Helen's* Rape and *Menalaus'* wrong
Became the Subject of great *Homer's* song; [...]
Nature to your undoing arms mankind
With strength of body, artifice of mind;
But gives your feeble sex, made up of fears,
No guard but virtue, no redress but tears.
Yet custom (seldom to your favour gain'd)
Absolves the virgin when by force constrain'd.
Thus *Lucrece* lives unblemish'd in her fame,
A bright example of young *Tarquin's* shame.
Such praise is yours—and such shall you possess,
Your virtue equal, tho' your loss be less.⁴⁶³

The two references here to Helen and Lucrece reinforce the portrayal of Belinda as a 'rape' victim. Lucrece, or Lucretia, was the beautiful and virtuous wife of Collatinus who became the object of Tarquin's desire. Tarquin held a drawn sword against her and gave her the choice of consenting to sexual intercourse or being killed with one of her male slaves to make it appear that he had killed them in an act of adultery to defend Collatinus' honour. After her rape, Lucrece disclosed the events to her father before stabbing herself in her heart.⁴⁶⁴

Eighteenth-century publishers portrayed Lucrece as the archetypal rape victim. Her name was depicted as emblematic of female virtue and a signifier of a rape enacted

⁴⁶² Ibid, III.171-178.

⁴⁶³ "To BELINDA on the RAPE OF THE LOCK" in Pope, *Minor Poems*, Twickenham Edition, vol.6 (Meuthen: Yale University Press, 1954) p.107, lines 1-24.

⁴⁶⁴ Her story originated in Ovid's *Fasti*, Livy's *History of Rome* and William Shakespeare's *The Rape of Lucrece*. For further discussion of the rape and the myth of Lucrece see Greenfield, p.2

by force and without consent. Her death encouraged the popular perception that a woman who has been raped will subsequently die. In Livy's account, before Lucrece dies she comments: 'Though I acquit myself of the sin [...] I do not absolve myself of the punishment. Nor in time to come shall ever unchaste woman live, through the example of Lucretia.'⁴⁶⁵ *The Newgate Calendar's* account of the rape trial of John Holliday (1700) reinforces the idea that a woman's consent, or lack thereof, to rape was determined by her death or survival. The account states that the victim 'being no Lucretia, to value her chastity at the loss of her life, was forced to submit'.⁴⁶⁶ Although the comment ascribes force to the act it implies that the virtuous woman would avoid rape by seeking death. The perception of the 'true' rape victim, who dies from the shame of her forced violation, is satirized by Pope's comment that Belinda's virtue is 'equal' to that of Lucrece. His defence of Belinda's innocence, which is also evident in 'The Rape of the Lock's' imagery of sexual violence, however, appears in contrast to the characterization of Belinda as a flirtatious and materialistic beauty, which precedes her rape. As we will see, Belinda's appreciation of her own beauty and, at times, almost heretical regard for her appearance, implies her culpability in the act as she seeks male attention.

II. Belinda and rape myths

Although the imagery of sexual violence, pervasive throughout the poem, implies Belinda's lack of consent, as previously noted, there are points at which her virtue is questioned. Pope's decision not to establish Belinda's morality and chastity contrasts with the poem's theme of sexual violation and facilitates the satiric tone. Belinda undergoes a number of transformations through the poem that evoke the period's popular rape myths and act to cast further doubt on her virtue. At the beginning of the

⁴⁶⁵ Livy, trans. B. O. Foster, vol.I (Cambridge, Mass. And London: Harvard University Press and Heinemann, 1976) p.58.

⁴⁶⁶ *The Newgate Calendar*.

first Canto she is described as a ‘gentle *Belle*’, a description that invokes the traditional traits of femininity: meek, subservient, sensitive, moral and chaste.⁴⁶⁷ The key attributes of her character are emphasized when she is called a ‘pious Maid’ implying religious devotion, morality, and virginity.⁴⁶⁸ She is therefore ‘embrac’d’ by the sylphs who are proponents and guardians of virginity and morality. The ‘*Billet-doux*’ that Belinda receives from the Baron marks her first transformation into a coquette.⁴⁶⁹ Pope describes how:

First rob’d in White, the Nymph intent adores
 With Head uncover’d, the *Cosmetic* Pow’rs.
 A heav’nly Image in the Glass appears,
 To that she bends, to that her Eyes she rears;
 Th’ inferior Priestess at her Altar’s side,
 Trembling, begins the sacred Rites of Pride.⁴⁷⁰

Belinda’s religious and moral dedication, evident in her earlier description, is subsumed in her newly found materialistic avarice and pride. In a blasphemous ritual, which is the antithesis of Christian worship, Belinda pays homage to her own image and transforms into ‘the Goddess’; here her external façade becomes more worthy than her inner self.⁴⁷¹ This construction of her social identity centres on her sense of pride. In the Christian religion pride is the first deadly sin, and can be a motive for committing all other sins. This idea becomes apparent as Belinda’s ritual progresses and she covers the symbolic ‘White’ of her virginal state with an unnatural ‘glitt’ring Spoil’. The ‘Spoil’ or precious gems, which originate from the perceived heathen and immoral countries of India and Arabia, are themselves the result of the pillage and ‘rape’ of other nations’ resources. In Belinda’s final act of pride-driven incarnation, she puts on a false visage that destroys her natural charms and spontaneity to attract the male gaze:

Now awful Beauty puts on all its Arms;
 The Fair each moment rises in her Charms,

⁴⁶⁷ ‘The Rape of the Lock’, I.8.

⁴⁶⁸ Ibid, I.112.

⁴⁶⁹ Ibid, I.118. *Billet-doux* meaning love letter.

⁴⁷⁰ Ibid, I.123-128.

⁴⁷¹ Ibid, I.132.

Repairs her Smiles, awakens ev'ry Grace,
And calls forth all the Wonders of her Face;⁴⁷²

A sense of impending threat underlies this description of her constructed image. She puts on 'Arms' as though preparing for war signifying her entry into society as a sexual being with the attendant risks.

Belinda is no longer an undeniably chaste and moral woman, instead she constructs herself to attract and seduce men. As S. Block comments, a popular rape myth during this period held that '[a] woman's dual role as temptress and regulator meant that her stated "no" might still mean "yes"'.⁴⁷³ Belief in the idea of a seductress who falsely prosecutes her lover is evident in the records of rape trials in the early eighteenth century. In the trials of Roger Newell and Isaac Seaman (1719) witnesses attested that the prosecutrices had behaved 'impudently', meaning flirtatiously, towards the accused. In both cases, the prosecutrices were implied to have consented to sexual intercourse and the defendants were acquitted. As Simpson notes, the majority of the cases considered to be 'Malicious Prosecutions', were occasioned by blackmail for financial gain.⁴⁷⁴ In Pope's poem, Belinda appears to seek the reward of male attention. When she enters the social sphere of the court, 'ev'ry Eye [is] fix'd' on Belinda who reigns as 'the goddess' and to whom even 'Jews' and 'Infidels' pay homage. She does not adopt the traditional disdain of a goddess interacting with mortals. Instead, Belinda behaves as a coquette. She teases her male contemporaries, encouraging their attention and adoration whilst rejecting it:

Favours to none, to all she Smiles extends,
Oft she rejects, but never once offends.
Bright as the Sun, her Eyes the Gazers strike,
And, like the Sun, they shine on all alike.⁴⁷⁵

⁴⁷² Ibid, I.139-143.

⁴⁷³ S. Block, 'Rape without women: Print culture and the politicization of rape, 1765-1815', *The Journal of American History*, 89 (2002) p.39.

⁴⁷⁴ See Simpson, 'The "Blackmail Myth"'. See also the trials of Richard Newell (1716) and Jacob Wykes (1718), *The Proceedings*, t17160411-42 and t17180709-37 respectively.

⁴⁷⁵ 'The Rape of the Lock', II.11-14.

She is aware of the male attraction when she sees the ‘Gazers’ and employs further ‘Arts’ to sustain and increase their desire when she ‘Nourish’d two Locks’.⁴⁷⁶ When Pope writes later in poem that ‘Thrice she looks back, and thrice the foe drew near’, Belinda’s transformation into a flirtatious beauty suggests that this is coquettish behavior in which she entices the Baron, thus implying her complicity in the ‘rape’.⁴⁷⁷ Whilst Belinda does not verbally encourage her male suitors, she seeks to increase their interest through her physical appearance:⁴⁷⁸

Fair Tresses Man’s Imperial Race insnare,
And Beauty draws us with a single Hair.⁴⁷⁹

Despite being a virgin, Belinda is also a temptress who disregards the acceptable behaviour of a chaste and moral woman, destroying all perceptions of her good moral character.⁴⁸⁰ She seeks, and succeeds in inciting the sexual desires of her multiple suitors.

The sylphs, as witnesses to Belinda’s transformed character, recognize the predetermined resolution of her actions: ‘With beating Hearts the dire Event they wait, / Anxious, and trembling for the Birth of Fate.’⁴⁸¹ The Baron’s avaricious designs transform Belinda into the metaphorical image of the ‘captive *Queen*’ who is captured through her own devices and desires.⁴⁸² According to the contemporary rape myths, any ‘no’ that she now verbalizes fails to detract from her consent. Thus when Ariel seeks

The close Recesses of the Virgin’s thought;
As on the Nosegay in her Breast reclin’d,
He watch’d th’Ideas rising in her Mind,
Sudden he view’d, in spite of all her Art,
An Earthly Lover lurking at her Heart.
Amaz’d, confus’d, he found his Power expir’d,

⁴⁷⁶ Ibid, II.20.

⁴⁷⁷ Ibid, III.138.

⁴⁷⁸ Katie M. Edwards, Jessica A. Turchik, Christina M. Dardis, Nicole Reynolds, Christine A. Gidyez, ‘Rape Myths: History, Individual and Institutional-Level Presence, and Implications for Change’, *Sex Roles*, 65 (2011) p.761.

⁴⁷⁹ ‘The Rape of the Lock’, III.138.

⁴⁸⁰ See chapter four for a discussion of the relevance of good moral character in incidents of rape.

⁴⁸¹ ‘The Rape of the Lock’, II.141-142.

⁴⁸² Ibid, III.96.

Resign'd to Fate, and with a Sigh retir'd.⁴⁸³

Ariel's power resides in his role to safeguard the chastity and morality of his ward. The sylphs are however 'allocated' to moral and chaste women. When Ariel views the 'Earthly Lover lurking at her Heart' it indicates Belinda's burgeoning sexual awareness and intent to consummate her desires. Ariel's abdication of his role thus emphasizes Belinda's transformation and descent into immorality.

In the immediate aftermath of the Baron's assault, Belinda transforms into the 'pensive Nymph'.⁴⁸⁴ She struggles with conflicting emotions of 'Rage, Resentment, and Despair'.⁴⁸⁵ Arguably, whilst the Baron is the immediate object of her rage and resentment, Belinda incited his sexual desires and bears some responsibility for her own 'rape' and subsequent despair. This perspective is supported by the goddess's attitude in the 'Cave of *Spleen*' when she grudgingly and 'with a discontented Air / Seems to reject' Umbriel, whilst simultaneously granting his request for a potion to fuel Belinda's melancholy.⁴⁸⁶ The goddess's indifference to Belinda's emotional state implies that she, viewing the 'rape' in accordance with the rape myths, also blames Belinda for the incident and resents the request for her own involvement. Thaelestris' speech to the 'dejected' Belinda emphasizes that she faces the prospect of social condemnation:

Methinks already I your Tears survey,
Already hear the horrid Things they say,
Already see you a degraded Toast,
And all your Honour in a Whisper lost!
How shall I, then, your hapless Fame defend?
'Twill then be Infamy to seem your Friend!⁴⁸⁷

Thaelestris' harsh comments invoke the rape myth that 'women lie about being raped', implying that a woman cannot be raped and that any accusation of rape is false. In 5 B.C. Herodotus provided an early example of this myth in his *Histories* explaining that

⁴⁸³ Ibid, III.140-146.

⁴⁸⁴ Ibid, IV.1.

⁴⁸⁵ Ibid, IV.9.

⁴⁸⁶ Ibid, IV.79-80.

⁴⁸⁷ Ibid, IV.107-111.

‘The only sensible thing is to take no notice [of rape allegations]; for it is obvious that no young woman allows herself to be [raped] if she does not want to be.’⁴⁸⁸ Belinda must, it seems, defend her honour by recovering the metaphorical evidence of its loss.⁴⁸⁹ Yet, she is too late: the Baron ‘spoke, and speaking, in proud Triumph spread / The long contended Honours of her Head’.⁴⁹⁰ Belinda’s subjugation and the physical evidence of her grief which exposes the naivety of her previous flirtations, allows her to challenge the ideas expressed in the rape myths:

Yet am I not the first mistaken Maid,
By love of *Courts* to num’rous Ills betray’d⁴⁹¹

Whilst Belinda’s comment seeks to impress her innocence as a ‘Maid’ it also defines the Baron’s actions as ‘Fraud’ rather than ‘Force’ with its attendant sense of decreased male culpability. Ironically, she is of course not the ‘first mistaken Maid’. Instead, her comment invokes the numerous other victims of sexual assault in history and literature and the associated rape myths. Belinda leaves her readers with the desolate impression that there is no resolution that can absolve her own culpability and that only by avoiding entry into society thus concealing herself ‘from mortal Eye’ could her ‘rape’ have been avoided.⁴⁹²

Furious at her fate, Belinda ‘on the *Baron* flies’.⁴⁹³ Pope re-invokes the poem’s sexual symbolism as the Baron responds to her antagonism stating: ‘Nor fear’d the Chief th’unequal Fight to try, / Who sought no more than on his Foe to die.’⁴⁹⁴ The Baron’s ‘death’ upon Belinda invokes the idea of orgasm that was termed the *petit mort*,

⁴⁸⁸ Cited in Edwards, ‘Rape Myths’, p.761. See Herodotus, *The History*, trans. by David Grene (Chicago: University of Chicago Press, 1987) and Thomas Harrison’s analysis of Herodotus’ ideas about rape in ‘Herodotus and the Ancient Greek Idea of Rape’, *Rape and Antiquity: Sexual Violence in the Greek and Roman Worlds*, ed. by Susan Deacy and Karen Pierce (London: Gerald Duckworth & Co. Ltd, 2002) pp.185-208.

⁴⁸⁹ See Thalestris’ inciting comment: ‘And shall this Prize, th’inestimable Prize, [...] / On that Rapacious Hand for ever blaze?’ ‘The Rape of the Lock’, IV.112-113.

⁴⁹⁰ Ibid, IV.139-140

⁴⁹¹ Ibid, IV.152-153.

⁴⁹² Ibid, IV.157. See also *ibid*, IV.153-162.

⁴⁹³ Ibid, V.75

⁴⁹⁴ Ibid, V.77-78

or little death, in contemporary society. The inequality thus refers to both the traditional difference in physical size and power between man and woman and the social perceptions of rapists and rape victims that are inculcated by the rape myths. The line suggests that a woman cannot defend herself from rape or prove her innocence in the act to others. Belinda once more demands the restoration of her lock but the ‘Heav’n[s]’ intercede and appropriate the lock for themselves, decreeing that the symbol of her chastity cannot be reinstated.⁴⁹⁵

The poem’s conclusion, which proposes Belinda’s final transformation into myth, conflicts with the imagery of sexual violence and female resistance, which surrounds her ‘rape’. Her name is transferred to her hair, which is immortalized ‘midst the stars’.⁴⁹⁶ The narrative voice advises her to be grateful for her impending ‘consecrat[ion]’ in memory in comparison to other women who ‘shall be laid in dust’.⁴⁹⁷ This conflicts with the earlier description of the sylphs as women who were transformed after death to guard the chastity of later female generations.⁴⁹⁸ Belinda, it is implied, is prevented from acceptance into this immortal role because of the earlier implications of her immorality and culpability.

III. Belinda’s reputation and classical myths

Belinda’s transformation from an innocent woman to one of questionable virtue is supported by allusions to characters from classical myths; these allusions reflect her altering emotional state and reception by other characters. Belinda is first compared to a classical figure when the Baron determines to attain her lock by ‘Fraud or Force’. The stanza, that first describes the Baron’s desire for Belinda, invokes the myth of Phoebus

⁴⁹⁵ Ibid, V.112. See *ibid*, V.103-112 for Belinda’s attempted recovery of her lock.

⁴⁹⁶ Ibid, V.150.

⁴⁹⁷ Ibid, V.148-149.

⁴⁹⁸ Ibid, I.47-53: ‘As now your own, our Beings were of old, / And once inclos’d in Woman’s beauteous Mold; / Thence, by a soft Transition, we repair / From earthly Vehicles to these of Air. / Think not, when Woman’s transient Breath is fled, / That all her Vanities at once are dead.’

and Daphne.⁴⁹⁹ In *Metamorphosis* Ovid describes how Phoebus is shot by Cupid's love-inducing arrow and falls in love with Daphne, the virgin daughter of the river god, Peneus. Daphne, having been shot by Cupid's love-repelling arrow, flees from Phoebus. As the pursuit continues Daphne becomes tired and, in her desperation to avoid Phoebus, calls to her father for aid: 'Help me father! If your streams have divine powers change me, destroy this beauty that pleases too well!' ⁵⁰⁰ Peneus responds to his daughter's entreaties and transforms her into a laurel tree. Pope structures allusions to this myth around the Baron's covetous plans. In the preceding stanza he describes Belinda as 'Finny Prey',⁵⁰¹ meaning that she resembles a fish, thus alluding to Daphne as the daughter of the river god, whilst in the stanza following the Baron's speech he references '*Phoebus*'.⁵⁰² This allusion foreshadows Belinda's refusal to consent to the Baron's determination to possess her lock and his eventual success. It is also through this initial declaration of Belinda's impending doom that she is first described as, and thus transformed into, a 'Nymph', a phrase used in Ovid's narration of the classical rape myths to describe the violated woman.

After Belinda's violation the allusions to mythical female characters change. Thalestris, Anna, and Dido, who feature in classical myths as sexually permissive characters, now accompany her. Thalestris was a Queen of the Amazons, a tribe of women who refused to marry and used men for sex in the hope of giving birth to girls. She was famous in the eighteenth century for a legend in which she and three hundred Amazon women spent thirteen nights having sex in the camp of Alexander the Great with the aim of breeding a race of strong and intelligent children. Dido, the first Queen of Carthage, was seen as similarly licentious in Virgil's *Aeneid*. Juno and Venus conspire to encourage Dido to engage in an affair with Aeneas. Jupiter, on hearing of

⁴⁹⁹ Phoebus is alternatively known as Apollo in classic mythology.

⁵⁰⁰ Ovid, *Metamorphoses*, ed. by Charles Martin (New York and London: W. W. Norton and Company, 2005) I. 438-567.

⁵⁰¹ 'The Rape of the Lock', II.26.

⁵⁰² Ibid, II.35.

their liaison, commands Aeneas to leave Carthage and he obeys. In her grief Dido enlists her sister Anna to build a pyre upon which she commits suicide. In *Fasti* Ovid tells how Anna drowns after the death of her sister and is transformed into the river nymph, Anna Perenna. Anna Perenna's sexual immorality is evident when she impersonates Minerva in order to have sex with Mars. The presence of mythical women who are known for their promiscuity and who support Belinda alludes to the social condemnation often faced by rape victims during this period by casting aspersions on Belinda's moral character. The anxiety about malicious allegations of rape meant that a woman must prove herself to be of good moral character; consorting with women known to be sexually uninhibited implies Belinda's lack of moral values.⁵⁰³

The Baron's questioning of Belinda's morality and culpability causes her to explode in a fit of rage aimed at her attacker: 'See fierce *Belinda* on the *Baron* flies / With more than usual Lightning in her Eyes.'⁵⁰⁴ Her desire for vengeance for this affront is precipitated by Pope's reference to the vengeful goddess Latona who is also known in mythology as Leto. Pregnant with Zeus' illegitimate twins, Apollo and Artemis, Latona sought water at a pool, however the local mortals prevented her from drinking. She retaliated by turning them all into frogs.⁵⁰⁵ In another incident of Latona's revenge, a mortal woman named Niobe boasts that she has a better lineage and is more beautiful and fertile than the goddess. Latona incites her twins to avenge her wounded pride thereby causing the slaughter of Niobe's fourteen children, an act that provokes Niobe's husband, Amphion, to commit suicide. Niobe's grieving tears turn her into marble.⁵⁰⁶

In the poem's culmination Belinda is compared to classical myths involving female sacrifice. Pope describes how her hair is removed from the mortal realm and transformed into a star in an allusion to '*Berenice*'. This refers to the story of Queen

⁵⁰³ See chapter two for further discussion of moral character in rape trials and legislation.

⁵⁰⁴ 'The Rape of the Lock', V.75-76.

⁵⁰⁵ Ovid, *Metamorphoses*, Book VI.

⁵⁰⁶ Ibid, Book VII.

Berenice II of Egypt who sacrificed her hair to the goddess Aphrodite to protect her husband whilst he was at war. The hair was placed as an offering in the goddess' temple before disappearing. To explain the event the court astronomer suggested that the goddess had turned the hair into stars and indicated a cluster of stars shaped like a head of hair which has since been known as 'Coma Berenices' or Berenice's Hair.⁵⁰⁷ The transformation of the female body, or aspects thereof, into a constellation also invokes the other mythical rapes of Europa and Callisto. When Jove rapes Europa he perpetrates the act by transforming into a tame white bull to entice Europa into riding him before abducting her. He later creates the shape of the bull in the skies in remembrance of the act, known as the constellation Taurus. After Jove rapes Callisto and she gives birth to his son, Arcas, she is transformed into a bear by Jove's wife, Juno, and later a constellation by Jove himself.⁵⁰⁸ The association with Berenice, who sacrifices her hair to ensure her husband's safety, and Callisto, who does not consent to Jove's sexual desires and is sacrificed to sate his lust and Juno's jealousy, suggests that Belinda is not complicit in her 'rape'. Yet, the poem's satirical form does introduce levity into the theme of rape, thereby undermining the consequences of the act.

It is interesting to note that, in comparison to Belinda, male characters from classical myths are only used in reference to the Baron after the 'rape'. Although he is consistently depicted as preying on Belinda throughout the poem, prior to the severing of the lock Pope associates him only with humans. This is particularly evident in the game of ombre played between Belinda and the Baron in which the players muster metaphorical armies from the '*Amazon*',⁵⁰⁹ '*Asia*' and '*Afric*'.⁵¹⁰ After the Baron concludes his assault he is described with reference to the rapists of classical myth including: Jove, Paris, Neptune, Mars, and Hermes. With the exception of Paris,

⁵⁰⁷ Chris Sasaki and Joe Buddy, *Constellations: The Stars and Stories* (New York: Sterling Publishing, 2003) p.47 and Guy Ottewell, *Berenice's Hair* (On Demand Publishing, LLC-Create Space, 2013).

⁵⁰⁸ See section IV of this chapter for further discussion of the Callisto myth.

⁵⁰⁹ 'The Rape of the Lock', III.67.

⁵¹⁰ Ibid, III.82 '*Afric*' meaning Africa.

referred to by Pope as ‘the *Trojan*’, whose ‘rape’ of Helen resulted in the desecration of Troy, these mythical characters all perpetrated rapes that did not result in negative consequences for them.⁵¹¹ Jove, a serial rapist, and Neptune, who raped Caenis, never received reprisal for their acts.⁵¹² When Mars raped Rhea Silvia the act resulted in the conception of Romulus and Remus, the former of whom established the city of Rome.⁵¹³ Hermes similarly escaped punishment for the rape and impregnation of Chione and Apemosyne.⁵¹⁴ Through invoking these classical ‘rapists’, who are not condemned or punished in the myths for their actions towards women and maintain their positions of authority, Pope suggests that the Baron will also not receive reprisal for his treatment of Belinda.⁵¹⁵

The poem culminates in an explosion of classical allusions. Canto V begins with a battle between Thalestris as the advocate of immorality who claims that ‘Virtue [is] in Face’ and Belinda the ‘Prude’ who disagrees. This fight stirs the gods to action equivalent to when:

[...] bold *Homer* makes the Gods engage
And heavn’ly Breasts with human Passions rage;
‘Gainst *Pallas, Mars; Latona, Hermes, Arms*.⁵¹⁶

This Canto, added to the poem’s expanded version of 1714, was written in the knowledge of the poem’s popularity with readers. The mortal’s ire against the heavenly antagonists which fails to achieve the desired effect parodies the Fermor family’s ire

⁵¹¹ Unless otherwise stated the events and sequence of the myths adhere to their narration in Ovid’s *Metamorphoses*. See the rape of Helen (Ovid, *Metamorphoses*, Book XII).

⁵¹² See Jove’s rape of Europa (Ovid, *Metamorphoses*, Book II), Io (Ovid, *Metamorphoses*, Book I) and Callisto (Ovid, *Metamorphoses*, Book II) and Neptune’s rape of Caenis (Ovid, *Metamorphoses*, XII, pp.170 and 459).

⁵¹³ Mars’ rape of Rhea Silvia (Ovid, *Fasti*, ed. by T. E. Page (Cambridge, Massachusetts: Harvard University Press, 1959) III.11.)

⁵¹⁴ Chione gave birth to Hermes’ son Autolycus. (Ovid, *Metamorphoses*, XII, pp.170 and 459) Apemosyne was kicked to death by her brother when he discovered that she was pregnant. Ovid, *Metamorphoses*, IV.

⁵¹⁵ Jove, who was also known as Jupiter and was the Roman counterpart of the Greek god Zeus, was the king of the gods and the god of sky. Neptune, the Roman counterpart of the Greek god Poseidon, was the god of freshwater and the sea. Mars, the Roman counterpart of the Greek god Ares, was the god of war. Hermes, who is identified with Mercury in Roman mythology, was the messenger of the gods and the Greek god of transitions.

⁵¹⁶ ‘The Rape of the Lock’, V.45-47.

against the poem's publication, which was not halted and indeed the poem's popularity with readers continued to increase.

The 'loud Alarms' that ring in Olympus bring Jove, otherwise known as Jupiter, who was the Roman king of the gods, to judge the poem's events.⁵¹⁷ Jove cannot be said to be an unbiased judge as the rapist of Europa, Io and Callisto. Pope writes that:

Now *Jove* his golden Scales in Air,
Weighs the Men's Wits against the Lady's Hair;
The doubtful Beam long nods from side to side;
At length the Wits mount up, the Hairs subside.⁵¹⁸

It is notable that Jove does not just weigh the Baron's wits; instead he weighs those of 'Men'. The multiple evidence of 'men' which is compared to the sole evidence of Belinda's hair, suggestive of a biased judgement, reflects the male orientated world of the court system, in which the prosecutrix was surrounded by the male clerk, defendant, judges and, potentially, other lawyers. Finally, 'the Wits mount up', indicating the Baron's innocence, whilst Belinda's hair 'subside[s]'. Belinda, furious at Jove's judgment and provoked by Thalestris, makes a futile attack on the Baron with 'a deadly *Bodkin*',⁵¹⁹ inciting 'Heav'n' to remove her lock 'from the mortal plane.'⁵²⁰

The 'punishment' of Belinda, through the removal of her hair, contrasts with the imagery of sexual violence used to describe the 'rape', yet the implication of Belinda's culpability adheres to the ideas espoused in the period's rape myths. The conflicting interpretations of Belinda's rape invited by the poem are reflective of the difficulties, as discussed in part 1, faced by prosecutrices in prosecuting their assailants whilst preserving social perceptions of their morality.

⁵¹⁷ Ibid, V.48.

⁵¹⁸ Ibid, V.71-74.

⁵¹⁹ The term bodkin had multiple meanings during the eighteenth century. It referred to objects used to tighten clothing, in particular corsets and bodices, hairpins, and 'sharp, stiletto-like daggers' (Mary C. Beaudry, 'Bodkin Biographies', *The Materiality of Individuality: Archaeological Studies of Individual Lives*, ed. by C. L. White, 2009, p.95). In this reference, Pope's comment that the bodkin has 'grac'd her Mother's hairs' allows us to conclude that it was a hairpin.

⁵²⁰ 'The Rape of the Lock', V.111-112.

IV. Transformations

In the poem's culmination, Pope describes how Belinda's lock transforms into stars, thus suggesting that the loss of her virtue will be consecrated in myth. The lock's journey into the skies is shrouded in the mystery typical of mythical tales. Pope writes

But trust the Muse – she saw it upward rise,
Tho' marked by none but quick Poetic eyes:
(So *Rome's* great Founder to the Heav'ns withdrew,
To *Proculus* alone confess'd in view.)⁵²¹

The use of brackets here is important; they draw attention to this allusion and indicate it as a moment of authorial clarification into the Canto's meaning. '*Rome's* great Founder' refers to Romulus who built and named the city of Rome.⁵²² According to the myth, as it was told by Livy in *The History of Rome*, Romulus disappeared in mysterious circumstances, which encouraged suspicion that the Senate had killed him. To avert the public's growing hostility towards the senate, Senator Proculus Julius declared at a public meeting that

today at dawn's first light Romulus, father of our country, descended from heaven without warning and appeared before me. I was drenched in the sweat of fear and I stood rooted to the spot in veneration, praying that it might be lawful for me to be looking upon him. "Go," he said, "announce to the Romans that the gods in heaven will my Rome to be the capital of the world. Accordingly, let them cultivate the art of war; let them realize, and teach their descendants, that no human power can withstand Roman supremacy." With these words he rose aloft and disappeared.⁵²³

When Pope compares the lock's journey to that of Romulus it suggests that he claims for himself, the owner of the 'quick Poetic eyes', the role of a divinely blessed prophet who enlightens his audience. Proculus, however, is rarely perceived in literature as a herald of facts. Livy for example describes Proculus' speech as a 'shrewd device' and concludes that: 'It is wonderful what credence the people placed in that man's tale, and how the grief for the loss of Romulus, which the plebians and the army felt, was quieted

⁵²¹ Ibid, V.124-126.

⁵²² In *History of Rome* Livy writes that Romulus 'founded Rome, the city that he had named after himself' (1.7.11).

⁵²³ Livy, I.22.

by the assurance of his immortality.⁵²⁴ For Livy, Proculus' false declaration is intended to ease the growing unrest about Romulus' disappearance. The allusion then precedes the fantastical description of the lock's transformation into a 'propitious Ray' with the warning that it is an untruth.⁵²⁵ Pope thus unmasks the deification of Belinda's lock as a deliberate act of deceit on par with Proculus' propaganda. He predicts however that his warning will be ignored as he describes the audience who will see the 'Star':

This the *Beau-monde* shall from the *Mall* survey,
And hail with *Musick* its propitious Ray.
This the blest Lover shall for *Venus* take,
And send up Vows from *Rosamonda's* Lake.⁵²⁶
This *Partridge* soon shall view in cloudless Skies,
When next he looks through *Gallilaeo's* Eyes;
And hence th' Egregious Wizard shall foredoom
The fate of *Louis* and the fall of *Rome*.⁵²⁷

In comparison to the gullible plebians of Proculus, Pope describes upper class spectators. It is the fashionable, the entranced lovers, Partridge the much-maligned eighteenth-century astrologer, and the insubstantial Sylphs who follow the lock's progress.⁵²⁸

When Pope insinuates that his account of Belinda's lock as it transforms into a star is false, yet proceeds to fashion it as a spectacular and supernatural event, he constructs a mythical and satirical narrative. He directs the reader to discover the myth's meaning through its classical references:

A sudden Star, it shot through liquid Air,
And drew behind a radiant *Trail of Hair*.
Not *Berenice's* Locks first rose so bright,
The Skies bespangling with dishevel'd Light.
The *Sylphs* behold it kindling as it flies,

⁵²⁴ *Ibid*, I.16.

⁵²⁵ 'The Rape of the Lock', V.134.

⁵²⁶ Rosamonde's Lake, situated in St. James Park, was a famous rendezvous site for lovers during this period. Conversely, however, its secluded aspect also led to it being the location of 'a greater number of persons, and especially of "unfortunate" females, to commit suicide than any other place in London.' (Mr. Jesse, *A New Critical Review of the Public Buildings*, cited in *British History Online*, Version 5.0 <www.british-history.ac.uk/old-new-london/vol4/pp47-60> [accessed 1 March 2015].

⁵²⁷ 'The Rape of the Lock', V.133-140.

⁵²⁸ In his Bickerstaff hoax of 1708, Jonathan Swift satirized John Partridge, claiming to have accurately predicted his death and falsely convincing readers that Partridge was indeed dead. (Isaac Bickerstaff (Jonathan Swift), *Bickerstaff's Almanack* (London: Printed for the Company of Stationers, 1708).

And pleas'd pursue its Progress through the Skies.⁵²⁹

Belinda's hair, transformed into a star, evokes yet also outshines Berenice's myth because of the infamy of the lock.⁵³⁰ It is more closely aligned with the idea of constellations that are formed as memorials of rapes.⁵³¹ When Pope describes her as a beautiful 'Nymph' she is associated with Ovid's 'lovely Nymph' and rape victim Callisto. The light that Belinda's star emits is described as 'dishevel'd' suggesting a woman's appearance after an assault.

Belinda's transformations in the poem, which are described through reference to classical myth, are part of an eighteenth-century discourse of classical rape stories, in which the 'rape victims' are alluded to in reference to other scenes or incidents of rape to guide reader responses. As Laurie Maguire has asserted in her analysis of Helen of Troy's story, classical rapes are reshaped over time to resemble and reinforce the period's ideas about rape and attitudes towards women.⁵³² The influence of this idea is particularly apparent in the later transformations of Anne Bond discussed in the previous chapter, and, as we will see, Lady Abergavenny, the prosecutrix in the famous Abergavenny divorce trial.

V. Callisto's and Belinda's legacies

Fictional portrayals of prosecutrices which alluded to the classical victim, Callisto, were prevalent in the 1730's print market. In Ovid's account of the myth, Callisto lives simply as the favoured member of the goddess Diana's virgin train. A huntress who dresses simply and without 'artful Pride', she makes no attempt to gain male attention. Jove, however, spies the 'fair *Arcadian Nymph*' whilst walking on earth and becomes

⁵²⁹ 'The Rape of the Lock', V.127-132.

⁵³⁰ See section III of this chapter for discussion of Berenice's hair.

⁵³¹ See the rapes of Europa and Callisto that are discussed in section III of this chapter.

⁵³² Laurie Maguire, *Helen of Troy: From Homer to Hollywood* (Malden, MA: Wiley-Blackwell, 2010).

enamored of her. One day, in the heat of the midday sun, he notices Callisto venture into a cool, shady thicket to rest and cries:

Here I am safe, [...] from *Juno*'s Eye;
Or shou'd my jealous Queen the Theft descry,
Yet wou'd I venture on a Theft like This,
And stand her Rage for such, for such a Bliss!⁵³³

Jove has no intention of behaving honorably with Callisto. His use of the word 'theft', a term associated with an enforced and non-consensual removal, indicates his aim to rape her. He deceives Callisto by transforming into the image of Diana before he enters the grove and then:

With Love enflam'd, and eager on his Bliss,
Smother'd her Words, and stop't her with a Kiss;
His Kisses with unwonted Ardour glow'd,
Nor cou'd *Diana*'s Shape conceal the God.
The Virgin did whate'er a Virgin cou'd;
(Sure *Juno* must have pardon'd, had she view'd)
With all her Might against his Force she strove;
But how can mortal Maids contend with *Jove*?⁵³⁴

This translation is full of the language of sexual violence and fulfills the period's legislative criteria of force and lack of consent in a rape. Callisto strives against 'unwonted' assault yet he 'smother[s]' and 'stop[s]' her attempts. After the rape Jove retires to heaven 'exulting' but Callisto is left 'By Shame confounded, and by Fear dismay'd'. When Ovid questions 'how can mortal Maids contend with *Jove*?', he describes rape as an act in which women have no ability to escape the man's determination to violate.⁵³⁵

Nine months later Callisto reencounters Diana and her train as they enter another grove to enjoy the cooling stream running through it. On the revelation of Callisto's pregnancy, Diana banishes her from her presence. After Callisto gives birth to Arcas she, rather than Jove, becomes the object of Juno's rage. Juno enacts her revenge on Callisto by turning her into a bear in a violent and debasing act of transformation. The

⁵³³ Ovid, *Metamorphoses*, II.54.

⁵³⁴ Ibid, II.54.

⁵³⁵ Ibid, II.54.

goddess grips Callisto's hair using it to overpower her victim who she throws down and 'drag[s]' across the ground before depriving her of the power of speech to prevent Callisto from seeking aid. Callisto, in the form of a bear, wanders the forests for years until she encounters her grown son who is out hunting. Arcas, ignorant of his mother's identity, aims his bow at the bear but is prevented from committing matricide by Jove's intervention. The god transforms mother and son into the constellations Ursa Major and Ursa Minor.

Callisto's story is one of victimization at the hands of Jove, Diana, her fellow nymphs, and Juno.⁵³⁶ She is subjected to repeated and violent thefts. Her virginity, self-confidence, social status, patronage, physical form, humanity, and eventually life are all stolen from her. Whilst Jove is the agitator of these events, the crimes are committed against her by men and women and ultimately the only succor that she receives is at the hands of her rapist when he protectively transforms her. Yet even this act is an expression of male dominance exerted without female consent. Callisto becomes a captive and her fate is evidence of Jove's aggressive masculinity.

Kathleen Wall notes that Callisto's name, and its variants of Calisto, Calista, and Caliste, and the symbolic imagery of stars and the bear that are associated with her, are interwoven into many rape narratives.⁵³⁷ Whilst Ovid's interpretation of Callisto was available in the many translations of his work in the eighteenth-century market, she was also appropriated in other texts.⁵³⁸ These reinterpretations of Callisto were particularly

⁵³⁶ This cross-gender persecution is also present in *The Rape of the Lock* when Clarissa aids and abets in Belinda's 'rape', and in the pressure Thalestris imposes on Belinda to respond to her assault as she deems fit.

⁵³⁷ See William Caxton's translation of Raoul Lefevre's *Recuyell of the Historyes of Troye* (Ghent: Printed for William Caxton, 1473-74) that was republished in London between 1702 and 1738; William Warner's *Albion's England* (London: George Robinson, 1537); John Milton's *Comus. A Mask Presented at Ludlow Castle* (London: s.n., 1747); *The Barley-Breake, or a Warning for Wantons* by W.N (London: Simon Stafford, 1607); John Crown's *Calisto, or The Chaste Nymph; A Masque* (London: Tho. Newcomb, 1675); Nicholas Rowe's *The Fair Penitent* (London: Jacob Tonson, 1714). This is by no means an exhaustive list. For further details on texts dealing with the Callisto myth prior to the eighteenth century see Kathleen Wall, *Callisto Myth from Ovid to Atwood: Initiation and Rape in Literature* (Ontario: McGill-Queen's University Press, 1988).

⁵³⁸ The publication history of Ovid's *Metamorphoses* in the eighteenth century is exceptional in comparison to its classical counterparts. As James M. Horowitz notes, 'he was among the most frequently

popular in the press at two distinct moments in the century. Nicholas Rowe was responsible for the first of these when he named his female protagonist Calista in *The Fair Penitent* (1703). The play's popularity led to the publication of subsequent related texts including Charles Beckingham's *An Epistle from Calista to Altamont* (1729) and the anonymous *The forsaken fair. An epistle from Calista in her late illness at Bath, to Lothario on his approaching nuptials* (1736). The actresses who played the role of Calista encouraged the publication of further texts such as the dedicatory poem to Anne Oldfield on her death entitled *A Pastoral Elegy on the death of Calista. Humbly inscrib'd to the Honourable Col. C-----rchill* (1730) and *The Theatrical Portrait, a poem, on the celebrated Mrs. Siddons, in the characters of Calista, Jane Shore, Belvidera, and Isabella* (1783).

The Abergavenny case (1730), involving also the trial of Richard Lydell for criminal conversation with Lady Abergavenny, gave rise to the transformation of the mythical figure of Callisto into Calista, who was a very different character from Rowe's earlier version. As Thomas Lockwood notes in *Henry Fielding: Plays, Volume II, 1732-1734*, Lady Abergavenny 'was figured as the real life version of Rowe's Calista'.⁵³⁹ This was encouraged in part by texts such as Beckingham's mock apology from Lady Abergavenny, featured as Calista, to her husband. The intrigue of the case was exacerbated by a second infamous rape case, that of Francis Charteris who was

translated classical poets of the period' and the translations catered to a wide audience. ('Ovid in Restoration and Eighteenth-Century England', *A Handbook to the Reception of Ovid*, ed. by J. F. Miller and C. E. Newlands (Chichester: John Wiley and Sons, 2014) p.355.) The standard seventeenth-century text was an edition first published by George Sandy in 1627 that remained largely uncontested throughout the century. In the eighteenth-century market however there was a mass of full, partial, and parodic translations of Ovid's work. In *Monstrous Motherhood: Eighteenth-Century Culture and the Ideology of Domesticity* Marilyn Francus comments that: 'The number of editions provides a strong indicator of the cultural consumption and circulation of Ovid.' (Baltimore: The John Hopkins University Press, 2012) p.327). Examples include: the major English version containing all fifteen books that is known as the Garth-Tonson edition (*Ovid's Metamorphoses, by the most Eminent Hands*, ed. by Samuel Garth (London: Jacob Tonson, 1717)); Anon, *A New Translation of Ovid's Metamorphoses into English prose, as near the original as the different idioms of the Latin and English languages will allow* (London: printed for Joseph Davidson, 1748); *Ovid's Metamorphoses epitomized in an English poetical style for the Ladies of Great Britain* (London: Robert Horsfield, 1760).

⁵³⁹ *Henry Fielding: Plays, Volume II, 1732-1734*, ed. by Thomas Lockwood (Oxford: Clarendon Press, 2007) p.8.

convicted of raping his servant Anne Bond, and then pardoned by the King. The two trials were frequently linked in publications including Morgan's *Political State* (1730). In 1731 the scandals of the Abergavenny v. Lyddell and Bond v. Charteris trials were published alongside a rendition of Rowe's *Fair Penitent* in the scandalous *Calista. An Opera* (1731) ascribed to Paul Chamberlain.⁵⁴⁰ The opera, which was allegedly refused by the theatres on account of licentiousness, appeared in print accompanied by *The Perspective, or Calista Dissected To which are prefixed, A Lock and Key to the late Opera of Calista* (1731).⁵⁴¹ The opera's narrative follows the stories of *Col. Francisco* (inspired by Charteris) who presides over a rape trial based on the false allegations of his dairy maid (inspired by Bond); Count de Ulto who is cuckolded by his wife Countess de Ulto; and Calista (whose character alludes to Lady Abergavenny) who is married to Altamont and conducts an affair with Lothario. The *Opera's* rendition of Calista is perhaps the least forgiving of the versions available. In Act III Lothario expresses anxiety about their relationship and desires it to cease. Calista, who is self-reportedly 'too much a slave to [her] Passions' remonstrates with him saying:

it is time enough to think of Death and Despair, when we have out-lived our mutual Affection. Let us imitate *Paris* and *Helen* and not dream of a Wooden Horse 'till we see *Troy* in Flames, and then die Martyrs to *Venus* in each others Arms.⁵⁴²

There is a sense of glorification of death and the idea of death being fated by illicit sexual contact in Calista's account. Altamont becomes suspicious of the affair and commands his servants 'to be as watchful as *Argos* with his hundred Eyes; and when they have an Opportunity to catch them in their Amours [...] to secure *Lothario*'. Altamont's order reflects Lord Abergavenny's instruction to his Mr. Day to employ his servants 'to make a discovery' of Lady Abergavenny and Richard Lyddell's affair.⁵⁴³

⁵⁴⁰ See chapter two for further discussion of the opera in connection to the trial of Francis Charteris.

⁵⁴¹ Anon, *The Perspective, or Calista Dissected To which are prefixed, A Lock and Key to the late Opera of Calista*, attributed to Paul Chamberlain (London: J. Dicks, 1731).

⁵⁴² Ibid, Act III, p.47.

⁵⁴³ Anon, *An Account of the Tryal of Richard Lyddel, Esq.* (London: s.n., 1730) p.16.

The servants are then called upon in the trial as witnesses and Elizabeth Hopping attests to having seen the couple having sex ‘through the keyhole’.⁵⁴⁴

Calista loses her nonchalance, however, when her adultery is revealed. She exclaims:

O fatal Contrivance! We have been discovered in the very Act of forbidden Pleasures. I am lost and undone! Distraction and Confusion seize me. I never had a perfect View of myself before, and now the Sight is terrible.⁵⁴⁵

Calista’s self-blame is excessive but warranted in this version of events. The *Opera* closes on Calista’s death as recounted by Hermio who remarks that ‘*Calista* intrigued with *Lothario*, and as it has been revealed; the Thoughts of being reproached by the World, have killed her’.⁵⁴⁶ Guilt is here directly related to social censure. Calista’s death mirrors that of Lady Abergavenny who died from natural causes on 4 December 1729 before the trial was brought to court.

The idea of transformation is particularly pertinent in regards to Belinda. Belinda’s physical and moral transformations enable blame to be attributed to her for the act and indeed Pope himself expresses mock horror when Arabella is offended ‘not at herself, but at me’, implying that she bore responsibility for the original and inciting incident of hair severance. However, the fact that Pope does not trivialize the violence of the act, instead exacerbating it by reference to the imagery of forceful and destructive sexual violation, conflicts with this perception. The contrast between Pope’s rendition of the violence and force of the act inflicted on Belinda and the interpretation of her own culpability, which he invites through reference to rape myths and classical mythology, is evocative of the transformations often encountered by prosecutrixes. In rape trials, legal perceptions of the incident transform the complainant’s experience of sexual violence by attributing blame to the aggrieved woman. Whilst, as Greenfield notes, the contrast between the sexual violence present in *The Rape of the Lock* and the

⁵⁴⁴ Ibid, p.2.

⁵⁴⁵ Chamberlain, Act III, p.47.

⁵⁴⁶ Ibid, p.47.

trivial subject of violation (Belinda's lock) could suggest that sexual violence is of little consequence, Belinda's self-blame after the incident is suggestive of the culture of victim blaming in rape trials and the classical victim's responses. As such, and in spite of the lack of redress for the Baron's actions, the poem acknowledges Belinda's experience of violation.



When Pope situates *The Rape of the Lock* as a 'mock' mythical rape, it constitutes a radical reworking of the classical rape narratives involving two deities or a mortal woman who is violated by a god. Belinda as a nymph who, when affronted, 'burns with more than mortal fire' is the otherworldly presence in the text, yet she is assaulted by the mortal and 'sacrilegious' Baron.⁵⁴⁷ Pope provides a resolution in which neither the Baron nor Belinda has won. The symbolic lock of virtue cannot be regained by Belinda or kept and prized by the Baron nor, the poem suggests, can it be truly attained by any mortal. The assault fractures the deified image of Belinda, rendering her mortal.

Whilst Belinda's 'rape' invites interpretations that evoke the popular rape myths, Pope contrasts this with the tension of sexual violence that pervades the poem. The duality of Belinda's experience and perceptions of her character reflect the disconnection between women's experience of rape, their ability to attest to rape, and interpretation of their character in the early eighteenth-century rape trials. When Pope writes in the final lines, 'This *Lock, the Muse shall consecrate to fame, And 'midst the stars inscribe Belinda's Name!*', he describes how Belinda loses not only her lock and thus her chastity but also her name, now appropriated as a descriptor of the 'rape'.⁵⁴⁸ It is the story of Belinda's rape and her name alone that are accorded a mythical presence

⁵⁴⁷ 'The Rape of the Lock', IV.93.

⁵⁴⁸ Ibid, V.149-150.

in the 'heav'ns' whilst her mortal body is fated to 'die'. Belinda herself is found unworthy of the heavenly transformation that is accorded to Callisto.

The conflicting attitudes towards rape that *The Rape of the Lock* offers reflect those present in the law and society during the early eighteenth century and will be encountered in Defoe's and Richardson's rape scenes in later chapters. Pope does not dismiss, nor attempt to reconcile the various perceptions of rape conveyed through the law, rape trials, rape myths and fiction. Instead, he concludes the poem with a realistic representation of a 'rape victim's' infamy and social censure. Pope's conclusion suggests that the period's rape myths are the predominant determiner of a complainant's veracity or culpability. Yet, the inconsistencies between the different allusions to the topic of rape, which bemuse the reader and refuse a satisfactory conclusion, invites the reader to question what constitutes a rape, and by whom or what the act should be defined. This categorical uncertainty is reflected throughout the texts explored in the remainder of this thesis and is representative of social and legal attitudes towards rape between 1700 and 1765.

The influence of rape myths on perceptions of sexual violation is evident in *The Rape of the Lock* but they appear distinct from legal attitudes towards rape. Although this chapter has discussed some of the popular rape myths of the early eighteenth century, rape myths will be explored in further detail in the remaining chapters to investigate the relationship between these popular beliefs and legal attitudes towards rape.

Chapter Four

‘put[ting] her Handmaid to-Bed’:

Aiding and Abetting Rape in Daniel Defoe’s *Roxana* (1724)



Daniel Defoe’s novel *Roxana* (1724) contains a problematic scene in which Roxana instigates the rape of her maid, Amy, by their landlord. The scene appears early in the novel after Roxana is abandoned by her husband. Destitute, she leaves her children in the care of her husband’s family and enters into a sexual relationship with her landlord in exchange for financial security. In an attempt to legitimise their relationship as a contract marriage the landlord draws up ‘a Contract in Writing, wherein he engag’d himself to me; to cohabit constantly with me; to provide for me in all Respects as a Wife’.⁵⁴⁹ This device is necessary as both parties are already married, yet prompts Roxana to observe that she ‘was a Whore, not a Wife’.⁵⁵⁰ Roxana’s perception of her relationship with the Landlord causes her to wish that her maid might ‘be a Whore too’.⁵⁵¹ When Amy observes that her mistress has not conceived after 18 months of ‘marriage’, Roxana recalls her maid’s earlier offer, during Roxana’s courtship with the Landlord, to have sex with him in exchange for his financial

⁵⁴⁹ Daniel Defoe, *Roxana Or The Fortunate Mistress*, ed. by John Mullan (Oxford, Oxford University Press, 2008) pp.42. Hereafter cited as *Roxana*.

⁵⁵⁰ Ibid, p.45.

⁵⁵¹ Ibid, p.43.

assistance.⁵⁵² Roxana thus asks her to 'let him [the Landlord] try' to impregnate her but Amy now refuses.⁵⁵³ That evening Roxana aids and abets in Amy's rape:

At Night, when we came to go to-Bed, Amy came into the Chamber to undress me, and her Master slipt into Bed first; then I began, and told him all that Amy had said about my not being with-Child, and of her being with-Child twice in that time: Aye, Mrs. Amy, *says he*, I believe so too, Come hither, and we'll try; but Amy did not go: Go, you Fool, *says I*, can't you, I freely give you both Leave; but Amy wou'd not go: Nay, you Whore, *says I*, you said, if I wou'd put you to-Bed, you wou'd with all your Heart: and with that, I sat her down, pull'd off her Stockings and Shoes, and all her Cloaths, Piece by Piece, and led her to the Bed to him: *Here, says I, try what you can do with your Maid Amy*: She pull'd back a little, would not let me pull off her Cloaths at first, but it was hot Weather, and she had not many Cloaths on, and particularly, no Stays on; and at last, when she saw I was in earnest, she let me do what I wou'd; so I fairly stript her, and then I threw open the Bed, and thrust her in.

I need say no more; this is enough to convince any-body that I did not think him my Husband, and that I had cast off all Principle, and all Modesty, and had effectually stifled Conscience.

Amy, I dare say, began now to repent, and wou'd fain have got out of Bed again; but he said to her, Nay, Amy, you see your Mistress has put you to-Bed, 'tis all her doing, you must blame her; so he held her fast, and the Wench being naked in the Bed with him, 'twas too late to look back, so she lay still, and let him do what he wou'd with her.

Had I look'd upon myself as a Wife, you cannot suppose I would have been willing to have let my Husband lye with my Maid, much less, before my Face, for I stood-by all the while; but as I thought myself a Whore, I cannot say but that it was something design'd in my Thoughts, that my Maid should be a Whore too, and should not reproach me with it.⁵⁵⁴

The scene is unsettling partly because the act is referred to as '*Amy's Disaster*' rather than a rape. The term disaster is suggestive of an accident with huge implications for Amy, rather than a purposeful and criminal act instigated by Roxana. It raises the question of how readers should respond to the scene, what purpose Defoe intended it to serve, and whether the act is meant to be perceived as a rape. The brevity of the scene is surprising to a modern reader but Defoe's reevaluation of the act later in the novel suggests that he anticipated his readers would have viewed the incident as important, allowing them to understand and interpret the later cross reference.

⁵⁵² Ibid, p.45.

⁵⁵³ Ibid, p.45.

⁵⁵⁴ Ibid, pp.45-46.

This scene appears to raise more questions regarding Amy's rape than it answers, and has prompted numerous interpretations. Kirsten T. Saxton notes that most commonly critics have read the scene as evidence of 'Roxana's increasingly criminal nature and immoral or "unnatural" actions'.⁵⁵⁵ Maximillian E. Novak has previously suggested that the scene acts as a pragmatic demonstration of Amy's reliance on her mistress, in a social and economic sense, and, conversely, Roxana's class-constructed control over her servant.⁵⁵⁶ Kristina Booker draws on Novak's interpretation to provide a reading of the relationship between Roxana and Amy as an exploration of eighteenth-century anxieties regarding servants emulating their masters or mistresses. In Booker's analysis, the rape 'reads as an example of how far the master can be degraded by allowing the servant's emulation to go unchecked'.⁵⁵⁷ For Saxton, however, the 'intimate cross-class bond' between Roxana and Amy, which blurs class boundaries, 'replicates destructive and rote notions of female criminality'.⁵⁵⁸ Saxton suggests that Amy's rape thus becomes evidence of her excessive devotion to Roxana. Amy's servitude places her within a position that 'implies that no moral core is possible if one must always act on or act out another person's wishes'.⁵⁵⁹ Amy must therefore succumb to her mistress's desire for her to have sex with the Landlord because she has no free will to do otherwise. Helene Moglen offers an opposing perspective in which Amy is configured as an active participant in a role reversal which 'validat[es] her mistress' behaviour'.⁵⁶⁰

The varied critical responses to the scene, which focus on themes of economics, gender, or identity, overlook the implications of the period's rape laws in Roxana's narration of Amy's 'Disaster'. Yet, the impact of other legislative contexts on the

⁵⁵⁵ Saxton, p.91.

⁵⁵⁶ Maximillian E. Novak, *Realism, Myth and History in Defoe's Fiction* (Lincoln: University of Nebraska Press, 1983) p.102.

⁵⁵⁷ Booker, p.56.

⁵⁵⁸ Saxton, p.101.

⁵⁵⁹ Ibid, p.94.

⁵⁶⁰ Helene Moglen, *The Trauma of Gender: A Feminist Theory of the English Novel* (Berkeley: University of California Press, 2001) pp.48-49.

discourses of criminality in Defoe's novels has received significant critical attention.⁵⁶¹ Jeanne Clegg has recently demonstrated that the records of the Old Bailey's *Proceedings* and the *Ordinary's Accounts* inform Defoe's novel *Moll Flanders* (1722).⁵⁶² It is therefore reasonable to assume that he was aware of, and interested in, the popular contemporary cases that reflected on the issues of criminality that featured in his novels, and that these influenced the narrative of *Roxana*. This chapter therefore questions how and why Defoe alludes to the legal conventions of rape in this scene. I will argue that Defoe is aware of rape laws and the period's low conviction rates; that he uses this scene to critique rape law and judicial procedure, exposing the inherent problems; and that he proposes true justice for rape can only be meted out by a Christian god. The chapter begins by exploring the ways in which Defoe draws upon legal conventions and terminology in the scene, thus implying a perceived readership familiar with legal processes. The first section compares the scene to the legal conventions of rape discussed in chapter one and the rape myths considered in the previous chapter to reconstruct the legal questions which the scene invites. The second section of the chapter focuses on Roxana's role as an aider and abettor in Amy's rape. It reads the incident within the context of the cases of Alice Gray (1707) and the Castlehaven trial (1631), which involved the prosecution of aiders and abettors to rape, to consider the legal issues raised by the novel. This leads to an analysis of how Roxana's sense of guilt about her role in Amy's violation develops through the novel and what, in turn, Defoe suggests about rape through this. The chapter concludes by questioning what Defoe's fictional reconstruction of the legal conventions of rape reveals about the social attitudes towards the crime, the relationship it implies to have

⁵⁶¹ See Gladfelder, *Criminality and Narrative*, pp.93-150; Melissa J. Ganz, 'Moll Flanders and English Marriage Law', *Eighteenth-Century Fiction*, 17.2 (January 2005) pp.157-182; Swan, pp.33-48; Lincoln B. Faller, *Crime and Defoe: A New Kind of Writing* (Cambridge: Cambridge University Press, 2008).

⁵⁶² Jeanne Clegg, 'Moll Flanders, Ordinary's Accounts and Old Bailey Proceedings', *Liminal Discourses: Subliminal Tensions in Law and Literature*, ed. by Daniela Carpi and Jeanne Gaakeer (Berlin and Boston: Hubert & Co., 2013) pp.95-113.

existed between contemporary law and literature, and what interpretations Defoe invites.

I. ‘Amy’s Disaster’: defining rape in the common law

The episode of Amy’s rape presents conflicted attitudes toward rape, consent, and culpability. Whilst the scene implies Amy’s lack of consent, Roxana does not portray her maid as a victim of a violent and forceful act when she claims to have instigated the rape in order that her ‘Maid should be a Whore’.⁵⁶³ To be a whore or a slut implies a level of consent that is not evident in Defoe’s presentation of Amy’s character during the incident. Amy reflects this attitude when she exclaims that ‘she was a Whore, a Slut, and she was undone! undone!’⁵⁶⁴ Despite the characters’ disregard for the legal implications of this act, Defoe invokes the criteria required by the eighteenth-century courts to convict a rapist: namely, the element of force; proof of penetration and emission; issues of consent (or lack thereof); the moral character of the complainant; the pregnant complainant; and ideas of marital rape exemption.⁵⁶⁵

All the influential legal writers published during this period asserted that proof of the element of force was essential to a rape prosecution.⁵⁶⁶ Force was interpreted as a physical force rather than a psychological threat. Proof could be obtained through the statements of witnesses who attested to having seen the victim with torn clothing immediately after the alleged attack or injuries to areas of the body not covered by clothing. Medical evidence testifying to inflammation of the vulva, such as appeared in

⁵⁶³ *Roxana*, p.47.

⁵⁶⁴ *Ibid*, p.47.

⁵⁶⁵ The statutory criteria comprised: proof of force exerted by the defendant that was substantial enough to overcome a woman’s attempts to free herself, evidence of penetration of the complainant’s vagina by the defendant’s penis and his emission of semen therein, and the victim’s lack of consent to the act. Consideration of the pregnant complainant and marital rape exemption appeared in judicial procedure; however, the former was the product of medical and popular belief, whilst the latter derived from Hale’s beliefs (See chapter one for further details). The criteria explored in rape trials differ in the records but the issues that remain constant in all the records, and that are unanimously supported by all judges and courts, are the level of force used and the question of whether the complainant consented.

⁵⁶⁶ See Hale, Coke, Hawkins and Jacob.

the case of *Milton v. Booty* (1722) when the report of surgeon, Mr. Kighley, noted that Milton's 'Privities were inflamed and ulcerated', also contributed to the prosecution's claims.⁵⁶⁷ The prosecutrix was, however, required to prove that the defendant had penetrated and emitted semen within her '*by force and against her Will*'.⁵⁶⁸ In this respect, the issue of a woman's consent was considered collectively with that of force. To be plausible in court the woman's denied consent needed to be expressed verbally and physically. Whilst significant evidence of force could therefore aid in proving lack of consent, it was believed that consent could be given before, during, or after sexual intercourse.⁵⁶⁹ The woman's testimony was, most commonly, the only evidence for lack of consent and thus the court's ruling on the case depended on how her narration of the events was received.⁵⁷⁰ If we apply this understanding of rape to Amy's situation it is evident that it meets both of these criteria. Amy verbally denies her consent, or 'will' to sexual intercourse with the Landlord on four occasions.⁵⁷¹ Her refusal to consent to sexual intercourse with the landlord is then expressed as a physical resistance that occurs four times. She twice refuses 'to go' to bed when ordered, resists being undressed, and attempts to get out of the bed after being forced in to it.⁵⁷² Finally, the

⁵⁶⁷ *Select Trials at the Sessions-House in the Old Bailey*, p.198.

⁵⁶⁸ Coke, *The Third Part of the Institutions of the Laws*, p.29. The term prosecutrix refers to a woman who brings an allegation of rape before a court.

⁵⁶⁹ Jacob notes however that Statute 11 gave a husband, father, or next of kin, the right to prosecute in circumstances where the woman gave retrospective consent (*Every Man his own Lawyer*, p.2)

⁵⁷⁰ Legal professionals were notoriously suspicious of female testimony because of a prevalent anxiety about false allegations. The credibility of evidence recounted by women in the courts is debated by Hale in *History of the Pleas of the Crown* who observes that: 'The party ravished may give evidence upon oath, and is in law a competent witness, but the credibility of her testimony, and how far forth she is to be believed, must be left to the jury, and is more or less credible according to the circumstances of fact that concur in that testimony.' In his description of how to assess a woman's credibility Hale states that a woman must prove her moral integrity and, preferably, her virginity. In cases involving a woman who was not a virgin prior to the rape her prior sexual interaction would be evaluated. It was considered to be evidence of consent if she had had previous sexual contact with the accused. (Sir Matthew Hale, *History of the Pleas of the Crown*, vol I (London: 1736) p.633.) See Susan S. M. Edwards' discussion of this in *Female Sexuality and the Law* (Oxford: Martin Robertson, 1981) p.66. In cases involving a child under the age of consent the issue of credibility was applied to her parent(s) or guardian(s). See *Lockwood v. Weston* as reported in *Select Trials for Murders*, p.97.

⁵⁷¹ Amy states that 'before I told you he shou'd [...] but I won't now' (*Roxana*, p.45) and proceeds to respond to Roxana's repeated requests with 'no', 'nay, nay' and a further 'no' (Ibid, p.46).

⁵⁷² Ibid, p.46.

Landlord holds ‘her fast [...to] do what he wou’d with her’.⁵⁷³ In a jarring reversal of rape narratives that usually situate the male as the aggressor, Roxana assumes the active role in the rape and exerts the majority of the physical force on Amy. She forcibly ‘stript’ Amy of her clothes, ‘threw open the Bed, and thrust her in’ before watching the rape take place.⁵⁷⁴

Courts would also investigate the credibility of an allegation. This included a consideration of how long it took the complainant to make her accusation after the rape.⁵⁷⁵ Nonetheless, the plausibility of an allegation largely focused on the likelihood that a rape could have been perpetrated in the stated location and the purpose for the victim’s presence there.⁵⁷⁶ The court would consider whether the defendant could access the setting and whether it was secluded (thus facilitating a rape by preventing external interruption), or populated (suggesting that a woman could have called for assistance thus preventing perpetration of the act). It also contemplated whether the complainant had taken reasonable precautions to avoid being raped such as avoiding remote locations at night.⁵⁷⁷ The location of ‘*Amy’s Disaster*’, which takes place in Roxana and the Landlord’s bedchamber, is ambiguous. It is plausible, given Roxana’s role in the act, that a rape could have taken place without interruption. Roxana and the Landlord’s presence at ‘the Place where done’ is also reasonable.⁵⁷⁸ However, it is more difficult to assess an eighteenth-century court’s reaction to Amy’s presence in a bedchamber containing an undressed male. A ruling made by the Old Bailey in 1725 suggested that rapists were not legally accountable when a woman had failed to take

⁵⁷³ Ibid, p.46.

⁵⁷⁴ Ibid, p.46.

⁵⁷⁵ The law allowed forty days after a rape for a complainant to make her accusations known to the law. Despite this allotted time a lengthy delay was understood to undermine the claims. It was considered that ‘If she conceals it for any long Time, it may argue a Consent’ (Jacob, *Every Man*, p.442). Hale informs us that this encouraged the jury to believe that ‘her testimony is false or feigned’ (Hale, p.633).

⁵⁷⁶ The impact of location on rape allegations is discussed in further detail in the following chapter.

⁵⁷⁷ See *Tate v. Pritchard* (1725) fn.578.

⁵⁷⁸ Jacob, *Every Man*, p.442. Jacob observes that ‘a Woman’s positive Oath of a Rape, without concurring Circumstances, is seldom credited: If a Man can prove himself to be in another Place, or in other Company, at the Time she charges him with committing the Fact, this will invalidate her Oath.’

preventative measures against rape. The circumstantial evidence in this trial indicated that the defendant, John Pritchard, had raped Sarah Tate in Lobb's Field, but the court acquitted him on the basis that Tate 'had no Occasion to go with a Man, a private round-about Way over the Fields'.⁵⁷⁹ Amy's position as a chambermaid to Roxana complicates these ideas. On the one hand her duty to Roxana demanded her entry into the room at that specific time to undress her mistress for bed. Thus, in fulfilling her role Amy knowingly placed herself in a situation where a rape could take place.

Legal theory suggests that proof of penile penetration of the woman's vagina and the emission of semen therein was essential to a rape prosecution yet also implies that these criteria were difficult to satisfy in the eighteenth-century courts.⁵⁸⁰ The courts struggled to determine the extent of evidence that was necessary and how it was to be obtained.⁵⁸¹ Whilst the various courts collectively supported the assertion that proof of penetration was essential to convict the accused, evidence of emission was described sporadically in the records.⁵⁸² Roxana provides the proof of penetration and emission in the case of Amy's rape through her roles of character, narrator, and confessor. In a parody of a rape trial, the 'case' is witnessed and judged by the readers. Through this, Defoe draws attention to the idea that crimes happen which have no witnesses, or witnesses who are not considered credible by law, and yet suggests that this does not detract from the illegality or immorality of the act.

⁵⁷⁹ See *The Proceedings*, t17250827-74.

⁵⁸⁰ Jacob states of this position that '[u]nless there be Penetration the Body is not so abus'd as to be Rape, and without Emission, a Woman is not Defiled'. (*Student's Companion*, p.166)

⁵⁸¹ Jacob blamed the low conviction rates in rape cases on 'the Difficulty to prove a Penetration, which [...] is essential in Rapes' (*Student's Companion*, p.166) Evidence was usually obtained from medical professionals to support these criteria. In the case of *Milton v. Booty* (1722) cited earlier, the medical evidence testifying to inflammation of the vulva that provided evidence of force also evidenced penetration. (see fn.164)

⁵⁸² In the Court of King's Bench three key cases demonstrate the lack of credit given to the consideration of ejaculation during rape. In the case of *R v. Duffin* (1721), the judges were divided on whether emission had occurred but Duffin was convicted. In *R v. Sheridan* (1761) it was believed that emission had not occurred but the case still concluded with a conviction. Similarly in *R v. Russen* (1771) the presiding judges were uncertain as to whether emission had occurred but again Russen was convicted. It was only in 1781 in the case of *R v. Hill* that the judges ruled that proof of injection seminis, or ejaculation, was essential to a conviction. See MacFarlane, pp.41-42 for further detail on these trials.

Roxana's relationship with the Landlord would have complicated her ability to testify to the rape in a court. Jacob notes that 'in felonies neither the Wife nor her Examination shall be used, for, or against, her Husband'.⁵⁸³ If Roxana's 'marriage' was accepted as legitimate by the court the laws of coverture would not have permitted her testimony against her husband. In *Commentaries on the Laws of England*, William Blackstone explains this legal stance by observing that:

By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of her husband [...] In trials of any sort they are not allowed to be evidence for, or against, each other: partly because it is impossible their testimony should be indifferent, but principally because of the union of person.⁵⁸⁴

The common law perception of a husband and wife is integral to how we understand coverture. The defendant's right to silence in court was established by the seventeenth century. As a component of her husband's legal identity in the common law, the wife's testimony in court would compromise her husband's right to silence.⁵⁸⁵ This legislation enables the reader to comprehend why the Landlord appears to be overly concerned with demonstrating the legitimacy of his 'marriage'. Roxana notes that following the rape the Landlord 'hated [Amy] heartily [...] for he thought this a vile Action; whereas what he and I had done, he was perfectly easie in, thought it just, and esteem'd me as much his Wife as if we had been married from our Youth'.⁵⁸⁶ The Landlord is here keen to reaffirm his perception of the sanctity of his 'marriage' to Roxana, suggesting that Defoe was aware of the laws of coverture. As a legitimate marriage, it enables the narrative progression by according Roxana a legal identity that would prevent the rape from being prosecuted, thereby exempting the Landlord from blame.

⁵⁸³ Giles Jacob, *The Modern Justice* (London: Sayer, 1716) p.153.

⁵⁸⁴ Blackstone, *Commentaries*, vol. I, pp.442-3.

⁵⁸⁵ This was not the case in the period's civil law, which accorded a wife a separate legal identity under certain conditions.

⁵⁸⁶ *Roxana*, p.47.

The issue of the pregnant complainant is potentially the most complex in terms of understanding contemporary interpretations of this scene. This is due to Amy's eventual impregnation by the Landlord. Although Roxana suggests that this is not the result of the rape when she states: 'I brought him to lye with her again several times after that, till at last [...] she was really with child', the period's knowledge of pregnancy was not advanced enough to determine conception dates. An unmarried pregnant complainant was viewed with suspicion by the eighteenth-century courts. The legislation and legal theory largely held the view that '[t]he Law suppose a Woman cannot Conceive, except she Consent to the Man; without which, she may not have Enjoyment to Conceive'.⁵⁸⁷ This was influenced by long standing medical beliefs that a woman could not conceive without being aroused and/or climaxing.⁵⁸⁸ Pregnancy, with its medical connotations of female arousal, was therefore directly connected with female consent to copulation. Amy's pregnancy, in the eyes of the law, would have established a retrospective proof of consent and invalidated the suggestion that she was raped. Roxana's desire to overcome the Landlord's 'Aversion [...] to my maid, Amy' after the rape and to ensure that he 'lye[s] with her again' has a dual purpose. It fulfills her aim to provide him with children and avoids the act being perceived as a rape.

⁵⁸⁷ Jacob, *Student's Companion*, p.166. The legislation provided by 18 Eliz. 2 *Inst.* 190. stated that if a woman conceives as a direct result of the act it was not a rape. Staundeforde explained that: 'if at the time of the rape the woman conceives a child of the rapist, it is not rape, because no woman can conceive if she does not consent'. See MacFarlane, p.29. Hale commented dismissively of this that 'it seems to be no law at all' (Hale, p.731). Hawkins, however, suggested that if pregnancy was to be considered in rape trials the accused should 'not be tried till such Time as it might appear whether she did or did not' (*Treatise*, vol.1, p.108). Nonetheless the idea circulated until the end of the nineteenth century and was given credence throughout the eighteenth century in the numerous legal publications and dictionaries. See Chambers, *Cyclopaedia*, p.374: 'If the Woman conceive the Law esteems it no *Rape*; for an Opinion that she cannot conceive unless she consent.'

⁵⁸⁸ See chapter one for further details. The influence of medical theory on the law was remarked upon by Edward Wynne, a legal writer, in *Eunomus: Or, Dialogues Concerning the Law and Constitution of England* (London: s.n., 1768). The belief that women must climax to conceive was widely evident in the manuals produced by medical practitioners during the fifteenth, sixteenth, and seventeenth centuries, examples of which include: Jane Sharp, *The Midwives Book, or the Whole Art of Midwifery Discovered*, ed. by Elaine Hobby (New York: Oxford University Press, 1999) p.39 and John Sadler, *The Sicke Woman's Private Looking Glass* (London: printed by Anne Griffin, 1636) p.118. William Harvey disagreed with the Galenic model, suggesting instead that female climax was not necessary for conception however this was not known of or not credited by the judiciary. (Harvey, *Anatomical Exercitations Concerning the Generation of Living Animals* (London: printed by James Young for Octavian Pulleyn, 1653) p.165).

A further contemporary issue regarding the scene lies in the interpretation of Amy's character. The law in practice and theory, if not in legislation, required evidence of the moral character of the complainant. This element of the case had to be satisfactorily proved in order for the court to accept the validity of the complainant's testimony. Hale observed that the credibility of the complainant 'and how far forth she is to be believed, must be left to the jury, and is more or less credible according to the circumstances'.⁵⁸⁹ These 'circumstances' referred to the complainant's moral character, sexual history, previous sexual contact with the accused, and whether she was a prostitute.⁵⁹⁰ When Amy comments on Roxana's lack of pregnancy in the prelude to the rape scene it is within the context that Amy had been 'with-Child twice in that time', indicating that she has had sexual relationships.⁵⁹¹ Although we can only assume that these relationships did not involve the Landlord, Amy has indicated her consent to copulation with him prior to Roxana's marriage. Amy therefore would have failed to meet the standards of the law's concept of sexual morality. As a further detriment to her good character, Amy also promotes illicit sexual morality to Roxana during the Landlord's courtship. As Moglen has noted, at this stage in the novel Amy first assumes the role of bawd to Roxana.⁵⁹² She encourages her mistress to engage in an adulterous affair and to compound this legal and moral offence by committing the crime of bigamy. Through this interpretation Amy reads as a sexual tease who, prior to the 'rape', flirts with the Landlord and offers to bear his children on Roxana's behalf.

⁵⁸⁹ Hale, p.633.

⁵⁹⁰ Women who engaged in sexual relationships with numerous men were viewed as unchaste, or of poor character, and thus lost credibility in the court. This is particularly relevant to prostitutes. The rape laws of this period apparently extended justice to all women, a fact that was supported by the majority of legal writers including Hale who observes: 'that the woman was a common strumpet, or the concubine of the ravisher is no excuse'. Hale, however, proceeds to note that a woman 'who plied her trade without discrimination of person' was less credible in court. (Hale, p.633) William Blackstone later echoed these sentiments, commenting that a prostitute 'hath indeed no chastity at all, or at least no regard to it' yet he noted that further deliberation is needed when the women 'may have forsaken that unlawful course of life' (Blackstone, *Commentaries*, vol. 4 (London: William Strahan, 1769) p.213). In the period's legal manuals however prostitution was 'said by some to be Evidence of a Woman's Consent, that she was a common Whore.' (Jacob, *Every Man*, p.442.)

⁵⁹¹ *Roxana*, p.46.

⁵⁹² Moglen, p.48.

Contemporary readers may well have considered Amy's rape the deserved result of her actions.

The evidence of Amy's moral ambiguity and lack of a legally determined good character forces a re-evaluation of Roxana's determination to instigate the rape as a means of making her maid 'a Whore too'. Amy is unmarried and has engaged in sexual relationships that resulted in children throughout Roxana's marriage. The rape is unnecessary to determine Amy as a whore when she has already met the contemporary criteria to accord a woman with this label. However, the scene of Amy's rape provides the context through which these details are presented. The narration of the 'rape' presents Amy as lacking in good character. The details that Roxana reveals about Amy through the narration of the rape position her as a whore because they refute her legal credibility. This constructed revelation of Amy's character parodies the sexual double standards of the period's rape trials in which the process of the complainant testifying often led to them being viewed as unchaste.⁵⁹³ The exposure of Amy's sexual immorality prompts her cry of 'I am undone!' and destroys her identity as a victim.

An interpretation of the scene of Amy's rape read against the period's legislation is complicated by her position as a servant to Roxana and the Landlord. In *The Facts of Life* (1995) Roy Porter and Leslie Hall suggest that the eighteenth-century print market indicates a widely held social belief that 'Maidservants [are] fair game for male advances'.⁵⁹⁴ Rape of a servant, according to this perception, is not a rape but rather an expected and acceptable action by the servant's master.⁵⁹⁵ The narration of Amy's rape echoes these ideas. During Roxana's attempts to convince Amy to let the Landlord 'try' to impregnate her, a distinction is created between an employer's suggestion and order. When Roxana initially asks Amy to 'let' the Landlord copulate with her, Amy retains

⁵⁹³ Walker notes in 'Rape Acquittal' that 'the languages in which sexual violence could be articulated implicated women in the very acts about which they complained' (p.116.)

⁵⁹⁴ Porter and Hall, p.23.

⁵⁹⁵ See chapter two for an extended discussion of this in relation to the trial of Francis Charteris for the rape of his maid.

the ability to refuse.⁵⁹⁶ Similarly, when Roxana offers to ‘freely give’ Amy her ‘Consent’, Amy is able to decline the suggestion.⁵⁹⁷ However, Roxana becomes irked by her maid’s refusal exclaiming ‘Why you Fool you [...] don’t I tell you I’ll put you to Bed to him myself’ to which Amy answers ‘if you put me to-Bed to him, that’s another Case’.⁵⁹⁸ This comment suggests that Roxana, as Amy’s employer, holds the right to demand her maid’s compliance. Roxana’s response, ‘if I wou’d put you to-Bed, you wou’d with all your heart’, thus configures Amy as her mistress’ psychological and physical property.⁵⁹⁹

The relationship between Roxana and Amy throughout this scene draws unavoidable comparisons with the law’s attitude towards marital rape, which held that:

the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract.⁶⁰⁰

Roxana and the Landlord suggest that the relationship between employer and servant mirrors that of husband and wife. By engaging herself as a maid to Roxana, Amy has consented to ‘give up herself’ in any ‘kind’ to her mistress, a consent which she finds herself unable to retract in this scene. Her attempts to get out of the bed she has been ‘thrust’ into are therefore suppressed by the statement that ‘you see your Mistress has put you to-Bed’.⁶⁰¹ There is an implied surprise that Amy should counteract her mistress’ order and a presupposition that any command will be complied with. This reflection on the relationship between mistress and servant suggests that the servant has no ability to refuse consent if it is required of them. They are the physical and mental

⁵⁹⁶ *Roxana*, p.45.

⁵⁹⁷ *Ibid*, p.45.

⁵⁹⁸ *Ibid*, p.46.

⁵⁹⁹ *Ibid*, p.46.

⁶⁰⁰ Hale, p.711. Rape shield law, although not part of statutory legislation, protected abusive husbands against prosecution for raping their wives although it did not encompass situations in which a husband was the accessory to his wife’s violation. The credence for this particular exemption is generally given to Sir Matthew Hale, whose belief regarding this was stated in *History of the Pleas of the Crown*. Despite the fact the Hale did not cite any authority other than his own belief, it took 200 years for this belief to be overruled in England.

⁶⁰¹ *Roxana*, p.46.

property of, and at the disposal of, their employer, implying that no form of sexual relationship between a servant and their employer during this period can be considered a rape.⁶⁰² Within the legal context, Amy's violation is therefore constructed as an act which could never have been prosecuted. Yet, through the legalistic framing of the incident Defoe suggests that it is unacceptable and draws the readers' attention to the law's inability to provide justice for rape.

II. Reading Roxana as an aider and abettor to rape

Amy's rape is an important aspect of Roxana's character construction. In the scene of Amy's rape, Roxana is the principal agent in the act without whom it would not have taken place. Indeed, Roxana's narration of the incident emphasizes her own culpability as she describes how Amy 'let me do what I wou'd'. Roxana acts as an emotional and physical aggressor: she verbally demands Amy's compliance and encourages the Landlord whilst assuming the active role of undressing Amy and forcing her into the bed. Defoe's construction of Roxana's narrative voice in this scene is interesting because it is used to indicate her criminal role as an aider and abettor to rape. The law held that 'the Aiders and Abettors in committing a Rape, may be indicted as principle Felons'.⁶⁰³ To aid and abet in a criminal act is to participate either physically or verbally in the commission of a crime. An aider and abettor found guilty of rape during this period was convicted of the principle crime and subject to execution. Whilst Roxana's narrative provides 'evidence' of her role as an aider and abettor, it is through the Landlord that Defoe asserts her 'guilt': 'you see your Mistress has put you to-Bed, 'tis all her doing, you must blame her'. In legal convention, the presence of an aider and abettor to a rape did not alleviate the culpability of the perpetrator, as the Landlord appears to suggest here. The legal context of aiding and abetting a rape would have

⁶⁰² For example, see *The Proceedings*, t17160411-42, t17190225-43 and t17190225-48.

⁶⁰³ Jacob, *Every Man*, p.442.

been familiar to Defoe and his readers. The Gray and the Castlehaven trials are of particular relevance given the frequency and proximity of their publication to *Roxana*, which make it likely, given Defoe's interest in criminal biography, that he would have been familiar with them.⁶⁰⁴ The similarities between phrasing and events in the trials and Roxana's narration of Amy's 'Disaster' (discussed below) suggests that Defoe drew upon contemporary trials to create this rape scene.

In April 1707, Alice Gray, a widow aged 32, was indicted at the Old Bailey for aiding and abetting in the rape of a ten year old girl, Catherine Masters, with whom she shared lodgings. *The Proceedings* record that

The Girl [Masters] deposed, that *Alice Gray* and she lodged together, and that the Night the Fact was committed she went to Bed at about 8 a Clock, and about 11 a Clock the Prisoner came home, and a Man with her; that being sleepy, she did not perceive when *Alice Gray* came to Bed; but awaking about 2 a Clock in the Morning she found a Man in Bed with them: that then she endeavoured to get away, but *Alice Gray* pulled her back, and held her down in the Bed, and stopt her Mouth that she could not cry out, while the Man gained the perfect Knowledge of her Body. Other Evidences deposed, that the Girl the next Morning acquainted them how she had been abused, and inspecting her Body, found that a Man had been with her, and had given her the Pox. The Fact being plainly proved, the Jury found her guilty, and she received Sentence of Death.⁶⁰⁵

In a direct comparison to Roxana's role in Amy's rape, Gray is the overt aggressor here who facilitates John, alias Thomas, Smith to rape the complainant. Although to a modern reader Masters is considered to be a child, at the age of ten she was on the boundary between being viewed by the law as a child (females under the age of ten) or as a woman who was capable of consent. Masters is here referred to as a 'young woman' signifying that the court perceived her to be capable of both consent and providing evidence in the case. The similarity between Amy's position and that of Masters are strengthened by their reactions to finding themselves in bed with a man without their consent. Both the fictional and the real woman attempt to get out of bed and are forced back into it. Describing Amy's 'rape' in a style evocative of a legally

⁶⁰⁴ For details of published records of the Gray trial, see fn. 605. For details of published records of the Castlehaven trial in the early eighteenth century, see fn. 615- fn. 618.

⁶⁰⁵ *The Proceedings*, t17070423.

adjudged rape suggests that Defoe intends for the incident to be read as a crime: this is particularly interesting given the conflicting factors which meant that, had it been real, the act could not have been prosecuted. Defoe suggests through Amy's 'Disaster' that a legal definition is not essential to classify sexual violation as rape and that this should not prevent the act from being viewed as unacceptable. He also indicates that those guilty of sexual violation should not be spared from punishment even when the act is not classed by the law as rape.

Gray's conviction for rape and subsequent execution on 2 May 1707 transformed a fairly unremarkable case into a trial worthy of repeated publication in case law collections and legal manuals. It was published in the Ordinary's Account (1707), *A Compleat Collection of Remarkable Tryals of the Most Notorious Malefactors, at the Sessions-House in the Old Baily, for near fifty years past* (1718-1721), Jacob's *The Laws of Appeals and Murders* (1719) and *A Treatise of Laws* (1721), and *The Bloody Register* (vol.1, 1764).⁶⁰⁶ The Gray proceedings drew interest from legal publishers because it was unusual for rape trials, and particularly those in which a female aider and abettor was indicted, to result in a conviction. In *Laws of Appeals and Murder* (1719) Jacob cites the Gray case amongst only four other rape trials that led to conviction as evidence of the period's low conviction rates for this crime.⁶⁰⁷ All of the other trials of aiders and abettors in rapes that were heard at the Old Bailey in the early eighteenth century resulted in acquittal of the defendant. Gray's trial was heard at the same sessions as that of Elenor Rodway, who was also indicted for aiding and assisting in the rape of a girl above the age of consent.⁶⁰⁸ The same court who convicted Gray determined that there was not enough evidence for Rodway to be indicted for rape and ordered that the charge be reduced to assault. The jury however

⁶⁰⁶ *Compleat Collection* was advertised in May and July of 1718 with a note to inform readers that it included the trial of 'Alice Gray, for a Rape'. *The Proceedings*, a17180530-1 and a17180709-1.

⁶⁰⁷ Jacob, *The Laws of Appeals*, pp.98-99.

⁶⁰⁸ *The Proceedings*, t17070423-34.

acquitted Rodway of both sentences. On 6 September 1716 another case involving a woman, Mary Pewterer, who was indicted for ‘assisting in a Rape’, was brought before the Old Bailey.⁶⁰⁹ This trial involved the rape of a child below the age of consent. The Jury determined that ‘the Evidence of so young a Child’ was not sufficient to convict Pewterer and so acquitted her.⁶¹⁰ No more cases involving women indicted for assisting in a rape were heard at the Old Bailey until 14 July 1742 when Ann Glass was indicted and also acquitted of the charge.⁶¹¹ Jacob’s comment that defendants in rape cases ‘seldom’ receive punishment for their actions, rather than supporting the judgment in these cases, appears to criticize the judicial treatment of the crime and does not assume that a rape has not taken place. Considered in this light, it could be said that the lack of judicial punishment meted out to Roxana and the Landlord reflects the reality of the period’s legal practice in rape cases.

Another relevant rape case notorious within the early eighteenth-century print market, and one that involved the conviction of an assistant to a rape, was that of Lord Audley, Earl of Castlehaven. In 1631 Castlehaven was indicted of sodomy, and aiding and abetting in the rape of his second wife, Lady Anne Stanley. The trial records note that Castlehaven encouraged his wife to participate in a variety of sexual activities with many of his manservants, including ‘commend[ing] those that had the longest’ penis on inspection.⁶¹² Lady Anne eventually began an adulterous relationship with her page, Henry Skipwith, whilst Castlehaven engaged in a homosexual relationship with Florentius Fitz-Patrick. Castlehaven then brought a sailor, Giles Broadway, into his home. Castlehaven informed Broadway that his wife ‘wholly delight[ed] in lust, which I am neither able nor willing to satisfy’ and requested that Broadway ‘lie with her’

⁶⁰⁹ Ibid, t17160906-24.

⁶¹⁰ Ibid.

⁶¹¹ Ibid, t17420714-23.

⁶¹² Rictor Norton, ‘The Trial of Mervyn Touchet, Earl of Castlehaven, 1631’, *Gay History and Literature*. Updated 8 August 2009 <<http://rictornorton.co.uk/touchet.htm>> [accessed 24 April 2016].

instead.⁶¹³ Castlehaven suggested that, after his death, Broadway would ‘marry her, and thereby raise thy fortune’.⁶¹⁴ Lady Anne was not however party to these machinations. She attested to the court that one evening, whilst she was in bed with her husband, Castlehaven held her down and ordered Broadway to rape her. In November 1630, Castlehaven’s son, James, supported by testimony from Lady Anne, Castlehaven’s step-daughter, Broadway, and Fitz-Patrick, brought his father’s illicit sexual activities to the attention of the law. This resulted in Castlehaven being convicted of sodomy and rape in 1631. He was beheaded on 14 May 1631.

The Castlehaven trial has a lengthy publication history that lasted for over three centuries. As Cynthia Herrup observes in her account of the case, this reflects the ‘persistence of many of the issues with which the trial engaged – familial responsibility, aristocratic privilege, sexual politics’, rather than the rape itself.⁶¹⁵ In the years preceding *Roxana*’s publication the Castlehaven case appeared as a stand alone text in *The Case of Sodomy, in the Tryal of Mervin Lord Audley, Earl of Castlehaven, for committing a Rape* (1708).⁶¹⁶ It was referred to in *The Case of John Atherton, Bishop of Waterford in Ireland; who was convicted of the sin of uncleanness with a cow, and other creatures* (1710), which observed that Atherton and Castlehaven were ‘Guilty of the same Unnatural Crimes’.⁶¹⁷ These pamphlets focus on Castlehaven’s conviction for sodomy demonstrating that the contemporary audience considered it to be the most serious of his crimes. Between 1715 and 1719 George Abbot recounted Castlehaven’s actions and conviction alongside the 1613 divorce trial of the Earl of Essex and Lady Frances Howard in popular pamphlets *The Case of Impotency* (vols. 1 and 2).⁶¹⁸ As is reflected in the title, the pamphlet paid particular attention to the alleged impotence of

⁶¹³ Ibid.

⁶¹⁴ Ibid.

⁶¹⁵ Herrup, p.134.

⁶¹⁶ *The Case of Sodomy, in the Tryal of Mervin Lord Audley, Earl of Castlehaven, for committing a Rape* (London printed for John Morphew, 1708).

⁶¹⁷ *The Case of John Atherton, Bishop of Waterford in Ireland; who was convicted of the sin of uncleanness with a cow, and other creatures* (London: printed for E. Curll, 1710) p.6.

⁶¹⁸ George Abbot, *The Case of Impotency*, 2 vols. (London: printed for E. Curll, 1715-1719).

both defendants as is reflected in the title. A further two generic case law volumes also reported on the Castlehaven case.⁶¹⁹

A comparison between the Gray and Castlehaven trials and the scene of Amy's rape implies the influence of the law on Defoe's work. Indeed, details that appear in the Ordinary's Account of Gray's execution suggest that it may have inspired Roxana's reaction to, and perception of, Amy's rape. The Ordinary, Paul Lorrain, comments that Gray:

deny'd the Fact, and said, she never was guilty of any thing like it, though she had otherwise much offended God, and particularly in her having of late kept company with a Man, whom she was to have marry'd, but was not actually marry'd to him.⁶²⁰

Given that the evidence was 'very plain against' Gray, her recorded response here is remarkably similar to Roxana's perception of Amy's rape. Whilst Gray openly denies her involvement in the rape of Masters, Roxana's denial is less overt, being framed by her failure to conceptualize of 'Amy's Disaster' as a rape. Gray's, and Roxana's, perception of their guilt is evidenced from their own illicit sexual behavior rather than a belief that their actions facilitated rape.

Both Roxana and Gray attribute guilt to themselves. Their consideration of the rapes is quickly subsumed by a preoccupation with their own self-perceived illicit sexual behaviour with the rapist. Gray's only confession during her trial, imprisonment, and the spectacle of her execution is to having 'kept company with a Man, whom she was to have marry'd, but was not actually marry'd to'.⁶²¹ Similarly, Roxana closes the scene of Amy's actual rape by reflecting on her unmarried status. Their sense of guilt finds its framework within Christian ideas of guilt and punishment rather than the common law, and refuses to acknowledge the implications of aiding and abetting in a

⁶¹⁹ *A Compleat Collection of State-Tryals*, vol. I (London: printed for Timothy Goodwin, John Walthoe, Benj. Tooke, John Darby, Jacob Tonson, John Walthoe Jnr., 1719) and Thomas Salmon, *Tryals for High-Treason, and other Crimes*, vol.I (London: printed for D. Browne, G. Strahan, W. Mears, R. Gosling and F. Clay, 1720-1731).

⁶²⁰ *The Proceedings*, OA17070502.

⁶²¹ *Ibid.*

rape. Just as Gray fears that she has ‘offended God’ by engaging in a sexual relationship outside of the sanctions of marriage, Roxana also perceives that she has sinned in a spiritual sense. She becomes ‘the Devil’s agent’ because she is an adulteress and has ‘sought to make others as wicked’ as herself.⁶²² When faced with imminent death, both women pray to the Christian God for ‘Mercy’.⁶²³ For Gray, this moment occurs as she awaits execution. We are informed that she remained resolute that she had sinned only because of her sexual relationships outside of marriage despite ‘some Reverend Divines [...] shewing her the dreadful Punishment that would attend her Denial, if she was any ways guilty or appris’d’ of it’.⁶²⁴ Roxana’s penitence arises when the ship that she is travelling on to Dover is accosted by a storm causing her to believe that she will be drowned. Faced with the prospect of retribution from a God who ‘knows’ of her sins, Roxana repents for the ‘Wickedness’ of her life.⁶²⁵ Her reflections, however, are based on her illicit sexual relationships and a belief that she presented a ‘wicked Example’ to Amy, and ‘prostituted’ her to the Landlord.⁶²⁶ Roxana however gains reprieve from death when the storm passes and her ‘Repentance wore off’.⁶²⁷

It is possible to trace similarities between Castlehaven’s reported words to his wife at the time of her rape as they appear in Abbot’s pamphlet, and the Landlord’s attitude towards Amy. *The Case of Impotency* suggests that Castlehaven defended his actions to his wife by stating that: ‘if she lay with any other Man, with his Consent, it was not her Fault but his, and that if it was his Will to have it so, she must obey and do it’.⁶²⁸ The Landlord’s comment to Amy that ‘you see your Mistress has put you to-Bed, ‘tis all her doing you must blame her’ when read in the context of this trial acts as a

⁶²² *Roxana*, p.48.

⁶²³ *Ibid*, p.48.

⁶²⁴ *The Proceedings*, OA17070502.

⁶²⁵ *Roxana*, p.125.

⁶²⁶ *Ibid*, p.126.

⁶²⁷ *Ibid*, p.129.

⁶²⁸ *The Case of Impotency*, p.17.

reversal of Castlehaven's speech.⁶²⁹ Lady Anne, as the wife and property of her husband and lacking in a separate legal identity from her spouse, is defenceless against his demands. So too is Amy as the property of her mistress.

The legal context of Roxana's instigation of Amy's rape raises the question of why Roxana does not express remorse for her role in the act. Whilst it is possible that Defoe's construction of the scene reflected the low conviction rates in rape cases, he also uses the incident to explore the conflict between legal and religious ideas of justice and guilt.

III. Roxana's guilt

Immediately following her narration of Amy's rape, Roxana reflects on the incident and expresses her guilt through reference to Christian religious imagery. Alluding directly to the biblical story of Rachael, who used her maid as a surrogate mother to provide her husband, Jacob, with a child, Roxana observes that 'it was all my Fault; did I not drag your Cloaths off your Back, and put you to-Bed to him'.⁶³⁰ However, Roxana then uses this religious context to rationalize her actions and alleviate her guilt when she states to the Landlord that:

When *Rachael* put her Handmaid to-Bed to *Jacob*, she took the Children as her own; don't be uneasie, I'll take the Child as my own; had I not a hand in the Frolick of putting her to-Bed to you?⁶³¹

Roxana suggests that caring for the child, whose conception she instigated, is her penance for instigating Amy's rape. By following the precepts of the Biblical story of Rachael and Jacob, Roxana is able to achieve a resolution to the crime and the Landlord's sense of unease or guilt.

Roxana's reference to Christian precepts of sexual behaviour and culpability fails when she faces the possibility of death. Some time after the scene of Amy's 'Disaster',

⁶²⁹ *Roxana*, p.46.

⁶³⁰ *Ibid*, p.48.

⁶³¹ *Ibid*, p.48.

Roxana and her maid travel by boat from France to Holland. A storm arises during their journey causing the sailors and the women to fear that they will die. Amy, terrified and sea sick, falls into a 'swoon'.⁶³² When she revives she asks Roxana if the storm has passed to which Roxana replies '*it may be calm by-and-by, when we are all drown'd, and gone to HEAVEN*'.⁶³³ Amy responds, exclaiming: 'I go to HEAVEN! No, no, If I am drown'd, I am damn'd! *Don't you know what a wicked Creature I have been?* I have been a Whore to two Men, and have liv'd a Life of Vice and Wickedness for fourteen Years.'⁶³⁴ Amy's analysis of her character causes Roxana to reflect:

*Poor Amy! What art thou, that I am not? what hast thou been, that I have not been? Nay, I am guilty of my own Sin, and thine too: Then it came to my Remembrance, that I had not only been the same with Amy, but that I had been the Devil's Instrument, to make her wicked; that I had stripp'd her, and prostituted her to the very Man that I had been Naught with myself; that she had but follow'd me; I had been her wicked Example; and I had led her into it all; and that as we had sinn'd together, now we are likely to sink together. [...] I am the wicked Cause of it all; I have been thy Ruin, Amy; I have brought thee to this, and now thou art to suffer for the Sin I have entic'd thee to; and if thou art lost for ever, what must I be?*⁶³⁵

In her re-evaluation of the incident, Roxana no longer identifies herself with the story of Rachael. Instead, as she finally recognizes her central role in the sexual crime committed on Amy, Roxana considers that she has aided the Christian devil in securing Amy's moral and spiritual corruption, thus ensuring her own guilt and spiritual damnation according to her Christian beliefs. However, it is interesting that at this stage Roxana still does not conceive of Amy's 'Disaster' as a rape, instead terming it an act of prostitution and interpreting her guilt as arising from the promotion of sexual immorality.

After they land safely in Harwich harbor, Roxana comments that

I look'd back upon my Wickedness with Abhorrence, as I have said above; but I had no Sence of Repentance, from the true Motive of Repentance; I saw nothing of the Corruption of Nature, the Sin of my Life, as an Offence against God, as a

⁶³² Ibid, p.125.

⁶³³ Ibid, p.125.

⁶³⁴ Ibid, p.125.

⁶³⁵ Ibid, p.126.

thing odious to the Holiness of his Being; as abusing his Mercy, and despising his Goodness; in short, I had no thorow effectual Repentance, no Sight of my Sins in their proper Shape; no View of the Redeemer, or Hope in him; I had only such a Repentance as a Criminal has at the Place of Execution, who is sorry, not that he has committed the Crime, as it is a Crime, but sorry *that he is to be Hang'd for it*.⁶³⁶

Roxana's reflection on Amy's rape suggests that Defoe has constructed her as a character who is aware of the legal implications of her role as an aider and abettor to rape. As was demonstrated in chapter two through the punishment of Mother Needham, a bawd was not sentenced to execution. Roxana's reference to a criminal's repentance 'at the Place of Execution' implies her belief that Amy's 'Disaster' warranted a capital punishment thereby defining the incident as rape rather than prostitution. However, Roxana's penitence is self-indulgent and is not influenced by a sense of shame or fear of the common law. As Roxana notes, she has no 'true Motive of Repentance' beyond a fear of death.⁶³⁷ Although she acknowledges the impact of her actions on Amy, Roxana's sense of guilt is continually referenced back to herself and the judgment that she fears will be passed upon her as she questions: 'if thou art lost for ever, *what must I be?*'⁶³⁸ It is only the threat of death and the possibility that she will face judgment from the Christian God, which prompts her to recognise her guilt. However, when the threat of the Christian metaphysical justice system passes, Roxana comments that her 'Repentance wore off'.⁶³⁹

In the novel's conclusion, Roxana finally takes responsibility for her actions and is punished for her cumulative crimes. In her concluding comments, she states that

after some few Years of flourishing, and outwardly happy Circumstances, I fell into a dreadful Course of Calamities, and *Amy* also; the very Reverse of our former Good Days; the Blast of Heaven seem'd to follow the Injury done the poor Girl, by us both; and I was brought so low again, that my Repentance seem'd to be only the Consequence of my Misery, as my Misery was of my Crime.⁶⁴⁰

⁶³⁶ Ibid, p.129.

⁶³⁷ Ibid, p.129.

⁶³⁸ Ibid, p.126.

⁶³⁹ Ibid, p.129.

⁶⁴⁰ Ibid, pp.329-330.

Roxana's description of the 'Blast of Heaven' serves as the only true moment of judgment and punishment in the text. Roxana has by this point committed multiple crimes that are defined as such by a range of possible justice systems. She is an adulteress, a whore, a fraudster, and it is implied that she is an accessory to the murder of her daughter. There is a sense that the sum total of her multiple sins, which evade punishment through the common law or ecclesiastical courts, forces the Christian judge to mete out a punishment which precedes death as a form of justice redolent of biblical teachings. The undefined nature of the 'Blast of Heaven' echoes Roxana's inability to verbalize possible punishments for her crime during the storm, appearing as a sentence that is too awful to recount. The reader is left with the impression that whilst Roxana can escape legal judgment she cannot escape the vengeance of the Christian God.



Defoe's 'rape' scene provides insight into the importance of reconstructing the legal and social conventions of rape in order to reconstruct contemporary readings of the scene. In his rendering of Amy's rape, Defoe draws on the rape laws, trial procedures, and the period's rape myths discussed in chapters two and three respectively. These contexts, as will be explored further in chapters five and six, were important to the interpretation of rape in fiction. Whilst the common law questions about the perpetration of the act raised by Defoe imply that Amy's 'Disaster' could have been prosecuted, the records of similar trials suggests otherwise. However, it is only as the novel progresses and Roxana's sense of guilt develops that Defoe confirms a reading of the scene as a rape. Through this, Defoe suggests that a legal definition is not essential to interpret an act as a rape.

Roxana's re-evaluation of the scene during her journey to Holland has significant and, as yet, critically unacknowledged, implications for interpretations of Amy's 'Disaster'. Defoe suggests that rape has a lifelong impact on Amy, forcing her into immorality and preventing her from entering the Christian heaven after her death. However, Defoe implies that Roxana will face greater punishment for her role as the instigator of Amy's rape. The punishment is portrayed as extensive by Roxana's very inability to conceive of it when she asks 'what must be my Portion?'⁶⁴¹ Whilst Defoe alludes to rape laws through Amy's 'Disaster' and Roxana's guilt, he challenges the ability of the legal system to effect criminal repentance, suggesting that the repentance associated with corporeal punishment in contemporary society relates to self-pity rather than remorse for their actions. Defoe thus proposes that true justice for rape can only be meted out by the Christian God.

⁶⁴¹ Ibid, p.126

Chapter Five

‘the scene of a rape in good earnest’?:

Rape and Public Spaces in Henry Fielding’s *Rape upon Rape* (1730) and *Joseph Andrews* (1742), and Tobias Smollett’s *Roderick Random* (1748) and *Peregrine Pickle* (1751)



In his law manuals *A New Law Dictionary* (1729) and *Every Man His Own Lawyer* (1736) Giles Jacob discusses the circumstantial evidence required to support a woman’s allegation of a rape in a trial. He contends that:

a Woman’s positive Oath of a Rape, without concurring Circumstances, is seldom credited: If a Man can prove himself to be in another Place, or in other Company, at the Time she charges him with committing the Fact, this will invalidate her Oath so if she is wrong in the Description of the Place where done, or swears the Fact to be committed in such Place, to which it is impossible the Man could have Access at that Time; as if the Room was then lock’d up, and the Key in the keeping of another Person, &c.⁶⁴²

Unsurprisingly, the extract begins with a comment on the veracity of female testimony that can be undermined by the defendant’s deposition or an inaccurate ‘description’. It is notable, however, that the circumstantial evidence quoted focuses only on location. Jacob uses the example of a private space that is difficult to access and can therefore be contained and safeguarded to explore the type of setting that would prevent the perpetration of a rape.⁶⁴³ He does not comment on public spaces yet, surprisingly, these

⁶⁴² Jacob, *Every Man*, p.442.

⁶⁴³ As has been noted in chapter four, private spaces also create difficulties for complainants because of the lack of external witnesses.

are presented as the most detrimental type of space to a woman's accusation of rape in the period's trial records. In the case of James Raven, who was indicted at the Old Bailey in 1752 for the rape of Mary Irish beside the highway, Raven was acquitted despite two witnesses testifying to seeing the rape. During the trial the court questioned:

What Highway was this; is it not a publick Road? [...] And if this Woman in the Field could see this Fact; if you had scream'd out, all these Pease-pickers must have heard you. What, none of these come to your Assistance?⁶⁴⁴

The classification of the highway as a 'publick' space in the cross examination of Irish suggests a legal assumption that a rape could not take place in these locations because of the proximity of other people. It was assumed that there would be enough people within the immediate vicinity to offer assistance to the woman and to prevent the crime. In the trial of John Simmons (1726), however, the prosecutrix, Mary Batten, claimed that a watchman who passed by during the rape was bribed to not offer her assistance.⁶⁴⁵

This chapter investigates how Henry Fielding and Tobias Smollett use the legal conventions regarding public spaces to effect a comic representation of rape. I will argue that the legal attitude towards public spaces forms an important context for understanding accusations of rape, which has not yet received proper critical attention. The case studies focus on Fielding's and Smollett's depictions of rapes that occur at night in the public spaces of the street, the highway, and the highway inn, to suggest that these locations imply female consent and the falsity of a rape allegation, whilst increasing the threat of prosecution posed to men.

The terms 'public' and 'private' are contentious in critical debate. The concept of public space, expressed by Jürgen Habermas as the 'public sphere', has been widely criticized and is accepted to have multiple meanings.⁶⁴⁶ This study uses the term

⁶⁴⁴ *The Proceedings*, t17460226-32.

⁶⁴⁵ *Ibid*, t17260302.

⁶⁴⁶ Habermas conceives of the public sphere as a discursive space in which cultural meanings and rules are constructed and which may not imply a physical, or a physically accessible, setting. He comments that 'as in the expression "public building", the term need not refer to general accessibility; the building does not even have to be open to public traffic. "Public buildings" simply house state institutions which govern

‘public’ to imply physical visibility and accessibility. As the analyses of the spaces of the highway, street, and inn will demonstrate, external and interior locations were readily accessed by, and visible to, passers by. Private space is defined in contrast to this as an individual’s home, or a setting that is secured against entry, for example by a locked door. It is important to this chapter to note that the locations of the street, highway, and inn are also spaces of transit and transition, which are populated by travellers. The comparison between these spaces involves a transition from the surveillance associated with a heavily populated location and sense of legal jurisdiction on the city streets to the less populated and therefore less visible countryside removed from the central legal administration. The locations are also marked in my discussion by the transition from day to night: whilst night time brings reduced usage and visibility to the street and the highway, the inn is populated at night but has reduced lighting. In all of the locations discussed the presence of a woman in a public space at night signifies her lack of good moral character and exposes men to the threat of false allegations of rape. Karen Lipsedge notes that in seduction narratives transitional spaces ‘act as stepping stones’ to the socially acceptable narrative conclusion.⁶⁴⁷ This study argues that this is contradicted in Fielding’s and Smollett’s farcical ‘rape’ narratives where the transitional space is depicted as unstable, lawless, and threatening, and facilitates illicit or criminal behaviour.⁶⁴⁸ The impact of transitional space on gender roles is also important. Positioned at a remove from the surveillance and conventions of society,

social interactions and as such are “public”’. (Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. by Thomas Burger and Frederick Lawrence (Cambridge: The MIT Press, 1991) pp.1-2.)

⁶⁴⁷ Karen Lipsedge, *Domestic Space in Eighteenth-Century British Novels* (Basingstoke: Palgrave MacMillan, 2012) p.132. See also Tita Chico, *Designing women: The Dressing Room in Eighteenth-Century English Literature and Culture* (Lewisburg: Bucknell University Press, 2005) p.12: ‘In domestic novels, the dressing room becomes a transitional space through which heroines must pass in order to reach the conclusion of the female bildungsroman, finding a proper husband.’

⁶⁴⁸ This is similar to Gladfelder’s analysis of the Verge of the Court, an area surrounding Whitehall and St. James in which debtors were immune from arrest, as a transitional space in Fielding’s *Amelia*. He comments that Fielding creates the Verge ‘within an allegorical structure of meaning, as an unstable, transitional space of criminality and surveillance, contagion and safety – the exemplary space of modern urban life, given the embattled conditions of legal authority in eighteenth-century London’. (Gladfelder, *Criminality and Narrative*, p.197).

they offer the opportunity for gender role reversals thus threatening men as well as women.⁶⁴⁹

The first two sections of this chapter focus on representations of rape and location in the works of Fielding. The discussion of rape, the law, and judicial procedure explores how Fielding's legal knowledge enabled him to construct an informed representation of public spaces which paid attention to the legal contexts of these locations.⁶⁵⁰ The chapter begins by focusing on the role of the city streets in the scene of Ramble's attempted rape of Hilaret in Fielding's play, *Rape upon Rape* (1730). The city setting enables Fielding to explore the rape myth that 'no modest woman would actually prosecute someone for rape' through the depiction of Hilaret as a manipulative character who falsely accuses Ramble of rape.⁶⁵¹ Fielding portrays the night-time streets as a sexually permissive setting, which precludes rape because entry into this space demands female transition from chastity to immorality. The city street at night thus plays a dual role in a description of rape: it signifies the complainant's iniquity and identifies their accusations as false.

This leads on to a discussion of rape on the highway through analysis of the attempted rape of Fielding's character, Fanny, in his novel *Joseph Andrews* (1742). The chapter argues that this episode in the novel challenges the assumption found in rape trials that the 'Publick' highway is a populated and visible space which safeguards women against rape. Instead, Fielding depicts the prevalence of a male-perpetrated threat against men and women on the highway. He suggests that fear of criminal activity encourages travellers to adopt behavioural strategies that are motivated by self-

⁶⁴⁹ This contrasts with Helene Moglen's analysis of Defoe's use of transitional space in *Robinson Crusoe*. Moglen contends that 'the island offers Crusoe a transitional space – an opportunity to differentiate himself from a feminized world that he is also able to control' (Moglen, p.34).

⁶⁵⁰ For more information on Fielding's legal career and its influence on his fictional texts see: *Henry Fielding (1707-1754): Novelist, Playwright, Journalist, Magistrate*, ed. by Claude Julien Rawson (Cranberry, NJ: Rosemont Publishing, 2008); Lance Bertelsen, *Henry Fielding at Work: Magistrate, Businessman, Writer* (Basingstoke and New York: Palgrave, 2000); Gladfelder, 'The Judge and the Author: Fielding in Midcentury', *Criminality*, pp.151-208.

⁶⁵¹ Dickie, p.581.

preservation rather than a sense of social responsibility, and which allow criminals to prevail. The highway thus becomes a transient and dangerous space that cannot be effectively governed by the law or by social structures of surveillance and crime prevention.

The chapter closes with a discussion of attempted rape in the highway inn in Tobias Smollett's novels *The Adventures of Roderick Random* (1748) and *The Adventures of Peregrine Pickle* (1751). Here, I argue that this setting presents a threat to men rather than women, facilitating the comedic value of the scenes. Smollett's 'rapes' are farcical acts of mistaken identity, false accusation and blackmail, which explore the contemporary anxiety about the veracity of female testimony. Anthony Simpson has argued that contemporary audiences were familiar with the 'rape-and-blackmail association' exemplified by Smollett's scenes.⁶⁵² However, I show how Smollett's 'extortion rapes', and their accompanying hilarity, are characterized and made feasible by their location. The accessibility of the rooms within the inns of *Roderick Random* and *Peregrine Pickle* allow Smollett's protagonists to witness and therefore narrate the alleged act. His settings, and the fictional witnesses to the attempted rapes, emphasize the impossibility of perpetrating a rape. By the conclusion, I will have demonstrated that Fielding and Smollett drew upon, and expected their audiences to recognize, the cultural and legal assumptions about the location of an alleged rape and used this to guide readers' responses to the scene.

I. Rape in the streets

In 1730 Fielding depicted an attempted rape in the street at night in his play *Rape upon Rape*. During the scene Hilaret, a noblewoman, leaves her father's house at night to seek her love, Constant, and becomes parted from her maid. Ramble, who has just

⁶⁵² Simpson, 'The "Blackmail Myth"', p.112.

returned from sea, encounters Hilaret, whom he mistakes for a prostitute, and ‘*Takes hold of her*’.⁶⁵³ Hilaret begs him to:

Let me go I beseech you, Sir, I will have nothing to say to any of your Profession.

Ramb. That’s unkind, Madam: for as I take it, our Professions are pretty nearly allied, and like Priest and Nun, we are proper Company for one another.

Hil. My Profession, Sir!

Ramb. Yes, Madam, I believe I am no Stranger to the honourable Rules of your Order. Nay, tis probable I may know your Abbess too; for tho’ I have not been in Town a Week, I am acquainted with half a Dozen.⁶⁵⁴

Hil. Nothing but your Drink, Sir, and Ignorance of my Quality, could excuse this Rudeness.

Ramb. (Whu- [whistles] Ignorance of your Quality! (The Daughter of some Person of Rank, I warrant her) [Aside] Look’e, my Dear, I shall not trouble myself with your Quality: It is equal to me, whether your Father rode in a Coach and Six, or drove it – I have had as much Joy in the Arms of an honest Boatswain’s Wife, as with a Relation of the *Great Mogul*.⁶⁵⁵

Ramble’s dialogue and assumption that Hilaret is a prostitute firmly situates this scene within the comic register. However, the humour derives from the binaries that Fielding constructs, most particularly the knowledge of the audience and the author, which are juxtaposed with the characters’ ignorance. The audience is aware that Ramble’s assessment of Hilaret’s character is incorrect thus defining the proposed sexual plunder of Hilaret as an attempted rape. However, through Ramble, Fielding describes an uncertain divide between morality and immorality. Ramble juxtaposes the ‘Professions’ of a rake and a prostitute against a priest and a nun, thus creating contrast between figures representative of sexual permissiveness and sexual restraint. Whilst the reference to the priest and the nun suggests a concept of sexuality inhibited by religious belief,⁶⁵⁶ Ramble then comments: ‘I am no Stranger to the honourable Rules of your

⁶⁵³ *Rape upon Rape*, ix, p.10.

⁶⁵⁴ The term ‘Abbess’ is used here to refer to the Madam of a Brothel and the ‘Order’ that Ramble concludes Hilaret belongs to is that of the prostitutes.

⁶⁵⁵ *Rape upon Rape*, pp.10-11.

⁶⁵⁶ A particularly notable incident of a priest indulging in illicit sexual behaviour was the French trial of Father John Baptist Girard who was convicted of raping Mary Katherine Cadiere in 1728. The trial was widely published in the early 1730s under the titles *Memoirs of Miss Mary-Catherine Cadiere, and Father Girard, Jesuit*. (London: printed for J. Isted, 1731); *The case of Mrs. Mary Catherine Cadiere, against the Jesuit Father John Baptist Girard* (London: J. Roberts, 1732); and *The Tryal of Father John-Baptist Girard* (London: J. Isted, 1732). Aphra Behn provides an account of a nun’s sexual permissiveness in *The History of the Nun, Or The Fair Vow Breaker* (London: Printed for A. Baskerville,

Order. Nay, 'tis probable I may know your Abbess too.' Ramble's reference to the ironically 'honourable Rules of your Order' and 'your Abbess', a contemporary phrase used to describe a bawd, uses the language of religious convents to describe prostitution as was common in the period. Ramble's asides to the audience then emphasize the contrast between his ignorance and the audience's knowledge. His sarcastic comment, made in the belief that Hilaret is a prostitute, that she is '[t]he Daughter of some Person of Rank, I warrant' is provoked by his ignorance of her social status. It is ironic that Hilaret is in fact the daughter of Mr. Politick, a man of high social status.

Hilaret addresses, and attempts to rectify, Ramble's impression that she is a prostitute stating that

You look, Sir, so much like a Gentleman, that I am persuaded this Usage proceeds only from your mistaking me. I own it looks a little odd for a Woman of Virtue to be found alone in the Street, at this Hour –

Ramb. Yes it does look a little odd indeed. [*Aside*]

Hil. But when you know my Story, I am confident you will assist me, rather than otherwise. I have this very Night escaped with my Maid from my Father's House; and as I was going to put my self into the Hands of my Lover, a Scuffle happening in the Street, and both running away in a Fright to avoid it, we unluckily separated from each other – Now, Sir, I relie on the Generosity of your Temper to assist an unhappy Woman, for which you shall not only have my Thanks, but those of a very pretty Fellow into the Bargain.

Ramb. I am that very pretty Fellow's very humble Servant. But I find I am too much in Love with you my self, to preserve you for another: Had you proved what I at first took you for, I should have parted with you easily; but I read a Coronet in your Eyes: (she shall be her Grace if she please, I had rather give her a Title than Money). [*Aside*]⁶⁵⁷

Hilaret is, of course, correct in her assumption that Ramble's attitude towards her is formulated by the mistaken impression that she is a whore. She is, however, incorrect in her belief that her account of the events that have befallen her will justify her presence on the street at night and assert her good moral character. For Ramble, the setting unequivocally confirms Hilaret's immorality. When he comments that 'I find I am too

1688). Laura Linker comments that 'Many of the French sources that Restoration and early eighteenth-century writers re-imagined in their works present erotic depictions of the sensationalized medieval nun Héloïse, or nuns like her, who pine for absent lovers. They feature libertine heroines that combine religious with sexual transgression.' *Dangerous Women, Libertine Epicures, and the Rise of Sensibility, 1670-1730* (Surrey: Ashgate Publishing Limited, 2011) p.6.

⁶⁵⁷ *Rape upon Rape*, pp.10-11.

much in Love with you my self, to preserve you for another' he suggests that a sexual encounter is a foregone conclusion stipulated by the location. Ramble attempts to humour and flatter Hilaret into consenting to sex when he comments: 'Had you proved what I at first took you for, I should have parted with you easily; but I read a Coronet in your Eyes.' His aside to the audience reveals that the only title he believes she is entitled to is a mock statement of social status provided by himself. It is ironic that the humour of Ramble's statement lies not, as he believes, in its lie but in its truth that he fails to perceive. The comment is important because it demonstrates the dire implications of the setting: Hilaret, despite her attempts to persuade Ramble that there is a legitimate reason for her presence on the streets at night, has failed to 'prove' her morality.

The scene mirrors the depositions of alleged rape victims in the court. In a case heard at the Old Bailey in 1726 John Simmons was indicted for the rape of Mary Batten in the streets of London at night.⁶⁵⁸ Batten testified that Simmons' accomplices '[h]eld me while the Prisoner ravish'd me: and I cry'd and struggled, and did all that I could to hinder him, but it signified nothing, [...] the other Two serv'd me in the same Manner as the Prisoner did'.⁶⁵⁹ Margaret Dixon, witness for the prosecution, deposed that she

Found the Prisoner and the two others. They own'd they had lain with her. They begg'd she give them no Trouble, and swore from Time to Time, that they'd come and make her amends, and give her 6 Shillings a piece to buy her a new Gown.⁶⁶⁰

Despite what appears to be ample proof against the defendant, Simmons was acquitted of the crime largely due to Batten's presence on the highway at the time that the rape was alleged to have occurred. Batten commented that she had travelled to visit a 'Shop-Mate' at Christmas and 'staid till one a Clock in the Morning' before returning home.⁶⁶¹ It is notable that she clarifies her late return home by stating: 'not that I use to keep ill

⁶⁵⁸ *The Proceedings*, t17260302.

⁶⁵⁹ *Ibid.*

⁶⁶⁰ *Ibid.*

⁶⁶¹ *Ibid.*

Hours; for it is very well known that I take an honest Care for a Livelyhood, but it was Holiday Time'.⁶⁶² The acquittal demonstrates that Batten's reason for being on the street at night was insufficient to convince the court of her virtue. She failed to meet the criteria of a good moral character as required by the law and thus invalidated her deposition.

The issues of female culpability and morality raised by Simmons' case are reflected in Hilaret and Ramble's ensuing dialogue. Hilaret concludes that she has 'but one Way to get rid of him' by agreeing to accompany Ramble to the 'next Tavern'.⁶⁶³ She remains concerned however that her 'Virtue' and 'Reputation' will remain intact, to which Ramble responds '[t]he Night will take Care of that'.⁶⁶⁴ The night is featured as a threatening and embodied presence that facilitates and instigates a woman's moral and sexual corruption. Of course, for Ramble, Hilaret has already proven her lack of good moral character and virtue through her location so he appears exasperated when he comments that 'These Whores have learnt a strange Cant since I left *England*'.⁶⁶⁵ Thus when Hilaret threatens to 'alarm the Watch' and then cries 'Help there! A Rape, a Rape!' Ramble attempts to 'Hush' her stating 'you call too loud, People will think you are earnest'.⁶⁶⁶ Fielding once more plays with dual meanings: Hilaret is in earnest in her cry yet the comic discourse of rape suggested that women 'cried a rape' to facilitate blackmail or to enable a feigned resistance to allow them to engage in illicit but desired behaviour. Ramble, however, does not comprehend that a 'Whore' could not consent to sexual intercourse and therefore believes that any charge of rape is false.⁶⁶⁷ His preconceptions are synonymous with those apparent in judicial practice. If a prostitute

⁶⁶² Ibid.

⁶⁶³ *Rape upon Rape*, p.11.

⁶⁶⁴ Ibid.

⁶⁶⁵ Ibid.

⁶⁶⁶ Ibid.

⁶⁶⁷ Ibid.

claimed to have been raped the legal manuals advised that her profession was a 'strong presumption' in the defendant's favour.⁶⁶⁸

Fielding's attempted rape scene is brought to an abrupt end when Hilaret warns Ramble that she will

[...] alarm the Watch.

Ramb. You'll be better natur'd than that. At least, to encounter Danger is my Profession; so have at you my little *Venus* – If you don't consent, I'll ravish you.

Hil. Help there! A Rape, a Rape!

Ramb. Hush, hush, you call too loud, People will think you are in earnest.

Hil. Help, a Rape! –

Staff. That's he there, seize him.

Ramb. Stand off, ye Scoundrels!

Staff. Ay, Sir, you should have stood off – Do you charge this Man with a Rape, Madam?

Hil. I am frightened out of my Senses –

Staff. A plain Case! – the Rape is sufficiently proved – what, was the Devil in you, to ravish a Woman in the Street thus?⁶⁶⁹

The immediate response to Hilaret's cry for help supports the legal perception of the street as a populated location in which a woman's cries for aid will be responded to. This reflects evidence found in the period's rape trials. In the case of John Pritchard, who was acquitted of the rape of Sarah Tate in Lobb's Field in 1725, the court of the Old Bailey concluded that Tate 'had no Occasion to go [...] a private round-about Way over the Fields, for fear of being ravished in the Publick Street'.⁶⁷⁰ The ruling insinuates that if Tate had chosen to return home by the route of the streets she would not have been raped. It implies that the presence of other people in the immediate vicinity will offer both a deterrent to a rapist and security to women, suggesting that passers by would interfere in the events thus preventing the rape. Staff's declaration that 'the Rape is sufficiently proved' appears to contradict this conception of the street as an impossible location to accommodate a rape.⁶⁷¹ The audience, however, is well aware that, whilst Ramble has threatened to 'ravish' Hilaret, the offence has not been

⁶⁶⁸ Jacob, *Every Man*, p.193.

⁶⁶⁹ *Rape upon Rape*, p.11.

⁶⁷⁰ *The Proceedings*, t17250827-74.

⁶⁷¹ *Rape upon Rape*, p.11.

committed. Staff's declaration that 'the Rape is sufficiently proved' becomes increasingly ironic as it later transpires that he works for Justice Squeezum who aims to extort money from the falsely accused Ramble in exchange for his acquittal.⁶⁷² In this incident of 'rape', Ramble is faced by a malicious accusation made by Hilaret and the legal profession, but only Squeezum is motivated by extortion whilst Hilaret attempts to avoid the act through false allegation. Thus, Fielding appears to suggest that the legal profession is corrupt and that the crime is manipulated by the profession for financial gain, thereby implying that rape prosecutions are likely to be false.

In *Rape upon Rape* Fielding suggests that an allegation of rape in a populated street at night would almost certainly be false, and that a conviction under these charges would be evidence of legal malpractice. The 1727 trial of Thomas Coventry for the rape of Catherine Southall implies that Fielding's understanding of public locations in relation to rape equated with judicial practice. During the trial Southall deposed that Coventry

courted me for Marriage, and persuaded me to go down Salisbury Road with him, and he would give me the Wedding Ring; it was about 7 o'Clock at Night when he deluded me, and then haul'd me into a dirty Place at Ivy-Bridge, and laid me down, and then laid upon me, and wanted to unlace me, then took up my Coats and laid with me – he had to do with me and entered my Body.⁶⁷³

When Southall returned to the house at which she was a servant she informed her mistress, Mary Kinerly, of the rape. Kinerly testified to Southall returning in a 'vile Condition'.⁶⁷⁴ After inspecting her, Kinerly sought out her husband at work where she overheard Coventry boasting to 'some soldiers that he longed for a Maidenhead, and by G-d he had got one'.⁶⁷⁵ Sarah Kinman, a midwife, also provided evidence for Southall's claim that 'a Man had had to do with her'.⁶⁷⁶ Coventry, however, declared that Southall

⁶⁷² See chapter two for a more extensive discussion of Justice Squeezum's character and social perceptions of the legal profession and judicial malpractice more widely.

⁶⁷³ *The Proceedings*, t17270113-21.

⁶⁷⁴ *Ibid.*

⁶⁷⁵ *Ibid.*

⁶⁷⁶ *Ibid.*

had consented to the act. He commented that the location of the rape was ‘not above five Yards distance from the Strand, and there were People going by in the Time’.⁶⁷⁷ The jury acquitted Coventry despite the lack of witnesses for the defence thus supporting the supposition that a woman could not be raped in the public space of the streets without intervention from passers by.

This trial reveals a discrepancy between the rape records and Fielding’s comic street ‘rape’. Fielding describes an ambiguous setting of a street at night. He does not provide an exact location or describe significant features, which could identify a specific street. Instead, his setting could represent any street, thus suggesting that his analysis of the location as a context for a rape is relevant to all streets. Whilst the universality of this description allows the comedy to draw on and relate to the equally universal rape myths and jests that circulated throughout the era, it contrasts with the description of settings which were provided in rape cases. In Coventry’s trial, Southall and her witness, Kinerly, need to support the rape allegations with an accurate and distinctive description of the location. Thus, the report records details that are notable for their specificity of time and place. Southall walks *down* Salisbury Road, reaching the location of the ‘dirty Place at Ivy-Bridge’ at ‘7 o’Clock at Night’. Coventry makes use of similarly precise detail in his descriptions to disprove the claim. A rape could not, it is concluded, take place in a location that is ‘not above five Yards distance’ from the heavily populated Strand.

The location of Fielding’s scene is essential to generate its humour. It draws on contemporary rapes alleged to have occurred on the street and the legal assumption that the act of rape would have been impossible because of the proximity of other people.⁶⁷⁸ Fielding’s setting therefore enables Ramble’s misinterpretation of Hilaret’s social status and his assumption that, despite her words to the contrary, she would consent to a

⁶⁷⁷ Ibid.

⁶⁷⁸ In *The Rover* Aphra Behn uses location in a similar way when the chaste Florinda wanders the streets at night and is almost raped twice by Wilmore and then Blunt (London: s.n., 1677).

sexual liason with him. Hilaret's entry into the street at night prevents her from being viewed as a virtuous character, which is further supported as the play continues when she engages in the immoral and illegal act of falsely accusing Justice Squeezum of rape in order to blackmail him.⁶⁷⁹ Fielding's street scene enables physical mobility and the metaphorical female transition from virtue to immorality and sexual license. The assumption that virtuous women would not be present in this location precludes any claims to chastity, thus preventing Hilaret's defense at the scene. When Hilaret's accusations are viewed as true, this interpretation is reflective of judicial corruption rather than the possibility that a rape could be perpetrated in this location.

II. Rape and the highway

Joseph Andrews tells the story of its titular protagonist's geographical and personal journey from his position as a servant to the discovery of his true parentage as the son of Mr. Andrews, a wealthy gentleman. During his travels he is violently mugged, beaten and stripped of his clothing. Fanny, who is in love with Joseph, hears of this attack and sets out to visit him. During her journey on the highway she is attacked, but rescued by the passing Parson Adams who saves her from this rape. Adams, who is travelling by coach,

heard the most violent Shrieks imaginable in a female Voice. *Adams* offered to snatch the Gun out of his Companion's Hand. 'What are you doing?' said he. 'Doing!' says *Adams*, 'I am hastening to the Assistance of the poor Creature whom some Villains are murdering.' 'You are not mad enough, I hope,' says the Gentleman, trembling: 'Do you consider this Gun is only charged with Shot, and that the Robbers are most probably furnished with Pistols loaded with Bullets? This is no Business of ours; let us make as much haste as possible out of the way, or we may fall into their hands ourselves.' The Shrieks now increasing, *Adams* made no Answer, but snapt his Fingers, and brandishing his Crabstick, made directly to the Place where the Voice issued; and the Man of Courage made as much Expedition towards his own Home, whither he escaped in a very short time without once looking behind him: where we will leave him to contemplate his own Bravery, and to censure the want of it in others; and return to the good *Adams*, who, on coming up to the Place whence the Noise

⁶⁷⁹ This act suggests and supports the rape myth that women could not be raped and male fears of false allegations discussed in chapter three.

proceeded, found a Woman struggling with a Man, who had thrown her on the Ground, and had almost overpowered her. The great Abilities of Mr. *Adams* were not necessary to have formed a right Judgment of this Affair, on the first sight. He did not therefore want the entreaties of the poor Wretch to assist her, but lifting his Crabstick, he immediately leveled a Blow at that part of the Ravisher's Head, where, according to the Opinion of the Ancients, the Brains of some Persons are deposited.⁶⁸⁰

In the ensuing fight Adams hits Fanny's assailant over the head and, knocking him unconscious, believes him to be dead.

Fanny's 'violent Shrieks' and 'struggl[es]' attest to her lack of consent, but it is clear that, without the assistance of Adams, she would have been 'overpowered'.⁶⁸¹ In comparison to the attitudes expressed towards Hilaret, it is notable that this scene does not imply Fanny's lack of morality. Instead Fielding suggests that Fanny's subjugation would be representative of a flaw in the social responsibility of people in the vicinity failing to come to her aid. Adams, the unlikely hero of this incident, immediately seeks to offer aid to Fanny when he hears her cries. His sense of duty to others requires that he prioritize her safety over his own so that he arrives at the scene furnished only with a 'Crabstick'. Adams' 'Bravery' encapsulates the ideal of social responsibility that, whilst not represented in case evidence, was assumed to be commonplace in legal theory. In 1752 James Raven was indicted at the Old Bailey for raping Mary Irish with the aid of three accomplices on the 'Highway between Kingsland and Newington, the Corner of the Fields'.⁶⁸² Although the case was complicated by Irish's ensuing pregnancy, and two statements testifying to the defendant's good character, the report suggests that it was the location of the rape that led to Raven's acquittal. Irish claimed that

On the 31st of July I was going to my Master's House. Going on an Errand, this young Man met me, and two more. Two held my Leggs, the other stopp'd my Mouth with his Hand. I was going for my Master's Cows when this young Man met me; I got from him, but he follow'd me and threw me into the Ditch.

Q. How many in Company were there?

Irish. Four. Two held my Leggs, one stopp'd my Mouth.

⁶⁸⁰ Henry Fielding, *The History of the Adventures of Joseph Andrews*, ed. by Douglas Brookes-Davies (Oxford: Oxford University Press, 2008) pp. 119-120.

⁶⁸¹ Ibid.

⁶⁸² *The Proceedings*, t17460226-32.

Q. What did the Prisoner do to you?
Irish. The young Man the Prisoner lay with me.⁶⁸³

Two witnesses for the prosecution provided circumstantial evidence that supported the indictment. Mary Edwards attested to having ‘heard Murder cry’d’ from the fields adjoining the highway.⁶⁸⁴ When she arrived at the scene of the commotion, Edwards saw Raven ‘in the Ditch’ lying on top of a woman although she could only see ‘the Woman’s Cap and Sleeve’.⁶⁸⁵ Anne Price, who was also in the fields, claimed to have:

heard Murder cry’d out. It was of a Tuesday, in the Pease Season. And coming along, who should we see but young Raven run over the Field. And he went to hurl Stones and Dirt at us. There came a Fellow up in a red Waistcoate, and swore, I’ll have your Legs open. I saw nothing any farther.⁶⁸⁶

The court however questioned

What Highway was this; is it not a publick Road? [...] And if this Woman in the Field could see this Fact; if you had scream’d out, all these Pease-pickers must have heard you. What, none of these come to your Assistance? For these Pease-pickers were in Sight as well as this Woman.⁶⁸⁷

In Raven’s case, the presiding judge assumes that witnesses to a rape would aid the woman, thereby preventing her violation.

Fanny’s reprieve at the hands of Adams is designed as an improbable coincidence driven by the demand of narrative rather than offering hope to female travellers. Adams is out of step with his time: his chivalrous ‘Bravery’ in rescuing Fanny appears as the valour of bygone ages, of which he is an ‘excellent Scholar’.⁶⁸⁸ His self-sacrificing bravery, which epitomizes the social responsibility assumed by the law to safeguard women on the highway, is contrasted with the cowardice of the ironically named ‘Man of Courage’ who prioritizes personal safety over that of others. The ‘Man of Courage[’s]’ comment that they should ‘make as much haste as possible out of the way, or we may fall into their hands ourselves’ echoes similar statements

⁶⁸³ Ibid.

⁶⁸⁴ Ibid.

⁶⁸⁵ Ibid.

⁶⁸⁶ Ibid.

⁶⁸⁷ Ibid.

⁶⁸⁸ *Joseph Andrews*, p.19.

made in trials heard at the Old Bailey where depositions concerning rape that occurred on or beside a highway frequently feature women's cries for aid that fail to elicit assistance from people within the vicinity. In the case of John Stevens, who was convicted of raping Elizabeth Humphreys on the Highway outside of Islington on the evening of 28 March 1752, Humphreys reported that during the rape she

saw a man pass by on foot; I was in hopes he would help me; I called murder: no help came: the prisoner dash'd my head against the ground, pulled me by the hair of the head; he bit my shoulder with his teeth; I had a great bump on my head the next day: in the struggling I was up once, and then I saw the man that passed by in light colour'd cloaths, standing on the causeway at a distance. The prisoner got me down a second time, and pulled me about so monstrously, that I can hardly express it.⁶⁸⁹

Remarkably, the man later read about the prosecution in the paper and, 'hearing the woman was one of a good character', wrote to her offering to testify to the rape during the trial.⁶⁹⁰ The records report that Tipping

was coming from Holloway home, betwixt eight and nine o'clock in the evening: near the end of the back-lane I heard a woman groan; I staid some time to consider whether I should go forwards or not: I then went on and went close by them: the woman was down upon her back, her cloaths up, her legs open, and the man upon her; she said, for God's sake, master, help; Murder! Murder! the man said, hold your tongue, you bitch.⁶⁹¹

Tipping deposed that he 'was afraid there was something more in it than should be, so I dar'd not stay to assist.' When asked: 'How came it, that you saw a man and woman in this situation and did not assist?'⁶⁹² Tipping responded: 'Because there are so many traps laid to draw people in, such as stratagems of women crying out, and the like.'⁶⁹³ Tipping's suspicion that Humphrey's cries for aid were part of a plot to entrap unwary travellers arose from his observation of 'two horse' waiting nearby that prompted him to 'imagine' that more accomplices were 'hard by'.⁶⁹⁴ Tipping's concern for personal safety that overrode his sense of public duty to others mirrors the Man of Courage's

⁶⁸⁹ *The Proceedings*, t17520408.

⁶⁹⁰ *Ibid.*

⁶⁹¹ *Ibid.*

⁶⁹² *Ibid.*

⁶⁹³ *Ibid.*

⁶⁹⁴ *Ibid.*

refusal to provide aid to Fanny. His statement that '[t]his is no Business of ours' is motivated by a fear that her assailants might be armed with better weapons than himself, leading to his own injury. His fears are well founded. Fielding informs us that 'the Ravisher, on the Information of the Crabstick, immediately le[apt] from the Woman, and hasten[ed] to assail the Man'.⁶⁹⁵ Whilst Fanny's assailant is not 'furnished with Pistols loaded with Bullets', Adams receives a 'drubbing'.⁶⁹⁶

As with the streets, the legal assumption that a sense of social responsibility would elicit aid for a woman thus preventing her rape relies on a second assumption that the highway, as a 'publick' space, was visible and populated. However, the populated city streets were different from highways. The volume of travellers on the highway and therefore the visibility of the space varied depending on its location. The highway on which Fielding's Fanny is accosted runs through a remote part of the countryside with few travellers. After her rescue she explains to Adams that:

she was travelling towards *London*, and had accidentally met with the Person from whom he had delivered her, who told her he was likewise on his Journey to the same Place, and would keep her Company; an Offer which, suspecting no harm, she accepted; that he told her, they were at a small distance from an Inn where she might take her Lodging that Evening, and he would show her a nearer way to it than by following the Road. That if she had suspected him, (which she did not, he spoke so kindly to her,) being alone on these Downs in the dark, she had no human Means to avoid him; that therefore she put her whole Trust in Providence, and walk'd on, expecting every Moment to arrive at the Inn; when, on a sudden, being come to those Bushes, he desired her to stop, and after some rude Kisses, which she resisted, and some Entreaties, which she rejected, he laid violent hands on her, and was attempting to execute his wicked Will, when, she thanked G-, he timely came up and prevented him.⁶⁹⁷

The remote nature of this highway causes further problems for Fanny and Adams when they, and the unconscious assailant, are discovered by 'a Set of young Fellowes'.⁶⁹⁸ Adams relates the events of Fanny's attempted rape to the group; however the assailant, returning to consciousness, offers an alternative version of events:

⁶⁹⁵ *Joseph Andrews*, pp. 119-120.

⁶⁹⁶ *Ibid.*, p.120

⁶⁹⁷ *Ibid.*, p.121.

⁶⁹⁸ *Ibid.*, p.122.

‘Gentlemen’, said he, ‘you are luckily come to the Assistance of a poor Traveller, who would otherwise have been robbed and murdered by this vile Man and Woman, who led me hither out of my way from the High-Road, and both falling on me have used me as you see.’⁶⁹⁹

The ‘Fellowes’, bemused by the variations in story and lack of corroborating evidence either way, declared ‘D-n them, let’s carry them both before the Justice’.⁷⁰⁰ Accusations of rape or robbery on the highway, which fell outside of the jurisdiction of London’s central courts, would be heard at the quarterly Assizes. If the local Justice of the Peace felt that the allegations warranted a trial, the offenders would be held in jail during the intervening time. Adams’ encounter with the local Justice however reveals that blackmail or assault were not the only risks posed by helping to thwart an attempted rape on the highway. The Justice, upon hearing the deposition of Fanny’s assailant, declares of Adams that he ‘may be more than a common Robber, he may be in a Plot against the Government’, a crime that carried the penalty of execution.⁷⁰¹ When he is eventually convinced of Adams’ innocence the Justice ‘flew into a violent Passion, and was hardly prevailed with not to commit the innocent Fellowes’ who had brought the trio before him.⁷⁰²

In the cases heard at the Old Bailey, which involved lower-class women who claimed to have been raped on the highway, it is notable that the prosecutrixes all asserted the just cause of their purpose for travel. Elizabeth Humphreys stated that she was returning home from work to tend to her ‘poor family in distress with the smallpox’.⁷⁰³ Mary Irish was ‘going for [her] Master’s Cows’.⁷⁰⁴ This is unsurprising because the Act of Settlement that was in force during this period prevented the geographical mobility of the poor except between locations of work and their parish of birth or legally acknowledged settlement. Through his legal training and role as a

⁶⁹⁹ Ibid, p.123.

⁷⁰⁰ Ibid.

⁷⁰¹ Ibid, p.128.

⁷⁰² Ibid, p.130.

⁷⁰³ *The Proceedings*, t17520408.

⁷⁰⁴ Ibid, t17460226-32.

magistrate Fielding would have been aware of this law, which he discusses in his later pamphlet, *A Proposal for Making an Effectual Provision for the Poor* (1753). In his portrayal of Fanny, Fielding therefore creates a significant ambiguity. He encourages the audience to read her as a virtuous character, yet her presence on the highway complicates this. Fanny is poor and she is travelling to see Joseph after hearing that he has been mugged. Her travels contravene these statutes so that whilst she does not appear to actively seek to break the law she is criminalized by her actions as a poor traveller. The authorial persona of *Joseph Andrews* does not however condemn Fanny for her actions during her journey. Her physical journey acts as a metaphor for her journey towards marriage and an improved social status. In the novel's culmination she is rewarded with marriage to Joseph, and the elevation of her social status when her filial relationship with Pamela Booby and Joseph's parentage come to light.⁷⁰⁵

In contrast to Fielding's depiction of rape on the streets in *Rape upon Rape*, in *Joseph Andrews* he challenges the legal conventions that suggested that a woman could not be raped on the highway. The 'rape' scene in the novel warns the reader of the risks of being raped and then being unable to seek legal reprisal for the crime, which are suggested to be attendant on entering this space at night. Fanny's journey, and most particularly the attempted rape, acts as a warning against travel rather than advocating geographical mobility for the poor.

⁷⁰⁵ Christopher Parkes has observed the discrepancies between *Joseph Andrews*, which appears to advocate benevolence towards the poor, and Fielding's later pamphlets *An Enquiry Into the Causes of the Late Increase of Robbers, &c.* (London: A. Miller, 1751) and *A Proposal for Making an Effectual Provision for the Poor* (London: A. Miller, 1753) that call for a 'network of country workhouses'. (Parkes, 'Joseph Andrews and the Control of the Poor', *Studies in the Novel*, 39.1 (2007) p.17). See also James Cruise, 'Precept, Property, and "Bourgeois" Practice in *Joseph Andrews*', *Studies in English Literature, 1500-1900*, 37.3 (1997) p.266.) However, the highway of *Joseph Andrews* does exemplify the problems that Fielding seeks to address through his proposal in *Enquiry* for a 'nation in which boundary lines all connect with each other to form a complete containment network'. (Parkes, p.20) Fielding's highway is an unsafe and threatening space for men and women that facilitates crime by destabilizing the social structures of surveillance and crime prevention. Fielding's vision in *Enquiry* would provide an organization structure that would enable regulation of the populace and transient spaces such as the highways thus containing criminals that are otherwise impossible to apprehend.

III. Rape at the inn

Tobias Smollett's picaresque novel *The Adventures of Roderick Random* (1748) tells the story of its titular protagonist whose lower-class mother dies shortly after giving birth. Roderick's father, a Scottish gentleman, is grief stricken and his paternal family refuses to assist him because of his mother's social status. After Roderick is expelled from school he embarks on a series of adventures as he travels through England, France, the West Indies, West Africa and South America. During his travels, Roderick, and his companion, Hugh Strap, share a coach with four other travellers. The coach stops overnight at an inn that has two rooms available. The company determines that Isaac Rapine, Strap and Roderick will share one room whilst Captain Weazel, his wife, and Jenny will occupy the second. During the night Strap gets up to relieve his 'disordered bowels'.⁷⁰⁶ When he returns he enters the wrong room, getting into bed with Mrs. Weazel. Captain Weazel, who has been using the chamber pot returns to bed and

feel[ing] a rough head with a cotton cap on it, [...] it came into his mind, that he was got to miss Jenny's bed instead of his own, and that the head he felt was that of some gallant, with whom she had made an assignation. – Full of this conjecture, and scandalized at the prostitution of his apartment, he snatched up the vessel he had just before filled and emptied it at once on the astonished barber and his own wife⁷⁰⁷

The 'incensed captain', then believing that Strap has violated his wife, 'seized him by the throat, with a volley of oaths' whilst Mrs. Weazel indignantly berates her husband, the noise drawing Roderick Random to the room.⁷⁰⁸ The mayhem surrounding Strap is soon exacerbated by a

cry of 'Rape! Murder! Rape!' which miss Jenny pronounced with great vociferation. – 'O! you vile, abominable old villain, (said she) would you rob me of my virtue? – But I'll be recovered of you, you old goat! I will! – help! For heaven's sake! Help! – I shall be ravished! Ruined! Help! – Some servants of the inn hearing this cry, came running up stairs with lights, and such weapons as chance afforded; when we beheld a very diverting scene. – In one corner stood

⁷⁰⁶ Tobias Smollett, *The Adventures of Roderick Random* (Oxford: Oxford University Press, 2008) p.51.

⁷⁰⁷ *Roderick Random*, pp.51-52.

⁷⁰⁸ *Ibid*, p.52.

the poor captain shivering in his shirt, which was all torn to rags: with a woeful visage, scratched all over by his wife, who had by this time wrapt the covering about her, and sat crying on the side of her bed. – In the other end, lay the old usurer [Rapine] sprawling on miss Jenny’s bed, with nothing on him but his flannel jacket over his shirt, and his meager limbs exposed to the air; while she held him fast by the two ears, and loaded him with execrations. – When we asked what was the matter, she affected to weep, and told us, she was afraid that wicked rogue had ruined her in her sleep, and bid us take notice of what we saw, for she intended to make use of our evidence against him. – The poor wretch looked like one more dead than alive, and begged for Christ’s sake to be released; which was no sooner done, than he protested she was no woman, but a devil incarnate – that she had first seduced his flesh to rebel, and then betrayed him. – ‘Yes, cockatrice (continued he, with a faltering voice) thou knowest thou didst spread this snare for me – but thou shalt not succeed – for I will hang myself before thou shalt get a farthing of me’. – So saying, he crawled to his own bed, groaning all the way.⁷⁰⁹

The characters in this scene allow it to be read as a comic parody of a rape. Smollett subverts gendered stereotypes by constructing Jenny as a forceful female who is able to physically overpower her alleged assailant thus belying the possibility of her rape. Her dialogue and the narrative descriptions of the scene compound the impression that this is a false allegation of rape. Jenny describes her allegations in the tense of a future event when she comments ‘I shall be ravished’ and asks ‘would you rob me’ whilst the narrative voice states that she ‘affected’ to weep. The contrasting description of the Jewish Isaac Rapine, who is emasculated by Jenny who holds him ‘fast by the ears,’ contributes to the scene’s comic value. Rapine is an atypical ‘rapist’ who is apparently enticed, and then betrayed, by the beautiful young ‘cockatrice’.⁷¹⁰ His description is reminiscent of the characterizations of Charteris discussed in chapter two. He is an abhorrent moneylender who, as we later learn, extorts money from his clients. However, his ‘faltering voice’ and ‘meager limbs’ contribute to the appearance of a ‘poor wretch [who] looked more dead than alive’, rendering him pitiful and impotent.

Rapine’s name, as we would expect from Smollett, is an important aspect of the character construction. Anthony Simpson notes in ‘The “Blackmail Myth”’ that Rapine

⁷⁰⁹ Ibid, pp.52-53.

⁷¹⁰ Ibid, p.53.

is ‘so called because of his notoriety as a money lender’.⁷¹¹ Rapine derives from the Latin *rapere* meaning to seize. In eighteenth-century law the crime of rapine was defined as the act of taking ‘property from another contrary to his consent’ and with violence.⁷¹² In the eighteenth-century London market it was a crime that was generally associated with the Borderlands and Ireland.⁷¹³ The term rapine was however used more widely. In the 1730 edition of Nathan Bailey’s *Dictionarium Britannicum* it is associated with ‘ra’vening’ and ‘greedy Eating’.⁷¹⁴ Robert Ainsworth’s *Thesaurus Linguae Latinae* (1746) contends that it means ‘To Rifle, or take a thing away by Force’.⁷¹⁵ Rapine’s name therefore encourages the audience to interpret Jenny’s allegations of rape as a form of reparation for his implied ‘crimes’ as a moneylender.

Jenny’s claim that ‘she was afraid that wicked rogue had ruined her in her sleep’ contributes to the humour of the alleged rape and adds another interpretive dimension to the ‘rape’ scene and her demands for reparation.⁷¹⁶ The English common law definition of rape meant that an act of sexual intercourse that did not wake the woman involved would be regarded as lacking the element of force essential to a prosecution. However, as a Jew Isaac Rapine is also liable to Hebrew law. According to Talmudic law any form of ‘sex with a sleeping woman is rape’.⁷¹⁷ The violated woman could expect fifty pieces of silver in recompense for her injury and held the right to demand marriage to her rapist.⁷¹⁸ Exogamy is of particular concern for a Jewish man because their religious

⁷¹¹ Simpson, p.112.

⁷¹² George Crabb, *English Synonyms Explained* (London: Baldwin, Cradock, 1818) p.769.

⁷¹³ John Hawkins *History of Music* (London: T. Payne, 1776) p.12, however, expresses an anxiety that, since the publication of John Gay’s *The Beggar’s Opera* (London: John Watts, 1728) ‘Rapine and Violence have been gradually increasing’ in London because young men, tempted by the ‘Charms of Idleness and Criminal Pleasure’ depicted through the character of Macheath, were driven to imitate his behaviour.

⁷¹⁴ Nathan Bailey, *Dictionarium Britannicum* (London: Printed for T. Cox, 1730) p.611.

⁷¹⁵ Robert Ainsworth, *Thesaurus Linguae Latinae*, vol.2 (London: printed for W. Mount and T. Page, 1746) p.1004.

⁷¹⁶ *Roderick Random*, p.52.

⁷¹⁷ Adele Berlin, *The Oxford Dictionary of the Jewish Religion* (Oxford: Oxford University Press, 2011) p.611.

⁷¹⁸ See David Weiss Halivni, *Midrash, Mishnah, and Gemara: The Jewish Predilection for Justified Law* (Cambridge, MA: Harvard College, 1986) p.31 and Michael L. Satlow, *Jewish Marriage Law in Antiquity* (Princeton, New Jersey: Princeton University Press, 2001) pp.125-6.

heritage passes through the maternal line meaning that any child born of the union would be a non-Jew. Whilst Shmuel Feiner states that “[t]estimonies as to acts of seduction, rape, and impregnation by the head of the household or one of his sons are scattered throughout the *responda* books of the period’, Jewish rapists are not evident in the records of the Old Bailey.⁷¹⁹ It is therefore likely that the Jewish authorities dealt with any acts of rape or that they were ‘made up’. The only rape case involving a Jewish perpetrator published during the eighteenth century was proven to be a false allegation.⁷²⁰ Iris Idelson-Shein suggests that ‘stories of coveted Jews all share a fear of being coerced or tempted into marriage or concubinage with a non-Jew, an anxiety intensified by a biblical prohibition: “You must not intermarry with them, neither giving your daughters to their sons nor taking their daughters for your sons; if you do, they will draw your sons away from the Lord and make them worship other gods.”’⁷²¹ Rapine is, however, coveted for his financial assets. The morning after the ‘rape’ it becomes clear that Jenny is interested in extracting monetary rather than marital reparations. Random observes that during breakfast Jenny, who was ‘indisposed’, sent a message to:

the master of the wagon, who immediately went into her chamber, followed by us all. – She told him in a lamentable tone, that she was afraid of a miscarriage owing to the fright she had received last night, from the brutality of Isaac; and as the event was uncertain, desired the usurer might be detained to answer for the consequence. – Accordingly this ancient Tarquin was found in the wagon, whither he had retired to avoid the shame of last night’s disgrace; and brought forth into her presence. – He no sooner appeared, than she began to weep and sigh most piteously, and told us if she died, she would leave her blood upon the head of that ravisher. [...] The waggoner understanding the case, advised Isaac to make it up, by giving her a sum of money, to which he replied with great vehemence, ‘A sum of money! – a halter for the cockatrice!’ – ‘O! ’tis very well, (said miss Jenny) by fair means. – Joey, be so good as to go to the Justice, and tell him there is a sick person here, who wants to see him on an affair of

⁷¹⁹ Shmuel Feiner, *The Origins of Jewish Secularization in Eighteenth-Century Europe*, trans. by Chaya Naor (Pennsylvania: University of Pennsylvania Press, 2010) pp.54-57. No cases of rape heard at the Old Bailey during the eighteenth century documented a Jewish defendant. In other crimes, the religious beliefs of Jewish defendants were documented.

⁷²⁰ Abraham Magny was forced to pay 500l. on the basis of an accusation of rape extracted from Mary King by Mary and John Crab. King later retracted her statement and gave testimony against the Crabs when Magny sued them for slander. See Anon, *The Confederacy: or, Boarding-School Rape* (London: Printed for E. Curll, 1741).

⁷²¹ Iris Idelson-Shein, *Difference of a Different Kind: Jewish Constructions of Race During the Long Eighteenth Century* (Pennsylvania: University of Pennsylvania Press, 2014) p.34.

consequence.’ – At the name of justice, Isaac trembling like an aspen-leaf, and bidding Joey stay, asked with a faltering voice, ‘what she would have?’ She told him, that as he had not perpetrated his wicked purpose, she would be satisfied with a small matter. – And though the damage she might sustain in her health might be irreparable, she would give him a release for an hundred guineas. – ‘An hundred guineas! (cried he in an extasy) an hundred furies! – Where should a poor old wretch like me, have an hundred guineas? If I had so much money, d’ye think I would be found travelling a wagon at this season of the year? – ‘Come, come, (replied Jenny) None of your miserly artifice here. – You think I don’t know Isaac Rapine the money-broker in the Minorities?– Ah! You old rogue! Many a pawn have you had from me and my acquaintance which was never redeemed,’ – Isaac finding it was in vain to disguise himself, offered twenty shillings for a discharge, which she absolutely refused under fifty pounds: At last, however, she was brought down to five, which he paid with great reluctancy, rather than be prosecuted for a rape.⁷²²

Within the context of Hebrew law it is important to note that during the bargaining, Jenny ‘absolutely refused under fifty pounds’, echoing the fifty pieces of silver specified by the Jewish faith. It is possible that Rapine finally agrees to pay five pounds to Jenny despite the paucity of evidence that could have been used to prosecute him to preserve his reputation. Simpson observes that blackmail relating to accusations of rape ‘may have been widespread’ during this period and comments that:

Even if a man was prosecuted for rape, falsely or not, he need not have been unduly worried about it. The low rate of conviction for this offense made legal sanctions unlikely. Married men would presumably have been fearful of public exposure of their indiscretions, real or imagined. Many may have preferred to pay hard cash in preference to having to explain their situation to a possibly unsympathetic audience on the home front.⁷²³

In his study of Jewish secularization in the eighteenth century, Feiner notes that the Jewish community in eighteenth-century Europe exhibited increasing moral libertinism and licentiousness.⁷²⁴ This was of concern to the rabbis who sought ways to curb sexual permissiveness. It is possible that Rapine feared repercussions from his religious authorities if Jenny’s allegations were made public. The text, however, suggests that the ‘shame of last night’s disgrace’ is not Rapine’s primary motivation for agreeing to

⁷²² *Roderick Random*, pp.55-56.

⁷²³ Simpson, pp.111-112.

⁷²⁴ Feiner, pp.54-57.

compensate Jenny.⁷²⁵ Instead, he is afraid of being prosecuted and even trembles ‘at the name of justice’.⁷²⁶ Rapine did not have any cause for anxiety in relation to a indictment of rape. In the presence of witnesses Jenny informs him that ‘he had not perpetrated his wicked purpose’.⁷²⁷ A court would not offer satisfaction for the ‘damage’ Jenny claims that the event has caused to her ‘health’ without evidence of penetration and/or emission. Yet, Rapine’s response suggests that the period’s rape laws were perceived by men to pose a significant threat of punishment and shame. Smollett implies through his characterization of Jenny that rape laws empower women over men, enabling them to prosecute, shame, and extort money from the falsely accused man. Thus, Smollett’s characters reversal the traditional rape roles of female victims and male offenders.

Jenny’s revelation of Rapine’s identity and her perception of the injustice she and her acquaintances had received from him in his role as a ‘money-broker’ suggests that her allegations are motivated by revenge. Jenny epitomizes the fear of malicious rape prosecutions: she is a sexual and dangerous woman who employs false feminine wiles to guarantee her success and whose actions are empowered by an irrational male fear of legal retribution.⁷²⁸ Thus, Jenny is equated with ‘the devil’. It is interesting to note that, in contrast, Rapine is termed ‘this ancient Tarquin’. In classic mythology, Tarquin raped Lucrece who was viewed as the paradigmatic chaste woman and rape victim. Smollett’s comparison between Tarquin, the villain of rape narratives, and the decrepit impotence of the falsely accused Rapine, is interesting. In mythology, Tarquin is depicted as young and virile. The contrast between Tarquin and ‘this ancient Tarquin’

⁷²⁵ *Roderick Random*, p.55.

⁷²⁶ Ibid. In Smollett’s later novel, *The Adventures of Peregrine Pickle* (1751) the Count is falsely accused of rape by his lover when she fears that her husband has discovered her adulterous affair. Similar to Rapine, the Count ‘more than half distracted with the terrors of an English jury, never dream’d of attempting to vindicate himself from the imputation he had incurred’ and pays his accuser ‘a present of a thousand pounds’ to avoid prosecution.

⁷²⁷ Ibid. It is possible that Rapine was operating illegally as a money-lender and imposing exorbitant interest rates onto his clients that might explain his anxiety about being brought before justice.

⁷²⁸ See Rudolph on malicious rape prosecutions: ‘Rape and Resistance’, p.179.

thus serves to further ridicule Rapine, the word ‘ancient’ once more suggesting impotence due to old age.

The shared sleeping arrangements of the eighteenth-century inn are central to Smollett’s depiction of this space. In *Roderick Random*, the open doors, and darkness of the building contribute to Strap’s altercation with Captain Weazel and set the scene for Jenny’s cry of ‘Rape!’⁷²⁹ Similar to the settings of the highway and streets, the inn is a transitional space, accommodating easy movement and gender interaction and facilitating the accusations of rape. In Smollett’s later novel *Peregrine Pickle* (1751), the space of the inn makes possible Mrs. Hornbeck’s allegation of rape against Peregrine’s *valet de chambre*. During their stay at an inn, Peregrine arranges for his valet to impersonate him during sex with Mrs. Hornbeck, enabling Peregrine to spend the night with his mistress. The darkness of Hornbeck’s room, and the ease of accessing it, facilitates the valet’s act. Following intercourse he

suffered himself to fall asleep at the side of his inamorata, and in the agitation of a violent dream, exclaimed in a voice so unlike to that of her supposed adorer, that she distinguished the difference at once; and waking him with a pinch and a loud shriek, threatened to prosecute him for a rape, and reviled him with all the epithets her rage and disappointment could suggest. The Frenchman finding himself detected, behaved with great temper and address: he begg’d she would compose herself, on account of her own reputation [...] She therefore admitted the apologies of her bedfellow, provided he would promise to atone by marriage for the injury she had sustained; and in this particular he set her mind at ease by repeated vows, which he uttered with surprising volubility, though without any intention to perform the least tittle of their contents.⁷³⁰

Hornbeck’s accusation of rape is legally unfounded because she consented until after the act when she discovered her lover’s identity. When she agrees to ‘admit the apologies of her bedfellow’ provided that he marries her, the scene becomes reminiscent of the Hebrew law that regulates Rapine and the ancient English rape laws that were informed by the Biblical prescripts on rape.⁷³¹ Smollett’s repeated use of this ‘rape’

⁷²⁹ *Roderick Random*, p.52.

⁷³⁰ Smollett, *The Adventures of Peregrine Pickle*, vol.2 (London: printed for the author, 1751) p.93.

⁷³¹ Prior to Edward I’s first statute of Westminster (1275) the rape laws permitted a prosecutrix to choose between marriage to, or execution of, her rapist in satisfaction for the crime. See F. Pollock and F.

device implies that allegations of rape are never credible in the contemporary context. There is the sense that rape is an historic crime which is no longer relevant to English law. The allusions to Hebrew law, given the anti-Semitic sentiments of eighteenth-century London, serves to further discredit the act.

The location of Smollett's rapes is essential to maintain the characteristics of the picaresque genre. The transient space of the inn enables the farcical acts of false accusations and mistaken identity yet the proximity of other people (whom we also encounter in Fielding's representation of the streets) prevents the scenes from being perceived as true rapes. The inn is depicted as a public space in which guests move freely between bedchambers and can readily hear a cry for assistance. Smollett's novels therefore conform to the legal conventions of public space by suggesting that it is impractical for an actual rape to occur within an inn.⁷³² Smollett's humorous depictions of women's rape allegations motivated by extortion attempts or to safeguard their reputation, imply that a woman's accusation of a rape alleged to have taken place in an inn must be inherently malicious. In contrast, Smollett's portrayals of men ridicule their fear of the justice system, thus challenging the fear of prosecutrices expressed in the rape myths discussed in chapter one. In the texts discussed here, Smollett therefore confirms the social and legal beliefs that rape could not be perpetrated in public spaces and the ability of the legal system to dispense justice for men. However, this perspective suggests to women that they could not obtain the conviction of a sexual assailant if the

Maitland, *History of English Law before Edward I*, vol. 2 (London: Cambridge University Press, 1968) pp.490-1; *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur: The treatise on the laws and customs of the realm of England: commonly called Glanville*, ed. by G.D.G. Hall (Oxford: Oxford University Press, 1965) pp.175-176.

⁷³² The perception of commercial buildings as public spaces that prevented women from being raped appears also in the period's trials. In 1721 William Robbins was accused of raping Mary Tabor at his tailor's shop. During the trial at the Old Bailey witnesses for the defence deposed that 'the Prisoner's Shop is next to the Street, and as Publick as the Highway'. Robbins was acquitted of the charge despite a number of depositions attesting to the rape from medical practitioners. In cases involving a rape at an inn the judicial perception of this setting is not overtly discussed in the records, however, none of these trials, when heard at the Old Bailey, resulted in a conviction. In the case of John Stevens who was tried for the rape of Elizabeth Banks in 1717, the records note that when the court heard that Stevens and Banks had 'lodg'd' at an 'Inn at Stanes' on the night of the alleged rape the case was concluded with Stevens' acquittal. See *The Proceedings*, t17170911-41 and t17170911-41.

act occurred in a public space at night because it would have been perceived that they must have consented.



Anna Clark contends that it was not until the late eighteenth century that the public sphere negatively impacted on perceptions of female culpability in rape cases.⁷³³ However, the legal manuals and trials suggest that rapes alleged to have occurred in public spaces implied female consent or a false allegation much earlier in the century. The public space thus inscribed ideas of the malicious and immoral prosecutrix upon rape complainants.

This chapter demonstrates that although the law deemed public spaces to be safe, literary depictions envisaged them as threatening to both men and women. In *Rape upon Rape*, *Roderick Random*, and *Peregrine Pickle*, the setting facilitates the prosecutrix's criminal actions, giving rise to false allegations and extortion. Smollett's inns, in particular, enable the female-perpetrated threat of malicious prosecution of rape against men. However, in *Joseph Andrews*, the highway presents a physical hazard to both genders who, Fielding suggests, could be attacked by criminals. The comparative danger of the public space is inversely related to the proximity of other people. The vicinity of the city streets and inns offer security in the form of witnesses and assistance. The remote environs of the highway allow it to be configured as the most dangerous space. Whilst asserted to be 'Publick' by the law, the highway at night is depicted as an ambiguous space of reduced legal governance, visibility, and population. In the attempted rape of Fielding's Fanny, the location facilitates rape and the assault of any who seek to aid the victim yet prevents prosecution because of the lack of corroborating evidence.

⁷³³ Clark, pp.3-4.

The impact of public spaces on rape trials and rape scenes, and the implied authorial assumption that readers will understand the implications of the location, suggests a close relationship between understandings of rape in the texts studied and the contemporary legal and social realities. Fielding and Smollett draw on the social and legal assumptions about the location of an alleged rape to guide readers' interpretations. For Smollett, this 'rape' device effects humour by depicting a false accusation of 'rape' and acts to reinforce the belief that women who entered public spaces at night consented to sexual intercourse and therefore could not be raped. Fielding's use of location is more complex: he alludes to and challenges the belief that women could not be raped in public spaces at night. Through the attempted rape of Fanny and Hilaret's allegations, he represents the conflict between contemporary assumptions about location and mitigating circumstances causing a female to be present in a public space at night. Yet, in the characters of Staff and Squeezum, Fielding critiques the justice and morality of the legal profession. In *Rape upon Rape* and *Joseph Andrews* Fielding suggests that a woman's presence in a public location at night does not always indicate her consent to sexual intercourse, thereby raising the possibility of rape. Whilst he draws on the assumption that the presence of others will not permit a rape to be effected, through the characters of Adams and the Man of Courage he suggests that not all members of society will aid a woman in distress.

There is opportunity for further investigation into the effect of space on literary depictions of rape. In the texts selected in this thesis, the impact of the setting on the 'rape' alters according to the demands of the genre. It could be said that the public location of Pope's mock-rape is essential to produce the levity of the mock-heroic genre, precluding forcible sex. In contrast, Amy's predicament in *Roxana* is influenced by her role as a maid, which produces the unstable definition of the bedchamber as a private or workspace. In the following chapter, Richardson presents the contrasting

issues of a private space that precludes witnesses to the incident of Clarissa's rape.⁷³⁴

These scenes of rape raise questions regarding the impact of genre and social roles on perceptions of rape locations which warrant further critical attention.

⁷³⁴ Richardson does suggest that Sinclair and the other women in the establishment are aiders and abettors to Roxana's rape. Whilst there is the potential that the women could act as witnesses to Clarissa's rape, the culpability and punishment of an aider and abettor in rape according to law meant that they were unlikely to provide testimony to the act (see chapter 4 for a more detailed discussion of the legal treatment of an aider and abettor to rape).

Chapter Six

Clarissa's Rape '- vulgarly so called': Women, Language and Voice in Samuel Richardson's *Clarissa* (1748)



The infrequency with which the term rape is employed in comparison to the length of *Clarissa* (1748), a work still received as the greatest rape novel in English literature, is startling. While Samuel Richardson's novel consists of some 984,870 words, the term 'rape' is only used on ten occasions, two of them regarding the rape of Miss Betterton, and never once employed by Clarissa.⁷³⁵ Clarissa instead describes her rape as an act in which: 'I was first robbed of my senses; and then (why should I seek to conceal that disgrace from others, which I can not hide from myself) of my honour.'⁷³⁶

Similar to Defoe's representation of Amy's 'Disaster', Clarissa's rape raises legal questions surrounding Lovelace's culpability, Clarissa's consent, and Mrs. Sinclair's role as an aider and abettor. It is then interesting that the term rape is only used to refer to a forced sexual act on four occasions. This surprising infrequency is further emphasized by the contrasting use of precise legal terminology to discuss Clarissa's inheritance. When her grandfather deeds Clarissa with land in his will, the

⁷³⁵ Hal Boyle, 'Genius Isn't All Thumbs', *Times Daily* (23 April 1962), *Google News Archive* <https://news.google.com/newspapers?id=pBAsAAAAIIBAJ&sjid=s8YEAAAAIIBAJ&pg=917,6007215&dq=clarissa+by+samuel+richardson+words&hl=en> [accessed 2 January 2015]. Word count refers to the first edition of *Clarissa*. Jamie Frater in 'Top 10 Longest Novels in the English Language' (6 June 2009) <listverse.com/2009/06/06/top-longest-novels-in-the-english-language/> [accessed 20 April 2016] however estimated the word count at 969,000. Later editions exceeded this total but the frequency of usage of 'rape' did not increase.

⁷³⁶ *Clarissa*, p.984.

Harlowe family disagrees with the provisions. The letters that emerge from this demonstrate that the characters of both sexes are comfortable with using legal language and are familiar with the common laws of primogeniture, strict settlement,⁷³⁷ and the civil law that enables Clarissa's inheritance.⁷³⁸

The contrast between the legal discourse of inheritance and the infrequent use of legal terminology to refer to Clarissa's rape raises the question of why Richardson uses legal terminology in this way, what it implies about rape, and how he invites his readers to interpret Clarissa's violation. This chapter proposes that through *Clarissa* Richardson challenges the ability of the legal system to offer justice in a rape trial. It begins by exploring how women learned about the period's rape laws and what information was available to them. This draws on the discussion of how legal information was disseminated in the print market in chapters two and four. The familiarity of Anna and Clarissa with inheritance law suggests that Richardson assumed a readership of women who were well informed about legislation, or that he used these characters to inform other women. However, Clarissa's and Anna's reluctance to use the term 'rape' suggests that Lovelace's interpretation of 'rape – vulgarly so called' is shared more widely in the novel, potentially revealing a conflict between women's legal knowledge and concepts of modesty within 'polite' society.

This discussion leads to an analysis of the legal conventions of the term 'seduction', which raises questions about the classification of Lovelace's crime. By

⁷³⁷ The laws of primogeniture dominated eighteenth-century inheritance practice for aristocrats. Under this law the estate would pass to the eldest male heir. In the absence of a male heir a female could inherit. Under strict settlement law, an unchangeable list of male successors, including sons, brothers, cousins, etc, was drawn up, and the estate would pass along the line. The property became known as being 'in tail' that later became 'entail'.

⁷³⁸ Clarissa's grandfather bequeaths Clarissa with a dairy under the civil law. The land is not entailed and thus he is able to include it in his personal will that would normally only encompass personalty. Personalty usually comprised money, chattel, and stocks and bonds. Clarissa's brother, James Harlowe, argues for the dairy to revert to his ownership to avoid splitting the estate and to promote his aims of being granted a title. In the absence of this, James seeks to marry Clarissa to Roger Solmes who agreed to transfer the property back to him. See Thomas O. Beebee, 'Doing Clarissa's Will – Samuel Richardson's Legal Genres', *International Journal for the Semiotics of Law*, 2.5 (1989) pp.159-182 for a more detailed evaluation of inheritance law in *Clarissa*.

exploring the implications of Clarissa's role as an heiress, Richardson also introduces the possibility that Clarissa is ravished rather than raped. Ravishment was defined as the abduction of any woman who was independently wealthy, or of nuns, with the intention to either rape or marry them. However, in the majority of the novel it is unclear whether Clarissa will remain in possession of her civil law inheritance due to her brother's, James Harlowe, intention to litigate against her grandfather's will. Through an analysis of the period's legal manuals, legal dictionaries, and general dictionaries, I will explore whether *Clarissa's* readers would have recognized the implications of the crime of ravishment within the novel.

Clarissa's reluctance to verbalize the intimate details of her violation is then considered within the context of social concepts of female modesty, which preclude female discussion of sexual acts. Similar to the issues explored in relation to *Roxana*, Richardson addresses the perception of Clarissa's moral character, and his ideas of *viva voce*. Clarissa's voice is threatened by male suppression throughout the novel revealing an apprehension about her ability to write. Clarissa's silence upon her rape is thus representative of female anxiety about risking social condemnation as an unchaste woman. This analysis is, however, complicated by the opiates that Lovelace forces Clarissa to take prior to the rape. Clarissa is unconscious during the act and so cannot attest to the level of force exerted on her or her lack of consent as required by the rape legislation. It is only through death and Belford's delivery of her letters to the reader that Clarissa's rape can be judged. Through this, Richardson encourages his readers to empathize with the difficulty of testifying to a legal system and society that were hostile to rape victims.

The chapter ends with an analysis of how Richardson actively guides his readers to respond to the novel through *Letters and Passages Restored From the Original Manuscripts of the History of Clarissa* (1751) and *Collection of Moral and Instructive*

Sentiments, Maxims, Cautions, and Reflexions, Contained in the Histories of Pamela, Clarissa and Sir Charles Grandison (1755) which were published to complement the novel. The supplementary materials contained within *Letters* and *Collection* were designed to limit what Peter Sabor has termed the ‘treacherous ambiguities’ of *Clarissa*’s ‘delicate situations’.⁷³⁹ The increased presence of Richardson’s authorial persona, particularly in the *Collection*, emphasizes how he intends *Clarissa* to be interpreted.⁷⁴⁰ The *Collection* aimed to provide a moral framework to the novel and to be ‘of service to the world, independent of the history, as they relate to life and manners’.⁷⁴¹ As Gordon Fulton notes in *Styles of Meaning* (1999), the separation of the novel from these subsequent texts was not wholly successful. The quotes can be unsettling to the reader who recognizes the contexts in which they first arose and, conversely, ‘many readers have been unable to consider the moral sentiments [of the novel] without interference from the idea of the *Collection*’.⁷⁴²

I. Legal knowledge and women in *Clarissa*

The legal market began to cater to women from the mid-seventeenth century through a handful of texts published in the vernacular targeted at a female audience and focusing on gender specific legal topics. The first English law book written for women, *The Lawes Resolutions of Womens Rights*, was published in 1632 to explain how the law protected women physically, economically, and in marriage.⁷⁴³ *Baron and Feme. A Treatise of the Common Law Concerning Husbands and Wives* (1700) focused on the legal regulation of marriage, and the offences that could be committed within that union.⁷⁴⁴ The earliest English text to overtly advertise its concern with the effect of

⁷³⁹ Peter Sabor, qtd. in Gordon Fulton, *Styles of Meaning and Meanings of Style in Richardson’s Clarissa* (Quebec: McGill-Queen’s University Press, 1999) p.59.

⁷⁴⁰ See Keymer, p.62 for a more detailed analysis of this.

⁷⁴¹ Richardson, qtd. in Fulton, pp.58-59.

⁷⁴² Fulton, p.53.

⁷⁴³ T. E., *The Lawes Resolutions of Women’s Rights* (London: John Grove, 1632).

⁷⁴⁴ Anon, *Baron and Feme. A Treatise of the Common Law Concerning Husbands and Wives* (London: printed for John Walthoe, 1700). Republished in 1719. ‘Baron and feme’ is a legal term that means

marriage on ‘the Privileges of Feme Coverts’, *Baron and Feme* also expressed interest in the rights of the husband, and thereby presented itself as a treatise for the instruction of both sexes.⁷⁴⁵ The legal information contained in *Baron and Feme* was reinterpreted in 1735 by the first female author of a legal tract, Sarah Chapone, and published under the title, *The Hardships of the English Laws in Relation to Women*. The first text to comprehensively document all laws, civil, common, and criminal, which related to women was published in 1732 under the title *A Treatise of Feme Coverts; or, the Lady’s Law* and later revised as *The Lady’s Law* in 1737. It offered a wider insight into the law and legal processes than *Baron and Feme* or *Hardships*. In spite of the period’s patriarchal social structure *Feme Coverts* claimed that the purpose of these publications was to inform ‘the fair Sex [...] how to preserve their Land, Goods, and most valuable Effects, from the Incroachments of anyone’.⁷⁴⁶

The assumption that there was an audience of women who were interested in the law is reflected in Richardson’s female characterizations. In *Clarissa*, female legal knowledge assumes an important role suggesting that women were increasingly interested in, and conversant with, the law. As critics have demonstrated, this manifests itself in a number of ways in the novel. John Zomchick discusses the prominence of female understanding of the civil law in the novel with particular reference to the incident when Mrs. Sinclair arranges Clarissa’s false arrest.⁷⁴⁷ April London analyses the influence of the civil laws relating to propertied women on Clarissa’s role and discourse.⁷⁴⁸ Female understanding of the law and use of legal terminology is also apparent in Clarissa’s and Anna’s discussion of inheritance laws. When Clarissa comments to Anna that she wishes she ‘had never been distinguished by my grandpapa

husband and wife. Feme is used here as the short form of feme-covert that signifies a wife who is under the protection of her husband through the laws of coverture, or marriage.

⁷⁴⁵ *Baron and Feme*, title page.

⁷⁴⁶ Ibid, p.2.

⁷⁴⁷ Zomchick, *Family and the Law in Eighteenth-Century Fiction*.

⁷⁴⁸ April London, *Women and Property in the Eighteenth-Century English Novel* (Cambridge: Cambridge University Press, 2004), particularly ‘Clarissa and the georgic model’, pp.17-28.

as I was: which has estranged me', she is reflecting on the nature of her inheritance under civil law.⁷⁴⁹ Clarissa is 'estranged' from her family because of her vulnerability to litigation despite her grandfather's request that the Harlowe family should not 'impugn or contest' his 'dispositions'.⁷⁵⁰ Whilst Clarissa wants to avoid the consequences of her civil law inheritance she also condemns the common law practices, stating that Solmes is an: 'Upstart man, I repeat, for he was not born to the immense riches he is possessed of; riches left by one niggard to another, in injury to the next heir, because that other is a niggard.'⁷⁵¹ Clarissa's preferred resolution to the situation is to pass control over her land to her father; however, her brother is unsatisfied with this because he requires the land to aid in his aims to gain a title. She is thus left at the mercy of a marriage settlement arranged between the 'grasping mind' of James and Solmes, which includes provisions for the dairy to revert to James' ownership.⁷⁵²

Whilst female use of legal language is apparent throughout *Clarissa*, the characters' command of the terminology of rape is more complex. The laws of rape were made available in legal manuals produced for an explicitly female audience. *The Lady's Law* stated:

Rape is also Felony, which is where a Man has carnal Knowledge of a Woman by Force, and against her Will. And if a Female, under the Age of Ten Years, be deflowered, either with or against her Consent, it is Felony without Benefit of Clergy. Stat. 18 *El. cap.* 6.

But there must be *Penetration* and *Emission* to make this Crime; and it must be prov'd that the Offender entered her Body, that there was *res in re*, or it is no Rape. For an Attempt to ravish a Woman, though it be never so outrageous, is an Assault only. 3 *Inst.* 60. *H. P. C.*

If a Woman ravish'd, yielded to the Violence, and such her Consent was forced by Fear of Death, or of Duress, this does not work any Mitigation of the Crime in the Ravisher; or if she consented after the Fact, or was a common Strumpet, for she is still under the Protection of the Law.⁷⁵³

⁷⁴⁹ *Clarissa*, p.41. For further details of civil law inheritance in *Clarissa* see Linda Kane Scott, *The Inheritance Novel: The Power of Strict Settlement Language in Clarissa, Evelina and Pride and Prejudice* (PhD Thesis, The University of Maine, 2003).

⁷⁵⁰ *Clarissa*, p.53.

⁷⁵¹ *Ibid.*, p.81. For further information on common law inheritance see Eileen Spring, *Law, Land, and Family: Aristocratic Inheritance in England, 1300-1800* (North Carolina: The University of North Carolina Press, 1993), particularly pp.123-147.

⁷⁵² *Clarissa*, p.81.

⁷⁵³ Anon, *The Lady's Law* (London: E. and R. Nutt and R. Gosling, 1737) pp.47-48.

The Lady's Law's description of the crime of rape corresponds with the legislation and the definitions provided in legal texts.⁷⁵⁴ Given that this information was available to a female audience, it is interesting that neither Clarissa nor Anna refer to these facts or use legal terminology. Shortly after Clarissa's rape, Anna refers to it as a 'seduction' whilst Clarissa cannot frame the experience in words, commenting '[w]hat dreadful, dreadful things have I to tell you! But yet I cannot tell you neither.'⁷⁵⁵ Anna's phrasing is particularly interesting given that she is the female character who is most openly conversant with rape laws. She demonstrates the breadth of her knowledge when she cites and applauds the 'custom in the Isle of Man':

If a single woman prosecutes a single man for a rape, the ecclesiastical judges impanel a jury; and if this jury finds him guilty, he is *returned* guilty to the temporal courts: where, if he be convicted, the deemster, or judge, delivers to the woman a rope, a sword, and a ring; and she has it in her choice to have him hanged, beheaded, or to marry him.⁷⁵⁶

Anna's preferred punishment is 'one of the two former'.⁷⁵⁷ This comment is particularly notable, the significance of which has not been previously recognized by scholars. Anna's description of the rape laws of the Isle of Man is a verbatim reproduction of an entry in Bishop Thomas Wilson's *History of the Isle of Man*, first published in William Camden's *Britannia* (1722).⁷⁵⁸ These laws bore no relevance to English legislation in which a woman's option to marry her rapist had been removed and a prosecution was required to be heard in only one court. Through the inclusion of this information, Richardson implies that Anna is sufficiently interested in the subject and the laws of rape to have memorized this excerpt, thus emphasizing her reluctance to use the terminology of rape.

⁷⁵⁴ See chapters one and two for an analysis of these definitions.

⁷⁵⁵ *Clarissa*, p.890.

⁷⁵⁶ *Ibid.*, p.1017.

⁷⁵⁷ *Ibid.*

⁷⁵⁸ See Carol Watterson Troxler, 'Thomas Wilson', *Oxford Dictionary of National Biography*, ed. by H. C. G. Matthew and Brian Harrison (Oxford: Oxford University Press, 2004) <<http://www.oxforddnb.com/view/printable/29691>> [accessed 1 June 2014] and 'Bishop Wilson' in *History of the Isle of Man*, Manx Society, Vol. XVIII, pp.113-14 <www.isle-of-man.com/manxnotebook/fulltext/cm1890.htm> [accessed 1 June 2014].

Anna's preference for the word 'seduction' remains apparent in her criticism of the English rape laws. She observes to Clarissa that

It is my opinion that it would be very right for the law to *oblige* an injured woman to prosecute and to make seduction on the man's part capital, where his studied baseness, and no fault in her will, appeared.⁷⁵⁹

The violation of a woman without her consent, phrased here as 'no fault in her will', was a capital crime if proven before the court.⁷⁶⁰ Anna's suggestions for altering the rape laws are not feasible. It produces an unanswered question: how would the justice system '*oblige* an injured woman to prosecute' and enforce this? A statutory assertion of this kind would imply that any female testimony to rape was the result of this obligation thus biasing the court against the defendant. Interestingly, Anna's vision of rape prosecutions contrasts with the rape myths, which perpetrated suspicion of female testimony and fear of false allegations.⁷⁶¹ The two extremes of these binaries appear to suggest that the emotive elements of rape cases, gender biases, and the harsh punishment attendant on a conviction, prevent the legal provisions for a just resolution to a rape prosecution.

Richardson's reiteration of the word 'seduction' further emphasises the issues of prosecution. The term implies to a modern reader that Clarissa was induced to consent to the act. In contemporary use, the word seduction was employed in some rape narratives but it did not indicate the act of rape.⁷⁶² However, in *A New Law-Dictionary* Jacob suggests that the term is an essential component of legal appeals and indictments in felonies. He states that the form of an indictment or appeal for charges of murder, coining, or rape should begin with the phrase: 'That A. B. of &c. not having God before

⁷⁵⁹ *Clarissa*, p.1017. However, in the *Collection* Richardson comments that 'The Seduction of a young woman from the path of virtue, in which she was safely walking till she was overtaken by the Seducer, is a capital and most ingrateful crime' (Samuel Richardson, *A Collection of the Moral and Instructive Sentiments, Maxims, Cautions, and Reflexions, Contained in the Histories of Pamela, Clarissa, and Sir Charles Grandison* (London: printed for S. Richardson, 1755) p.376).

⁷⁶⁰ A 'capital' crime is an offense that held the penalty of execution.

⁷⁶¹ See chapter three on rape myths.

⁷⁶² See Claudius Claudianus, *The Rape of Proserpine* (London: J. Watts, 1723) p.124 and Fielding, *The Coffee-House Politician* (London: J. Watts, 1730) p.54.

his Eyes, but being seduced by the Instigation of the Devil'.⁷⁶³ 'Seduced' means being led to do something under the influence of someone else, in this case the Christian devil.⁷⁶⁴ Yet, despite the suggestion that being seduced detracted from the person's culpability, in criminal trials for offences not of a sexual nature the term suggests the criminal retains responsibility for their actions. In the period's dictionaries, it is the process of seduction that is wrong rather than the actions undertaken by the person seduced. In *The New World of Words* (1706) Edward Phillips asserts that 'To *Seduce*' means 'to Mislead, Abuse, Deceive, or Cheat' whilst '*Seducement*, or *Seduction*' means 'the Act of Seducing, Misleading, &c.'. ⁷⁶⁵ In the 1740 edition of Nathan Bailey's *Universal Dictionary* 'SEDUCEMENT' and 'SEDUCTION' are defined as 'The Act of seducing or misleading' whilst to be described as 'SEDUCTIVE' indicates that you are 'apt to seduce or mislead'.⁷⁶⁶ The contemporary use of the term seduce does not imply the level of force required to define a rape and indicates some form of consent. Such an act would not be prosecuted in the period's courts thus conflicting with Anna's assertion that 'seduction on the man's part' should result in a 'capital' conviction. However, as will be discussed in the following section, Anna's understanding of the term contradicts these contemporary definitions and is more closely aligned with the legal definition of 'seduction'. It is interesting that, despite the legal influence on Anna's interpretation of seduction, she is not presented as an authoritative figure in the novel.

⁷⁶³ Jacob, *A New Law-Dictionary*, p.41 for the 'Form of an Appeal of Murder', p.154 for the 'Form of An Indictment for Coining of Money', p.510 for the 'Form of an Indictment for Murder', and p.539 for the 'Form of an Indictment for a Rape'.

⁷⁶⁴ The connection between the act of seduction and the Devil was widespread in the print market so that all definitions of 'Antichrist' provided by the period's dictionaries state: 'an adversary to Christ, a seducer that puts himself in Christ's room and stead'. See Phillips, p.42, *Glossographia Anglicana Nova*, p.38 and John Kersey, *Dictionarium Anglo-britannicum; Or, A General English Dictionary* (London: J. Wilde, 1708) p.596.

⁷⁶⁵ Phillips, p.596.

⁷⁶⁶ Bailey, p.757.

II. Classifying the crime: seduction, rape or ravishment?

Richardson's infrequent use of rape to describe the act committed on Clarissa arguably reflects its uncertain classification according to the law. Whilst Clarissa's limited testimony and response to Lovelace's actions imply that she is raped, Richardson indicates the further legal contexts of seduction and ravishment in his description of the act. Schwarz suggests that the phrasing of Clarissa's rape as a seduction 'complicates readers' interpretations of Lovelace's acts', implying their classification under the eighteenth century's civil laws governing seduction.⁷⁶⁷ The laws of seduction were enforced to remedy a wrong perceived to have been inflicted on a father and did not account for female consent or the perpetrator's force. The civil law of tort provided two options under which a father could prosecute the perpetrator for seduction: an 'action of *trespass quare clausum fregit*' (meaning that the perpetrator had trespassed on his property in the abduction of his daughter) and an 'action on the case *per quod servitum amisit*' (meaning that the perpetrator had caused damage to his daughter's services).⁷⁶⁸ As an heiress, Clarissa was a valuable asset to her family, whose marriage could be used for their social and/or financial gain, and her rape could be viewed as infringing on her services as a daughter. However, Lovelace does not trespass on the Harlowe property; instead Clarissa voluntarily exits the house to meet him. Whilst Anna's commentary on 'seduction' as an act in which the woman displays 'no fault in her will' suggests this legal context, it also implies that seduction is synonymous with rape which is not supported by legislation. In the wider novel, the use of seduction indicates that Richardson applies the term to incidents that could have been determined as rape. Clarissa herself refers to Lovelace as her 'seducer'⁷⁶⁹ whilst the

⁷⁶⁷ Joan I. Schwartz, 'Eighteenth-Century Abduction Law and *Clarissa*', *Clarissa and Her Readers: New Essays for the Clarissa Project*, ed. by Carol Houlihan Flynn and Edward Copeland (New York: AMS Print Inc., 1999) p.273.

⁷⁶⁸ Ibid, pp.272-4. See also Susan Staves, 'British Seduced Maidens', *Eighteenth-Century Studies*, 14 (1980-81) p.109 and the influential seduction case, *Norton v. Jason* (1653).

⁷⁶⁹ *Clarissa*, p.454 and p.398.

editorial voice that paraphrases a letter from Lovelace to Belford refers to his 'seducing arts'.⁷⁷⁰

A further, and critically unacknowledged legal context, is that of the ravishment laws, which Richardson introduces through Clarissa's rape and inheritance. Whilst ravishment was possibly the most misunderstood and least publicized sexual crime of the eighteenth century, as the printer of legal texts for the House of Commons, Richardson had a greater access to legal knowledge than most and would likely have been aware of the legal distinctions of ravishment.⁷⁷¹ Statutory law stipulated ravishment to be:

The stealing or taking away a Woman that hath an Estate in Lands or Goods, or is Heir apparent, by Force and against her Will, and marrying or defiling her, is Felony without Benefit of Clergy.⁷⁷²

The law therefore distinguished between the laws of rape and ravishment according to the wealth of the victim. A successful prosecution for ravishment would result in any marriage contracted during the abduction being dissolved. Such a marriage, which took place by force, was not considered to be legitimate in either the common law or the ecclesiastical courts. The convicted ravisher was subject to execution by order of the court. Alternatively, the male relatives of the victim were entitled to kill the assailant during the taking of the victim, or during her retrieval, without facing legal reprisal.

Despite the clear provisions for the crime of ravishment in statutory law, its definition in the legal manuals of the seventeenth and eighteenth centuries was convoluted, thus implying a limited understanding of the crime. In *The Compleat Justice* (1667) William Lambarde defines ravishment as synonymous with rape,

⁷⁷⁰ Ibid, p.534.

⁷⁷¹ Acts of ravishment were infrequent and, when they did occur, were heard in the higher courts such as the Court of Kings (or Queens) Bench or the Court of Justiciary. The most recent case to *Clarissa's* publication was heard at the Court of Justiciary in 1748 when James MacGregor was charged with assisting his brother in the 'abduction, rape and forced marriage of Jean Key, aged 19, a widow and heiress'. The records show that although the case is prosecuted according to the law of ravishment the offence is not referred to using this word. The Court of Justiciary instead deemed MacGregor to be guilty of abduction but commented that there was insufficient proof of 'forcible marriage' and 'rape'. *TNA*, PRO SP 54/42/16B.

⁷⁷² Statute 3. H. 7. 39. Eliz.

entitling his entry ‘Rape, or Ravishment’.⁷⁷³ He provides details of the rape legislation but makes no mention of the separate laws of ravishment. In *A New Law Dictionary* (1729) Giles Jacob observes that ravishment ‘signifies an unlawful Taking away either of a Woman or an Heir in Ward; and sometimes it is used in the same Sense with Rape’.⁷⁷⁴ Thomas Wood contends in *A New Institute of the Imperial or Civil Laws* (1730) that: ‘*Ravishing (Raptus)* is when a Virgin or a Widow (more especially Nuns) are taken away by force, with intent to deflower them, or when these are actually deflowered by force without taking away.’⁷⁷⁵ These descriptions provide conflicting definitions of ravishment, which variously suggest that it could be an act of abduction, which might involve a rape or attempted rape and might involve a wealthy and/or virtuous woman.

Despite this ambiguity, the crime of ravishment remained in legal discourse in the law manuals and was made available to explicitly female audiences. The earliest example of this is provided in *Lawes Resolutions*, which describes

two kindes of Rape, of which though the one be called by the common people, and by the Law itself, Ravishment; yet in my conceit it borroweth the name from *rapere*, but improperly, for it is no more but *Species stupri*, a hideous, hatefull kinde of whoredome in him which committeth it, when a women is enforced violently to sustain the furie of brutish concupiscence: but she is left where she is found, as in her owne house or bed, as *Lucrece* was, and not hurried away, as *Helen* by *Paris*, or as the Sabine women were by the Romans, for that is both by nature of the word, and definition of the matter: The second and right ravishment, *Cum quis honesta famae foeminam, siue virgo, siue vidua, siue santimonialis sit inuitis illis in quorum est potestate, abducit. Neque refert, an quis (volente vel nolente rapta) id faciat, nam vis quae Parentibus vel Curatoribus sit, maxime spectat.*⁷⁷⁶

In this extract, the author suggests that an act of sexual violation is distinguished as ravishment rather than rape if the victim is abducted during the perpetration of the

⁷⁷³ William Lambarde, *The Compleat Justice* (London: printed by John Streater, James Flesher, and Henry Twyford, 1667).

⁷⁷⁴ Jacob, *A New Law-Dictionary*, p.619.

⁷⁷⁵ Thomas Wood, *A New Institute of the Imperial or Civil Law* (London: printed for J. and J. Knapton, 1730) p.280.

⁷⁷⁶ *Lawes Resolutions*, pp.377-378. The Latin reiterates the legislative requirements of rape: that it involves a woman of good moral character, determined through consideration of her sexual history, who is sexually violated by force and against her consent. In children, evidence is provided by parents or guardians whose morality is considered.

crime. However, *The Lady's Law* (1737) asserts that the crime must be undertaken for financial gain:

The Indictment on the Stat. 3 H. 7. Is expressly so forth, that the Woman taken away had Lands or Goods, or was Heir apparent; and also that she was married or defiled, because no other Case is within the Statute; and it ought to alledge, that the Taking was for Lucre. And it is no Excuse that the Woman at first was taken away with her Consent, if she be afterwards forced to stay against her Will; or that she be after married with her Consent, if she were under the Force at the Time.⁷⁷⁷

Clarissa's and Anna's legal knowledge, hindered only by their inability to access professional training, suggests that they would have been conversant with this law: their lack of reference to it is therefore notable.

The dispute about Clarissa's inheritance throughout the novel is reflected in the fact that her 'rape' is never termed an act of 'ravishment'. Clarissa's inheritance is enabled under civil law and is liable to litigation as she is clearly aware when she comments: 'as to my estate, the enviable estate which has been the original cause of all my misfortunes, it shall never be mine upon litigated terms'.⁷⁷⁸ A legal evaluation of the act committed on her as ravishment rather than rape requires the settlement of her grandfather's will that in turn is dependent on the return of Morden, the will's executor, or the support of her male relatives. That the Harlowe family refuse to accept the terms of Clarissa's grandfather's will and then do not seek physical or legal retribution against Lovelace for ravishment, denies legal and linguistic resolution of the act committed on Clarissa. Until the terms of the will are settled the crime remains undetermined. However, when Clarissa dies, as Richardson clearly asserts to his readers through her will, she dies in possession of her inheritance, thus allowing her rape to be finally classified as an act of ravishment.⁷⁷⁹ This culmination to the central crime also resolves the issue of Morden's culpability for Lovelace's murder: as a family member Morden

⁷⁷⁷ *The Lady's Law*, p.377.

⁷⁷⁸ *Clarissa*, p.754. Inheritance derived through strict settlement or primogeniture laws was not subject to litigation.

⁷⁷⁹ *Ibid*, p.1414. In her will Clarissa bequeaths the inheritance left to her by her grandfather to James Harlowe. Through her ability to include this in her behests, Richardson confirms that she is still legally in possession of her inheritance.

was empowered under the law of ravishment to seek justice against the perpetrator. In the novel's ending Richardson thus provides the reader with a resolution in which Lovelace, as Clarissa's ravisher, dies by a legally sanctioned method.

It is interesting to reflect on Anna's comment after Clarissa's abduction: 'I wish you were actually married, let the cause for the prosecution hinted at be what it will, short of murder or a rape.'⁷⁸⁰ Within the legal contexts described, Anna's desire for her friend's marriage implies that this would enable the 'prosecution hinted at' to be that of ravishment or seduction. However, the proximity of murder to rape in Anna's statement suggests that society attached different levels of notoriety to the crimes of seduction, ravishment and rape. As such, Anna implies that it is preferable to be seduced or ravished rather than raped. The idea that prosecutions for seduction and ravishment, which suggest female consent, are less damaging to the victim's portrayal and status in society than rape, which forced penetration, suggests that the act of rape itself was considered shameful.

III. Clarissa's voice and *viva voce*

A further context suggested by Richardson's *Clarissa*, which has been briefly mentioned but warrants further investigation, is that of female modesty. Whilst not only a legal issue, the cultural perception of female chastity and morality is an important influence on the consideration given to a woman's moral character as discussed in chapter four. Female testimony to the intimate sexual details of a rape was often perceived in court as evidence of a woman's sexual knowledge and therefore immorality.⁷⁸¹ Richardson engages with the conflict between the necessity to provide sufficient evidence of a rape for the victim's claims to be affirmed and the requirement to prove her virtue. Clarissa is urged to attest to her rape by a number of characters to

⁷⁸⁰ Ibid, p.560.

⁷⁸¹ See chapter four for further details.

obtain justice for Lovelace's crime and to fulfill her 'duty' to her 'religion, family, honour, and sex'.⁷⁸² Anna, suggesting that Clarissa's experience will provide a 'warning' to other women, observes that it must be accompanied by details of the act, thus identifying the boundaries of modest female speech.⁷⁸³ Yet, the rape silences Clarissa's voice. In its immediate aftermath she is not able to write in the 'same connected and particular manner' of her previous correspondence, nor is she able to verbalize the details of her rape.⁷⁸⁴ The text implies that Clarissa's narrative silence is caused by her fear that recounting the events will destroy her modesty. Terry Eagleton supports this assumption when he argues that 'It is only by virtue of the rules governing polite discourse [...and] by dint of such exact articulations she is able to articulate at all.'⁷⁸⁵ Faced by a 'vulgar' subject, Clarissa's voice is stemmed. As Lovelace predicted, her 'modesty, which may fill her bosom with resentment, will lock up her speech'.⁷⁸⁶

Analysis of Clarissa's silence is complicated by Lovelace's use of opiates to drug her into unconsciousness prior to the rape. Her drugged state prevents her from being forced to choose between her 'duty' to testify in court and her concept of modesty, since Clarissa cannot testify to the intimate details of an act that she has not consciously witnessed. Whilst this enables Richardson to adhere to the demands of polite discourse, the use of drugs also raises questions about Clarissa's consent, or lack thereof, to the rape. Earlier in the novel Richardson demonstrates that, in order to rape Clarissa, Lovelace must use enough force that it would be legally determined as such.⁷⁸⁷ In an act of mock-benevolence, he resorts to the use of 'art' to overcome Clarissa's physical and emotional refusal to engage in sexual intercourse. The somnolent state that

⁷⁸² *Clarissa*, pp.1251-1252.

⁷⁸³ 'Since you cannot give the *example* without the *warning*, give *both*, for the sakes of all those who shall hear of your unhappy fate' (ibid, p.1017).

⁷⁸⁴ Ibid, p.1017; p.890.

⁷⁸⁵ Terry Eagleton, *The Rape of Clarissa: Writing, Sexuality and Class Struggle in Samuel Richardson* (Minnesota: University of Minnesota Press, 1982) p.51.

⁷⁸⁶ *Clarissa*, p.879.

⁷⁸⁷ When Lovelace tries to take advantage of Clarissa's fright after the curtain in her room catches fire he observes that Clarissa 'tore my ruffle, shrunk from my happy hand, with amazing force and agility, as with my other arm I would have encircled her waist' before screaming for 'Help!' (Ibid, p.725).

she is forced into prevents her from expressing or denying her consent to the act. In *Letters and Passages Restored From the Original Manuscripts of the History of Clarissa* (1751) Polly and Sally comment that ‘all agreed, that the arts used against her on a certain occasion, had too high an operation for them or me to judge what her will *would have been* in the arduous trial’.⁷⁸⁸ In this analysis, it is this evidence of Clarissa’s immediate will or consent, they (and the statutory law) declare to be paramount to a definition of rape. Clarissa’s drugged state means that she and the other characters can only speculate on what her will ‘*would have been*’. Thus, in a legal rendering, there is not sufficient evidence of Clarissa’s violation for it to be confirmed as an act of rape. The conflict between legal and moral judgments is, however, evident in Lovelace’s sense of guilt, and desperate attempts to atone through ‘legal justice’ despite the contention over Clarissa’s consent.⁷⁸⁹

Richardson challenges the precise details required to produce a legally affirmed act of rape throughout the novel when he represents the female voice in epistolary form. Anna encourages Clarissa to write to her with details of the rape:

The villainy of the worst of men, and the virtue of the most excellent of women, I expect will be exemplified in it, were it to be written in the same connected and particular manner that you used to write to me in.⁷⁹⁰

She suggests that Clarissa’s voice threatens Lovelace with exposure as ‘the worst of men’. Through Lovelace’s letters, Richardson explores the opposing perspective: that a woman’s testimony was hindered by concepts of modesty. In a letter to Belford that conflicts with the anxieties revealed in the murder of his ‘conscience’ Lovelace explores female anxiety about testifying to a rape. He reflects on the ‘likelihood’ of women seeking a legal resolution for a rape stating that:

⁷⁸⁸ Samuel Richardson, *Letters and Passages Restored from the Original Manuscripts of the History of Clarissa* (London: printed for S. Richardson, 1751) p.122. Cited hereafter as *Letters*.

⁷⁸⁹ *Clarissa*, p.907.

⁷⁹⁰ *Ibid*, p.1017.

Nothing but the law stands in our way, upon that account; and the opinion of what a modest woman will suffer, rather than become a *viva voce* accuser, lessens much an honest fellow's apprehensions on that score.⁷⁹¹

Lovelace's lack of anxiety about the law's ability to prevent or prosecute a rape is consistent with the low conviction rates in rape cases.⁷⁹² His comment however implicitly challenges judicial practice in rape cases.⁷⁹³ In contrast to his assertion in *Letters* that rapes are 'rare', Lovelace here suggests that the number of indictments is not indicative of the amount of rapes that occur because it is easy for a rapist to avoid detection.⁷⁹⁴ Lovelace expresses similar sentiments in an earlier letter when he questions if there is 'likelihood' of being prosecuted for the rape of Clarissa.⁷⁹⁵ Between 1700 and 1748 only 116 cases of rape were heard before the Old Bailey, of which 19 resulted in the defendant's conviction. Lovelace's observation implies that female apprehension of testifying in *viva voce* or 'with living voice' to the act committed is the cause of the low number of rape trials. When Richardson voices this argument through Lovelace, the novel's villain, Richardson suggests that female fears of testifying are detrimental to morality and justice because they enable criminals to avoid punishment.

Lovelace's evocation of the female '*viva voce*' is a vital component to understand how Clarissa is enabled to testify. 'In order to do [her] character justice with all [her] friends and companions' Clarissa (in her will) obliges Belford to 'contribute what is in his power towards a compilement to be made of all that relates to my story'

⁷⁹¹ Ibid, p.897. See also Lovelace's other comments on rape in his discussion of the alleged rape of Miss Betterton, p.495 and his observations on the judicial analysis of the moral character of the accused and prosecutor: 'let me tell thee that *character* biases and runs away with all mankind. Let a man or woman once establish themselves in the world's opinion, and all that either of them do will be sanctified. Nay, in the very courts of justice, does not *character* acquit or condemn as often as facts, and sometimes even in spite of facts? – Yet (impolitic that I have been, and am!) to be so careless of mine!' (Ibid, p.862.)

⁷⁹² The Old Bailey had a conviction rate of 16% in rape trials heard between 1700 and 1749. See Introduction for discussion of conviction rates in rape cases.

⁷⁹³ Contemporary readers also recognized in Lovelace's discourse a challenge to the period's law, and particularly its institutions of marriage and concept of rape. David Graham in his letter 'To Richardson' 22 April 1750 observes that when Lovelace plots against Clarissa he is also 'plotting to undermine the foundations of all Laws, divine and human' (cited in Keymer, p.158).

⁷⁹⁴ *Letters*, p.53.

⁷⁹⁵ *Clarissa*, p.103.

of which she requires him to make two copies.⁷⁹⁶ Clarissa's voice in the novel is a posthumous spectre that appropriates, and is mediated by, the male pen of its novelist editor, Belford. She is able to testify only when her deposition is not in 'viva voce' and is made through the 'hand' of her narrator, Belford. Richardson's analysis of female testimony to a rape asserts the difficulty of securing a conviction that demands the deposition to be given in person, in an open court. Reader responses that identify the act as a rape despite the lack of these judicial stipulations, which will be discussed in the following section, challenge this legal practice. The narration of Clarissa emphasizes that a rape can be identified as such without specificity of detail attesting to penetration and emission, yet this does not provide hope for violated women. Clarissa's testimony, provided posthumously, adheres to rape myth by suggesting that true rape victims are fated to die.

IV. Rape in *Letters* and the *Collection*

Eagleton observes that '[e]xasperated by perverse critics who found Lovelace attractive and Clarissa over-scrupulous, Richardson added to the novel a plethora of material designed to insulate it against such misprisions'.⁷⁹⁷ In the third and fourth editions of the novel this additional material that was designed to control interpretations of the text involved the rewriting of letters, and the inclusion of new letters, authorial comments, and tables that collated 'ample [...] Moral and Instructive Sentiments interspersed throughout the Work, as may be presumed to be of general Use and Service'.⁷⁹⁸ These tables organize key quotes about themes or ideas raised in the novel under alphabetical subheadings. They act as an interpretive framework through which the reader could gain insight into Richardson's purposes in *Clarissa*. In 1751 further

⁷⁹⁶ Ibid, p.1418.

⁷⁹⁷ Eagleton, p.23.

⁷⁹⁸ Quote taken from the long title to Richardson's third edition of *Clarissa. Or, the History of a Young Lady* (London: printed for S. Richardson, 1751). It also appears in the title of the fourth edition (1751).

letters were ‘restored’ to Clarissa’s story and published under the title: *Letters and Passages Restored From the Original Manuscripts of the History of Clarissa*. Richardson states that it was: ‘*Published for the Sake of doing Justice to the Purchasers of the Two First Editions of that Work.*’⁷⁹⁹ This implies that *Clarissa*’s readers are to be judged on their moral responses to, and interpretations of, the text.

A significant ‘restoration’ to *Clarissa* that occurs through *Letters* is the elongated exploration of Lovelace’s alleged rape of Miss Betterton. In the novel’s original version of the subplot, which appears prior to Clarissa’s abduction, the reader is tantalized by Lovelace’s comment to Belford:

I have just now received a fresh piece of intelligence from my agent, honest Joseph Leman. Thou knowest the history of poor Miss Betterton of Nottingham. James Harlowe is plotting to revive the resentments of that family against me. The Harlowes took great pains, some time ago, to get to the bottom of that story. But now the foolish devils are resolved to do something in it, if they can. My head is working to make this booby ‘squire a plotter, and a clever fellow, in order to turn his plots to my advantage [...] I will, in proper time, let thee see Joseph’s letter, and what I shall answer to it.’⁸⁰⁰

The details of this intriguing story are, however, surprisingly sparse when provided twelve letters later. It transpires that Lovelace is alleged to have raped Miss Betterton and then refused to marry her, leaving her to die in childbirth whilst he absconded abroad to avoid prosecution for rape. After hearing this news, James Harlowe tried to convince the Bettertons to prosecute Lovelace. Lovelace, paraphrased by the editorial voice, responds that the ‘affair [...] was a youthful frolic: that there was no rape in the case’.⁸⁰¹

The editorial voice retains a strong presence throughout the dissemination of details regarding Miss Betterton’s alleged rape in *Clarissa*. It succinctly informs the reader that Leman ‘acquaints Mr. Lovelace of the prosecution intended to be set up against him’ because of his concerns that ‘my dearest young lady shall come to harm’ and fears that

⁷⁹⁹ Long title to *Letters*.

⁸⁰⁰ *Clarissa*, pp.494-497.

⁸⁰¹ *Ibid*, p.495.

he might ‘lose his soul’.⁸⁰² In *Letters*, the story gains a new level of engagement when the editorial voice is supplanted by those of the characters. Leman, the self-interested accomplice of Lovelace in *Clarissa*, is accorded a greater depth of concern and empathy as he hopes that Miss Betterton’s rape was ‘not so very bad, as Titus says it was’.⁸⁰³ He requests that Lovelace be ‘kind and fethful to my dearest younge Lady, now you have her’.⁸⁰⁴ When Leman worries that Lovelace might be convicted and ‘have [his] head cut off’, his principal concern with his own loss of income from his master that is evident in *Clarissa* is significantly reduced.⁸⁰⁵ The effect of the altered voice removes the distance between the reader and the events of Miss Betterton’s rape. Rather than a paraphrased act that is secondary to, and potentially detracts from, the plot of *Clarissa*, the Betterton rape assumes a newly engaging and empathic role as a subplot. Leman’s concern with the potential punishment to be suffered by Lovelace and the greater level of empathy that he expresses for Lovelace’s victims works to convince the reader of Lovelace’s guilt in a way that *Clarissa*’s narration fails to do. The increased narrative bias in *Letters* thus situates Lovelace as a prior criminal offender and more firmly as the villain of *Clarissa*.

A comparison of Lovelace’s response to Leman’s letter in *Clarissa* and *Letters* further supports this characterization. In *Clarissa* Lovelace’s voice is only permitted to remark on the proposed prosecution that ‘A lady dying in childbed eighteen months ago; no process begun in her life-time; herself refusing to prosecute. Pretty circumstances, Joseph, to found an indictment of rape upon!’⁸⁰⁶ In *Letters* he comments:

A little innocent Contrivance was necessary to get her out – But no Rape in the case, I assure you, Joseph – She loved me: I loved her. Indeed, when I got her to the Inn, I asked her no questions. It is cruel to ask a modest woman for her consent. It is creating difficulties to both.⁸⁰⁷

⁸⁰² Ibid, p.495.

⁸⁰³ *Letters*, p.45.

⁸⁰⁴ Ibid, p.47.

⁸⁰⁵ Ibid, p.47.

⁸⁰⁶ *Collection*, p.495.

⁸⁰⁷ *Letters*, p.53.

Lovelace's expansive response in *Letters* suggests his anxiety to persuade Leman of his innocence, yet he ultimately fails to do so. The 'little innocent Contrivance' confirms that he abducted Miss Betterton against her will. That Lovelace then 'asked her no questions' insinuates that he did not obtain her consent thus defining the act as the rape he denies.

Miss Betterton's rape in *Letters* both echoes and warns of Clarissa's impending violation as we learn that Lovelace

went not abroad upon *her* account. She loved me too well to have appeared against me. She refused to sign a paper they had drawn up for her, to found a prosecution upon: And the brutal creatures would not permit the midwives assistance, till her life was in danger; and I believe to this her death was owing.⁸⁰⁸

Throughout the recounting of the Betterton 'affair' Lovelace emphasizes the low rate of conviction in rape cases and explores the reasons for this. Similar to Clarissa, it is implied that this Miss Betterton refuses to prosecute because of her modesty, a virtue that would be impaired by testifying. This prior evidence of female refusal to testify to a rape despite the insistence of her friends acts to vindicate Clarissa's response yet also predetermines her death as the inevitable fate of the virtuous yet violated woman that mirrors Miss Betterton's. Miss Betterton's demise, and the time lapse between the act and the potential proceedings, removes any possibility of legal reprisal, allowing Lovelace to exclaim:

No Rape in the case, I repeat: Rapes are unnatural things: And more *rare* than are imagined, Joseph – I should be loath to be out to such a straight. I never was. Miss Betterton was taken from me against her own will. In that case, her friends, not I, committed the Rape.⁸⁰⁹

Lovelace's concept of rape, that it is 'more *rare* than [...] imagined', implies that the act only becomes such if it is legally determined. Yet, his analysis of what constitutes a rape further condemns himself. A rape, he contends, is an act of abduction and

⁸⁰⁸ Ibid, p.53.

⁸⁰⁹ Ibid, p.53.

oppression of female will, both of which he has committed upon Miss Betterton. *Letters* obviates any interpretive confusion for the reader. It posits Lovelace as a rapist and defends Richardson's refusal to accommodate his pleas for forgiveness from Clarissa after the rape.

In the *Collection* Richardson adds a further guide to reader interpretations of the act committed on Clarissa and Miss Betterton when he provides a definition of rape that is evocative in its typography of the entries found in legal manuals and law dictionaries:

R.

Rapes.

THE Violation of a woman is a crime that a man can never atone for; especially when it is the occasion of destroying good habits, and corrupting the whole heart, v.101 [352].

The *smallest* concession made by a woman, resenting an Outrage actually made upon her honour, is as much to the purpose of the Violator as the *greatest*, v.173. [vi.77].

The woman who, from Modesty, declines prosecuting a brutal Ravisher, and has his life in her hands, is answerable for all the mischiefs he may do in future, v.273. [vi.183].

Will it not be surmised, that such a woman is apprehensive that some weakness will appear against herself, if she brought the man to a trial for his life? *Ibid*.

See Mrs. Howe's further arguments on this head,

Vol. v. p.273, 274. [vi. p.183, 184].

And also Dr. Lewen's, Vol. vi. p.283-286 [vii. p.208-221]. And Clarissa's Answers, Vol. v. p.277. and Vol. vi. p.287-290. [vi. p.188. and Vol. vii. p.212-215].

Indignities cannot be properly pardoned till we have it in our power to punish them, vi. 285. [vii.210].

Injuries that are not resented, or honourably complained of, will not be believed properly to affect us, *ibid*.

No truth is immodest, that is to be utter'd in the vindicated cause of innocence and chastity, *ibid*.

Little, very little difference is there between a suppressed evidence and a false one, *ibid*.⁸¹⁰

A comparison between this entry and the referenced pages in *Clarissa* shows that the comments originate in the dialogue of a selection of characters in the novel, yet in the *Collection* they are not linked to the character from whose letter they originate. There

⁸¹⁰ *Collection*, pp.196-197.

are, however, differences between some of the aphorisms quoted in the *Collection* and *Clarissa*, which at times simplify, and at others appear to alter, the implied meaning conveyed to the reader.

The first cited quote in the entry is linked to letter 268 written by Lovelace to John Belford. The only connection between the sentiment of the *Collection* and this letter is found when Lovelace observes of Clarissa that:

And for what should her heart be broken? Her will is unviolated:- At *present*, however, her will is unviolated. The destroying of good habits, and the introducing of bad, to the corrupting of the whole heart is the violation. That her will is not to be corrupted, that her mind is not to be debased, she has hitherto unquestionably proved. And if she give cause for further trials, and hold fast her integrity; what *ideas* will she have to dwell upon, that will be able to corrupt her morals?⁸¹¹

This letter is particularly unsettling when read in the context of the moral exemplars offered by *Clarissa*. Lovelace feels the ‘deepest remorse’ for his actions yet also attempts to justify them. He describes the rape as a test of Clarissa’s ‘will’ or morals. The fact that Clarissa has remained uncorrupted, Lovelace argues, is proof that her rape was not really an act of violation. Clarissa’s refusal to marry Lovelace, and belief that as a result of the rape she ‘shall live but a little while’, are depicted as the true threats of violation to her will.⁸¹² He contends that ‘she really makes too much of it: takes it too much to heart’ and that her ‘religion’ should ‘set her above making such a trifling accident, such an *involuntary* suffering fatal to her’.⁸¹³ The sentiment that Richardson extracts from this letter acts not only as an aphorism for the *Collection* but also as a guide to reading Lovelace’s letters. He derides Lovelace’s assertion that marriage would provide his penance to Clarissa and that after ‘a few months’ she would have ‘a quite different notion of things’.⁸¹⁴ In Richardson’s analysis, a rape can never be atoned for.

The second quotation cited in the entry refers to Letter 286 written from Belford to Lovelace. In the previous letter, Lovelace requests Belford’s aid in persuading

⁸¹¹ *Clarissa*, p.916.

⁸¹² *Ibid.*, p.916.

⁸¹³ *Ibid.*

⁸¹⁴ *Ibid.*

Clarissa to meet him at 'her appointed Church' to 'solemnize' vows of marriage.⁸¹⁵ He exclaims that 'If she should let the day go off – I shall be desperate! – I am entangled in my own devices, and cannot bear that she should detect me.'⁸¹⁶ Belford refuses to comply with the demands until he 'can be better assured you really intend honourably at last by this much-injured lady'.⁸¹⁷ He observes that:

the Four words thou courtest from the Lady are as much to thy purpose, as if she wrote Forty; since it will shew she can forgive the highest injury that can be offered to woman.⁸¹⁸

Lovelace's desire to marry Clarissa is due to his belief that this will absolve his crime and sense of guilt, yet this is not verified by Richardson's maxim.⁸¹⁹ Rather than acting as a form of punishment for the rapist determined by the female victim and offering justice to her for the crime committed, marriage is construed here as purely a vindication of rape.

Richardson supports this attitude towards marriage after a rape when he declares that a woman who declines prosecuting her rapist becomes accountable for 'all the mischiefs that he may do in the future'.⁸²⁰ This maxim, and the two that follow, are connected to Anna Howe's letter of 10 July in which she conveys her mother's 'opinion' on Clarissa's 'unhappy story':

She asks, What Murderers, what Ravishers, would be brought to justice, if *Modesty* were to be a general plea, and allowable, against appearing in a Court to prosecute?

She says that the good of society requires that such a beast of prey should be hunted out of it: and if you do not prosecute him, she thinks you will be answerable for all the mischiefs he may do in the course of his future villainous life.

Will it be thought, Nancy, said she, that Miss Clarissa Harlowe can be in earnest, when she says, she is not solicitous to have her disgraces concealed from the world, if she be afraid or ashamed to appear in Court, to do justice to herself and her Sex against him? Will it not be rather surmised, that she may be

⁸¹⁵ Ibid, p.957.

⁸¹⁶ Ibid.

⁸¹⁷ Ibid.

⁸¹⁸ Ibid, p.958.

⁸¹⁹ In Letter 268 Lovelace observes to Belford that if Clarissa should die he will 'think nothing of it, if we marry'. (Ibid, p.916)

⁸²⁰ *Collection*, p.196.

apprehensive, that some Weakness, or lurking Love, will appear upon the Tryal of the strange Cause?⁸²¹

Mrs. Howe's advice to Clarissa emphasizes its subjective nature. It is based on her perception of the effect of a woman not prosecuting her rapist. The questioning style of delivery confirms Mrs. Howe's advice as being based on conjecture rather than fact. The metaphorical imagery of Lovelace as a 'beast of prey' that evokes Clarissa's post-rape fable of the lady who 'took a great fancy to a young lion, or a bear, I forget which' is constructed as a rhetoric of persuasion.⁸²² In the *Collection's* entry the persuasive tone, questioning style, and interpretation of the sentiments as subjective, are removed. The maxims are rewritten in an authoritative editorial voice. The quotes are restructured so as to no longer be questions but pronouncements of fact. The maxims thus become dictatorial guidelines for the raped woman and vindicate her only if she takes legal action against her rapist.

The final maxims are associated with Dr. Lewen's letter of advice to Clarissa during which he states:

can indignities of any kind be *properly pardoned* till we have it in *our power to punish them*? To pretend to pardon, while we are laboring under the pain or dishonour of them, will be thought by some to be but the vaunted mercy of a pusillanimous heart trembling to resent them. The remedy I propose is a serious one; but what pain can be more severe than the injury? or how will injuries be believed to grieve us that are never honourably complained of?

I am sure Miss Clarissa Harlowe, however injured and oppressed, remains unshaken in her sentiments of honour, and virtue; and although she would sooner die than *deserve* that her modesty should be drawn into question; yet she will think no truth immodest that is to be uttered in the vindicated cause of innocence and chastity. Little, very little difference is there, my dear young Lady, between a suppressed evidence and a false one.⁸²³

The number of quotes in the *Collection* that derive from this letter emphasise its importance in *Clarissa*. Of the extracts selected these remain the most intact through Richardson's process of revision. The phrasing is altered only to change the tense, increase the sense of an authoritative voice, and to remove any subjectivity. The

⁸²¹ *Clarissa*, p.1016.

⁸²² *Ibid*, p.891.

⁸²³ *Ibid*, p.1252.

appropriation of the moral advice expressed by Lewen in the *Collection* is particularly interesting given that Richardson encourages his readers to refer to Dr. Lewen's 'further arguments on this head'.⁸²⁴ He does not attribute any quotes to other characters, indicating that Richardson wanted, and perhaps expected, his readers to interpret the original novel in accordance with Lewen's perspective.

The creation of a cross-referential relationship between the maxims and the novel's authorial, editorial and character voices works in a number of ways. The *Collection*, when read in the context of *Clarissa*, identifies for the novel's readers the moments at which these moral instructions in the novel are imparted but also asserts the independence of the *Collection*. The identifiable differences between the tone and style of the quotes liberates those contained in the *Collection* from the story of *Clarissa*, forcing the reader to recognize their wider value. The removal of 'my dear young Lady' from the *Collection's* maxim that 'Little, very little difference is there between a suppressed evidence and a false one' in particular situates it as a generic observation applicable to all potential prosecutrices.⁸²⁵

The style of the *Collection's* entry on rape is comparable with the period's legal manuals that dealt with the crime of rape. These texts also used a method of alphabetically organized subheadings to arrange the information and referenced the observations made. The referencing in these manuals, however, referred the reader to legislative or case law rather than literary precedents. These structural links emphasize the relationship between Richardson's maxims and the legal commentary on rape trials. Rather than advising on mediating a rape through the legal system Richardson provides advice on how women should overcome their own concerns with modesty in order to arrive at the process of prosecution. However, *Clarissa* herself resists this process, suggesting that Richardson cannot overcome the ideological conflict between modesty

⁸²⁴ *Collection*, p.197.

⁸²⁵ *Ibid*, p.197. See also *Clarissa*, p.1251-1253 for comparison.

and justice that faces her. His entry in the *Collection* and its connection to *Clarissa* situates the novel as a form of guidance to the raped woman, which challenges the law's inability to prosecute these cases.

V. Pollution, death and Richardson's justice

In *The Rape of Clarissa* (1982) Eagleton contends that Clarissa's death caused a 'national crisis'.⁸²⁶ Belford describes her death, commenting that:

Her sweet voice and broken periods methinks still fill my ears, and never will be out of my memory.

After a short silence, in a more broken and faint accent – And you, Mr. Belford, pressing my hand, may God preserve you and make you sensible of all your errors – You see, in me, how all ends – may *you* be – And down sunk her head upon her pillow, she fainting away, and drawing from us her hands.

We thought she was then gone; and each gave way to a violent burst of grief.

But soon showing signs of returning life, our attention was again engaged; and I besought her, when a little recovered, to complete in my favour her half-pronounced blessing. She waved her hand to us both, and bowed her hand six several times, as we have since recollected, as if distinguishing every person present; not forgetting the nurse and the maid-servant; the latter having approached the bed, weeping, as if crowding in for the divine lady's last blessing; and she spoke faltering and inwardly: Bless-bless-bless-you all-and now-and now- (holding up her almost lifeless hands for the last time)-come-Oh come-blessed Lord-JESUS!

And with these words, the last but half-pronounced, expired: such a smile, such a charming serenity over-spreading her sweet face at the instant as seemed to manifest her eternal happiness already begun.

[...] She departed exactly at 40 minutes after 6 o'clock, as her watch on the table.

And thus died Miss CLARISSA HARLOWE, in the blossom of her youth and beauty.⁸²⁷

Belford's emotive account inspired readers to respond to Clarissa as a tragic heroine which encouraged a quixotic response exemplified by Lady Bradshaigh who described suffering from a 'passion of crying' whilst reading the account and whose tears flowed through into the following night and day.⁸²⁸ As Adam Budd notes, Clarissa is not

⁸²⁶ Eagleton, p.17.

⁸²⁷ *Clarissa*, pp.1362-3.

⁸²⁸ Cited in Keymer, p.203. Keymer also notes the reactions of other readers that were expressed in letters to Richardson. 'Philaretus' comments that he would 'read the Account of her Death with as much Anguish of Mind, as I should feel at the Loss of my dearest Friend'. Lady Bradshaigh further complained

Richardson's model of reform nor does he desire the reader's reformation through emulation but rather through interpretation.⁸²⁹ The reaction of *Clarissa's* 'resistant'⁸³⁰ readers to the 'divine creature[s]' death required Richardson's later revisions of, and supplements to, the novel to clarify the purpose of his protagonist's death.⁸³¹

Clarissa's death, when read in the context of the *Collection's* maxims that are interpreted as a form of 'pre-court' authority on rape cases, requests the reader to re-evaluate their interpretations of *Clarissa's* characters and the punishments that they endure. Lovelace is immediately condemned; he 'can never atone' for Clarissa's rape.⁸³² The effect of the *Collection* on an interpretation of *Clarissa* is, however, more significant. Despite the letters from Anna, in which she offers Mrs. Howe's advice, and from Dr. Lewen through which Richardson advises Clarissa of the response to her rape demanded by his moral precepts, Clarissa fails to appropriate this role. Clarissa's concept of modesty, and perceived role as a modest exemplar, is challenged. Richardson dictates that her refusal to testify to the rape is a misconception of modesty because 'No truth is immodest, that is to be utter'd in the vindicated cause of innocence and chastity.'⁸³³ Most damning, however, is the suggestion that there is 'little difference' between suppressed and false evidence.⁸³⁴

that Richardson 'give joy only to the ill-natured reader, and heave the compassionate breast with tears for irremediable woes'. Mary Delaney was 'broken-hearted'. Keymer observes of these responses that instead of expressing the 'characteristic self-congratulation of sentimentalism' they were 'bitter and violent'. See Keymer, p.203.

⁸²⁹ Adam Budd contends in 'Why Clarissa Must Die: Richardson's Tragedy and Editorial Heroism' (*Eighteenth-Century Life*, 31.3 (2007) pp.1-28) that Richardson's 'model of reformation in *Clarissa* is male' and centres on Belford's moral transformation (p.16). Clarissa's death ensures that she cannot reform, as does Lovelace's. Mary Patricia Martin in 'Reading Reform in Richardson's *Clarissa*', *Studies in English Literature, 1500-1900*, 37.3 (1997) argues that marriage is the institutionally recognized symbol of the reformed rake. In Clarissa's question to Lovelace: 'thinkest thou, that *Marriage will satisfy for a guilt like thine*', and refusal to contemplate this, Richardson refuses to allow Lovelace's reform (p.7). Elaine McGirr similarly notes Richardson's insistence that 'Lovelace could not be rehabilitated' (p.6) in 'Why Lovelace Must Die', *Novel: A Forum on Fiction*, 37.1-2 (2003-4). She comments that 'Richardson's [...] villain cannot recreate himself. Lovelace cannot transform himself into a husband for he has committed to the part of a tyrant and must suffer a tyrant's fate.' (p.8)

⁸³⁰ Martin, p.607.

⁸³¹ *Clarissa*, p.1487.

⁸³² *Collection*, p.196.

⁸³³ *Ibid*, p.197.

⁸³⁴ *Ibid*, p.197.

Richardson's maxims about female prosecution in rape trials do not conform to Bernard de Mandeville's idea, cited by Lovelace, that conviction and punishment acts as a warning which prevents future offences.⁸³⁵ The punishment of a rapist is not configured as a form of crime prevention. Instead, Richardson stipulates the ineffectiveness of this whilst asserting the crime of rape to be anything but '*rare*'.⁸³⁶ Rape prosecutions are not constructed as a form of justice for the victim, instead they are an imperative method of protecting other women from the rapist who, Richardson implies, will reoffend. By refusing to prosecute Lovelace, Clarissa becomes seen as a facilitator of his role as a rapist. Clarissa is further condemned by the *Collection's* 'Advice to Young Women', which observes that:

If a Woman knows a man to be a libertine, yet will, without scruple, give him her company, he will think half the ceremony between them is over; and will probably only want an opportunity to make her repent of her confidence in him.⁸³⁷

Thus Clarissa is configured as guilty not only of failing to prosecute but also of believing that a libertine could be redeemed, an act that is determined as a 'crime'.⁸³⁸

Lovelace's drugging of Clarissa during her rape and its connotations however adds further meaning to her death. When Clarissa asks of Lovelace 'is Miss Howe really and truly ill? – very ill? – and is not her illness poison? And don't *you* know who gave it to her?' she insinuates Lovelace's culpability in his fabricated construction of Anna's ailment.⁸³⁹ She also reminds the reader that Lovelace has drugged her. The image of Lovelace as a poisoner and Clarissa as corrupted by his drugs pervades the text following her rape. Anna's interpretation of Lovelace's crimes upon Clarissa as

⁸³⁵ *Clarissa*, p.846. Lovelace comments: 'At worst, I am entirely within my friend Mandeville's rule, *That private vices are public benefits*'. See also Bernard de Mandeville, *The Fable of the Bees* (London: printed for J. Roberts, 1714).

⁸³⁶ *Letters*, p.53.

⁸³⁷ *Collection*, p.4.

⁸³⁸ 'Libertines', *Collection*, p.149. Richardson instructs his reader to refer to his entry on 'Libertines' after reading 'Rapes'. He writes, 'What has not the wretch to answer for, who sports in destroying a virtuous character; and in throwing upon the town, a poor creature whose love of him, and confidence in him, were all her crime?' (See *Collection*, pp.148-150 for full entry.)

⁸³⁹ *Clarissa*, p.894.

‘potions, and rapes, and the utmost violences’ intertwines the ideas of the opiates and the rape.⁸⁴⁰ This is supported by Mrs. Howe’s evaluation of Lovelace’s

complicated villainy [...] where perjury, potions, forgery, subornation, are all combined to effect the ruin of an innocent creature, and to dishonor the family of eminence, and where those very crimes, as may be supposed, are proofs of her innocence.⁸⁴¹

Thus, the opiates play a dual role, both as instigators of the rape and evidence of Clarissa’s innocence. Yet, as previously noted, they also deny Clarissa’s testimony and evidence of her lack of consent. Drugs also have a metaphorical role in the novel: they cause Clarissa’s ‘disordered mind’ and silence her voice, both temporarily and permanently in respect of the details of her rape. The bodily and mental corruption affected by the opiates heralds her indeterminate illness.

The connection between Clarissa’s poisoning (used to effect her rape), her consequent delirium, implied corruption, and illness, is key to understanding why Clarissa dies. The *Lady’s Law* defines rape as a ‘shameful pollution’ thus constructing it as a desecration that corrupts or contaminates the victim.⁸⁴² To be polluted implies the potential to pollute; thus Mrs. Howe ‘insist[s]’ on Clarissa prosecuting Lovelace as a clause to permitting further correspondence between her and Anna.⁸⁴³ Without the reassurance that Clarissa did not consent to sex and does not conceal a ‘lurking love’ for her assailant, Mrs. Howe remains suspicious that her bodily corruption may also involve the tainting of her will and modesty.⁸⁴⁴ Clarissa, in her determination that she ‘would sooner suffer every evil (the repetition of the capital one excepted), than appear publicly

⁸⁴⁰ Ibid, p.1017.

⁸⁴¹ Ibid, p.1016.

⁸⁴² *Lady’s Law*, p.50. See the *Oxford English Dictionary* definition of pollution as the ‘desecration of that which is sacred’, a physical or spiritual ‘corruption’ or ‘contaminant’.
<<http://www.oed.com/view/Entry/146992?redirectedFrom=pollution#eid>> [accessed 1 May 2014].

⁸⁴³ *Clarissa*, p.1017.

⁸⁴⁴ Ibid, p.1019. In *Memoirs of a Woman of Pleasure*, John Cleland also depicts sexual immorality as a contagious construct when Fanny recounts her introduction to masturbation at the hands of Phoebe and suggests that the polluted woman who has engaged in sexually illicit behavior is as dangerous to innocent women as a rake: ‘this I know, that the first sparks of a kindling nature, the first ideas of pollution were caught by me that night; and that the acquaintance and communication with the bad of our sex is often as fatal to innocence as all the seductions of the other’ (*Fanny Hill, or Memoirs of a Woman of Pleasure* (London: Penguin Books, 1994) p.281).

in court to do [herself] justice', is perceived as morally ambiguous by Mrs. Howe.⁸⁴⁵ Without proof of the veracity of Clarissa's story, Mrs. Howe must safeguard her own daughter's 'innocence' against the potentially contagious corruption of Clarissa.⁸⁴⁶ Thus the first desecration of Clarissa through the forced imbibing of 'somnia velences', which prevents proof that her will and modesty have not been tainted, leads to a depiction of her as physically and morally polluted and as a potential pollutant.⁸⁴⁷

The idea of contagion is one that Richardson raises throughout the novel in the letters of Lovelace and the use of the word 'plaguy'. When Lovelace plans to abduct, and then marry or rape Clarissa, he refers to any hindrances to his plans as 'plaguy'.⁸⁴⁸ In the aftermath of the rape he employs the term to signify Clarissa's refusal to marry him and the censure that he receives.⁸⁴⁹ It is interesting to note that all the characters that are referred to as 'plaguy' die by the novel's conclusion. This implies that the rape itself is a plague that is contagious to Lovelace, Leman, Sally, Polly, William, Betty, Dorcas, and Clarissa, who all expire.⁸⁵⁰ Clarissa's family, who are also implicated in the instigation of Clarissa's rape but not involved in its enactment, are affected to a lesser degree yet, as James observes, his misfortunes are contracted because of 'his vile and cruel treatment of his angelic sister'.⁸⁵¹

Clarissa herself recognizes the demand for her death in her 'MEDITATION' entitled '*Poor mortals the cause of their own misery*'. The document, retrieved by Mrs. Lovick, comments:

He hath commanded no man to do wickedly; neither hath He given any man licence to sin.
And now, Lord, what is my hope? Truly my hope is *only* in Thee.
Deliver me from all my offences; and make me not a rebuke unto the foolish.

⁸⁴⁵ *Clarissa*, p.1019.

⁸⁴⁶ Mrs. Howe's perspective on Clarissa's rape is signified in her comment 'if all be as you have related'. She refuses to adjudge with certainty without a legally determined conviction (ibid, p.1016).

⁸⁴⁷ Ibid, p.897.

⁸⁴⁸ Ibid, p.898.

⁸⁴⁹ Ibid, p.1378.

⁸⁵⁰ See Ibid, p.1491 for details of Leman's, Sally's, Polly's, William's, Betty's, and Dorcas' deaths.

⁸⁵¹ Ibid, p.1490.

When Thou with rebuke dost chasten man for sin, Thou makest his beauty to consume away, like as it were a moth fretting a garment: every man therefore is vanity.

Turn Thee unto me, and have mercy upon me; for I am desolate and afflicted.

The troubles of my heart are enlarged. Oh bring thou me out of my distresses.⁸⁵²

Clarissa's meditation asserts her own corruption. Her loss of virginity is a sin that is not 'licence[d]' by her lack of consent. She pleads with her Christian god for death as a deliverance from her 'distresses'. In her quest not to be made 'a rebuke unto the foolish' she acknowledges that if she lives yet refuses to prosecute Lovelace she will be socially condemned. Death is then her only option.

Clarissa's demise, which surprised and anguished contemporary readers, is pre-determined from the moment of her rape. When Lovelace informs Belford of his actions and that 'Clarissa lives'⁸⁵³ his friend responds '[t]hat she does is my wonder; and these words show that thou thyself [...] hardly expectedst she would have survived the outrage'.⁸⁵⁴ Contemporary reader Edward Moore, whose words also construct the rape as a pollutant, contended that Clarissa should solicit 'with Tears and upon her Knees the only means upon Earth of recovering her Honour from the Stain of Violence'.⁸⁵⁵ The 'only means [...] of recovering her Honour' was, he claimed, to be obtained through marriage to Lovelace.⁸⁵⁶ For Richardson, the context of Clarissa's potential ravishment rather than rape meant that such a marriage would be a criminal and 'Lovelacean response to the text'.⁸⁵⁷ As he implies through Clarissa, marriage will not 'satisfy' or atone for Lovelace's actions, nor will it prevent the poisonous effect of the rape. Clarissa's death can then be seen as 'a form of inoculation, or a form of remedial

⁸⁵² Ibid, p.1189.

⁸⁵³ Ibid, p.883.

⁸⁵⁴ Ibid, p.884.

⁸⁵⁵ Letter sent from Edward Moore to Richardson, 1 October 1748, FM XV, 2, f.17.

⁸⁵⁶ Ibid.

⁸⁵⁷ Keymer, p.204.

surgery'.⁸⁵⁸ Her death, and that of the accomplices to the rape, is thus a cleansing of the taint attributed through the act. Clarissa herself hopes that 'the evil [...] will end with me'.⁸⁵⁹ This desire can be read as a metaphorical expulsion of *all* rapes. Through this, Richardson enforces his idea that rape cannot be atoned for, and demands the victim's death as a ritual purification of the rape's effects as a contagious pollutant of society. His design in the novel's ending is encapsulated in Lovelace's last words: 'LET THIS EXPIATE!'"⁸⁶⁰ The ambiguity of the word 'this' in Lovelace's declaration leaves the reader uncertain about what the preposition signifies: is it Lovelace's death, Clarissa's death, or the end of the rape's effects? That Lovelace's death does not atone for his sins, suggests that Richardson aims to imply the conclusion of the rape's contagion.⁸⁶¹

Richardson implies that death is essential to the eradication of rape as a crime in society. The victim's body is described as being polluted by her violation and it is suggested that she presents a threat to social morality. Through Clarissa's refusal to prosecute her rapist and her misconception of Lovelace, Richardson attempts to prevent Clarissa from being read as a tragic heroine or a proponent of modesty to be emulated by her readers. In doing so he attempts to limit the contagious effects of her rape on society. Although this narrative demand was not wholly successful, *Letters* and the *Collection* emphasize Richardson's desire to challenge these misconceptions. When the novel is read in the context of these later revisions it becomes clear that through her death Clarissa is punished rather than vindicated. Through the emphasis on death as the resolution for an act of rape, Richardson thus challenges the idea that a rape can ever be atoned for, the period's social concept of marriage as a satisfaction for a rape, and the idea that the legal system can offer justice to the victim. Clarissa herself hopes that 'the

⁸⁵⁸ Ibid, p.202.

⁸⁵⁹ *Clarissa*, p.986.

⁸⁶⁰ Ibid, p.1488. Through this quote, Richardson refers to Rowe's *The Fair Penitent* when Calista observes that: 'Nothing but Blood can make the Expiation,/ And cleanse the Soul from inbred, deep Pollution.' (*The Fair Penitent*, Act V, Sc. I, p.66).

⁸⁶¹ McGirr comments that 'Richardson's postscript makes it abundantly clear that not even Lovelace's blood could cleanse his soul' (p.14).

evil [...] will end with me'.⁸⁶² Rape is constructed as a crime which exceeds the remits of statutory, common, and civil law. In a letter written on 25 April 1748 Richardson observes that Clarissa suffers

that long & terrible attack & combat on her Virtue which here so entangled her in the miseries of life that nothing cou'd free her from or make her triumphant over them but divine grace which now comes, like the God in the catastrophe of the Ancient fable to clear up all difficulties.⁸⁶³

He implies that the Christian god offers the sole means of retribution against a rapist. Clarissa therefore prays to the Christian god, stating 'Truly my hope is *only* in Thee.'⁸⁶⁴ Whilst Richardson does maintain that the law's role in prosecuting the case is essential to ensure punishment of the rapist, thus allowing the Christian God to exact vengeance with immediacy, it is arguable that this message is lost in the spectacle of Clarissa's religious death.



Through the act of writing *Clarissa*, Richardson and his readers emphasize the eighteenth-century appetite for fictional treatments of rape. It is interesting that the exploration of Clarissa's emotional response to the act, which suggests her victimization and her sense of guilt and deviates from the traditionally humourous rape scenes produced by authors such as Fielding and Smollett, fascinated readers and evoked some responses sympathetic to her plight despite the prevalence of victim blaming which surrounded the act of rape between 1700 and 1765. This suggests that the belief that women could be raped, introduced by Bond's initial portrayals in the print market, was increasingly acceptable. Whilst Richardson alludes to the Lucrece rape myths and

⁸⁶² *Clarissa*, p.986.

⁸⁶³ Keymer, p.212.

⁸⁶⁴ *Clarissa*, p.1189.

published judicial knowledge about sexual crimes, his texts explored the complexities of these, at times competing, ideas and the difficulties faced by rape victims.

Although Richardson implies that it is essential for the correct legal terminology to be used to define the specific act, the infrequent use of the term 'rape' implies the difficulty in distinguishing between various forms of sexual crime. In addition, he challenges the social concepts of female modesty, which complicate the *viva voce* attestations to rape required by law. The interpretation of Clarissa's violation as a rape without the intimate details usually required to confirm the act implies that the 'impolite' language of rape testimonials is superfluous. Yet, Richardson confirms the prevalent ideas implied by the myth of Lucrece (discussed in chapter three), which suggested that a virtuous woman would die during the perpetration of, or as a result of, a rape. The rape victim who survives the attack is, Richardson suggests, morally suspect. Whilst Mrs. Howe implies that Clarissa's virtue can be demonstrated through the legal prosecution of Lovelace, Richardson disagrees.⁸⁶⁵ Instead, he pre-determines Clarissa's demise from the moment of her rape. When Lovelace informs Belford of his actions and that 'Clarissa lives'⁸⁶⁶ his friend responds with surprise and notes that Lovelace himself anticipated her death as an outcome of the rape.⁸⁶⁷ It is only through death that Clarissa's virtue is confirmed and she can testify to her rape, requesting in her will that Belford publish her testimony posthumously.

Richardson's description of rape is undoubtedly detailed and shows a progression in understanding and acceptance of the female experience of rape from Pope's mock-rape and Fielding's and Smollett's largely comic portrayals. However, as a male author, the accuracy of Richardson's insight is questionable: he narrates the female experience through the female voice yet it is ultimately written by a male author,

⁸⁶⁵ See *Clarissa*, p.1017 for Mrs. Howe's comments.

⁸⁶⁶ *Ibid*, p.883.

⁸⁶⁷ *Ibid*, p.884.

and, as he even acknowledges through Belford's role in the novel, the female experience must be mediated by men.

Conclusion



This thesis has demonstrated, as *The case of the Ld. John Drummond* suggested, that ‘The Nature of a Rape’ is indeed ‘very perplex’d’ between 1700 and 1765.⁸⁶⁸ The term ‘rape’ held multiple connotations that included an act of sexual violation against the will of the woman, a false allegation of rape, and a subject of humour. As the range of competing discourses analyzed in this research indicates, the period’s complex ideas of rape were influenced by the law and the print market.

This thesis has explored the relationship between fictional depictions of rape and legal and social realities between 1700 and 1765. Through a focus on rape law, legal theory, trials and ‘rape’ scenes, it has investigated what rape meant to people in Britain during this period, and how the law and social beliefs about the act influenced responses to and representations of sexual violation. This research concludes that contemporary authors, publishers and readers were interested in the subject of rape, and that their fascination with the subject was influenced by competing attitudes to the subject that were expressed through statutory law, judicial procedure, fictional accounts of sexual violation, and rape myths.

⁸⁶⁸ *The case of the Ld. John Drummond*, p.2.

The depictions of rape in legal and non-legal sources provide an interpretive framework for incidents or scenes of rape. The authors studied clearly draw upon ideas of rape, the perpetrator and the complainant, expecting their readers to be aware of them, and inviting the reader to use the context of the law and print market to formulate their response to the text. The conclusions reached are, however, culturally and historically specific. Critical analyses of rape during this period need to reconstruct these historically specific contexts to understand what an incident or portrayal of rape meant to the contemporary reader. Whilst the fictional accounts of rape in the early to mid-eighteenth century contributed to understandings of rape by drawing upon and conveying the legal ideas about, and treatment of, rape, it is also evident that these attitudes were beginning to be challenged by the 1750s.

In its recognition of the diverse discourses of rape available in the eighteenth-century print market this thesis acknowledges Walker's desire to ensure that research facilitates 'discrete histories [of rape] to emerge' but has sought also to make links between the ideas that emerged.⁸⁶⁹ As the analysis of Pope's *The Rape of the Lock*, motivated by Lord Petre's theft of Arabella's hair, the publications inspired by the Charteris case, and the references to other famous trials such as the Castlehaven and Abergavenny cases, show, discourses of rape in this period often held immediate contextual relevance that influenced reader responses to the texts. Yet, authors also drew on extant assumptions about rape prevalent in society and the law, such as the relevance of public space to interpretations of allegations of rape, showing their awareness of wider ideas about the act.

The analysis of rape in legal and quasi-legal texts shows that information about the crime was widely available to authors and readers. The expansion of the legal market to incorporate texts written for a wide audience comprising legal and non-legal

⁸⁶⁹ Walker, 'The history of sexuality?'.

readers demonstrates that there was a demand for knowledge of the law. This increased access to information about rape law and judicial procedure was an important influence on how people, particularly the literate, understood the crime. It is notable through the publication of legal manuals for a female audience that legal acumen was not gender specific. As the male-authored characters of Roxana and Clarissa demonstrate, men promoted the idea that women of all social classes should understand the law.

Richardson's *Clarissa* and the legal market provide evidence that suggests independently wealthy women who were raped faced increased difficulty when seeking legal justice for their violation. In these cases, the competing definitions of rape and ravishment, which were poorly distinguished in legal theory, terminology, and knowledge, militated against legal reprisal. As is evident throughout this thesis, the term 'ravish' was used interchangeably to mean a rape or a seduction, and contributed to the rape myth that undermined the veracity of a woman's accusations.

Legal theory and the law itself determined whether a sexual violation would be seen as a rape. The 'rape' scenes studied allude to the legal requirements of force, consent, penetration, the moral character of the complainant, marital rape exemption, and the pregnant complainant, to imply the veracity, or otherwise, of the act. In an original contribution to knowledge this study has found that the legal assumption that rape could not be perpetrated in a public space is also evident in, and employed by, comic rape narratives to ensure that they are perceived as malicious allegations. These contexts demonstrate the author's understanding of the period's rape law and judicial procedure. This also indicates an expectation that their readers would comprehend the legal questions raised by the text and use them as an interpretative framework.

Trial reports, published singularly or in case law collections, were often more accessible and exciting to read than the legal manuals, treatises, and dictionaries, and also played an important role in contributing to contemporary understandings of rape.

Sensational trials such as the Castlehaven, Abergavenny, and Charteris cases were particularly influential in inspiring an array of printed responses. These reports, however, complicate the concept of the legal definition of rape as it was presented to readers because they focused on rape trials that were sensational for their content, the individuals involved, or unusual legal proceedings. The analysis of the Charteris case contributes to original knowledge by demonstrating that the political connotations of Charteris' pardon did not significantly increase its popularity as previously supposed. Coverage of the case in the 1730s instead focused on the trial for rape and demonstrates how such trials were disseminated through a diverse range of material.

Rape myths played an important role in contemporary interpretations of sexual violation. They supported male declarations of innocence and undermined female experience. Rape myths are evident in fictional accounts and trial records of rape accusations, and were important in formulating legal and social concepts of rape and the complainant. In the law, rape myths encouraged the growing suspicion of female testimony and anxiety about malicious prosecutions, and influenced the production of the concept that pregnancy implies the complainant's consent. Rape myths that encouraged suspicion of the veracity of rape allegations and female testimony were also informed by legal practice. In comic writing, the idea that female allegations of rape are always unfounded and of malicious intent are employed to meet the genre's demands and ensure that the act is always portrayed as a false accusation. These texts depict complainants such as Fielding's Hilaret and Jenny as posing a threat to men. Nonetheless, the ideas reinforced by rape myths were not unanimously presented in depictions of rape in the print market. The virtuous Fanny and Clarissa challenge the rape myth that women sought or enabled their own rape, which is evident in Belinda's transformation into a coquette. These portrayals of chaste rape victims who evoke the classical model of Lucrece contest the assumption that women cannot be raped.

Classical rape victims such as Lucrece play an important role in supporting the concepts expressed in rape myths and in signifying to the reader the author's intended interpretation. The two classical victims of a rape, Callisto and Lucrece, that are explored in this research hold different connotations for the contemporary audience. Callisto's presence in the publications related to the Charteris trial after he is pardoned signifies Bond's transformation from 'hapless Maid' to a malicious sexual being. Callisto's role in *The Rape of the Lock* is, however, more complex. Pope does not subscribe to the same reinterpretations of Callisto's character as immoral and unchaste as found in the wider eighteenth-century print market. Instead, he invokes Ovid's image of Callisto as a violated nymph. Lucrece, who is alluded to by Pope and Richardson, indicates a virtuous woman who is forcibly violated against her will thus presenting the image of a 'true' rape victim. The concept that the death of a victim indicates her innocence, as proposed in the myth of Lucrece and circulated through her presence in the eighteenth-century print market, is evident in Richardson's *Clarissa*. This research concludes that death was also construed as a resolution to restrict the morally contagious effects of rape and its portrayals. Thus, even the virtuous female body is seen to be corrupted by forcibly-inflicted sexual knowledge.

Raped women in classical myths are either deified as spotless victims or stigmatized as being culpable for their own violation. As the final transformation of Belinda's hair, which inscribes her name 'midst the stars', indicates, the appropriation of the 'rape victim's' name re-enacts the non-consensual and forcible theft of the preceding sexual violation. Transformation in itself is also revealed to be an important aspect of rape narratives and the interpretive process. Belinda's transformations through *The Rape of the Lock* mimic the transformative impact of reader interpretation that is influenced by collective social ideas of rape. As the analysis of Bond's metamorphoses in the

aftermath of the Charteris case show, the transformations of the rape victim are imposed on them by the ideas about rape circulated in the contemporary courts and print market.

The idea that women are culpable in their own rape is a rape myth, which can be found in: legal interrogations of a woman's moral character; malicious 'rape victim' characters such as Hilaret and Jenny; ambiguous characters such as Belinda, Amy, and Bond; and in the self-doubt of the virtuous Clarissa. It is an important influence on contemporary understandings of rape that subjugates women in contemporary perceptions as well as their own, and undermines the severity of the act. This creates a 'disconnection' between the female experience of rape, and the victim's expression of the event and its interpretation by others. This is most obvious in the silencing of Clarissa's voice, her incoherent thoughts, and her inability to testify to rape. Pope signifies the disjuncture through the tension of sexual violence that pervades the poem and Belinda's grief at her loss, which conflict with the ideas expressed in the popular rape myths that he evokes and the scene of her classical judgment.

Judicial practice, statutory legislation, law conviction rates, and popular perceptions of the crime, meant that a legal resolution was not available for many incidents that would be regarded as a rape in our era. Similarly, the narrative demands of the texts studied in this thesis means that a legal resolution could not be achieved. In their allusions to legal conventions, authors, such as Defoe, often discredited the woman's role as a victim thereby enabling narrative progression. In contrast, Smollett and Fielding drew on the legal perceptions of public space to write comic parodies of rape. Adherence to the demands of legal conventions about sexual assault thus encouraged contemporary readers or audiences to interpret textual depictions as a rape or a false allegation. Whilst less frequent in fiction of the period, the treatment of female characters such as Clarissa and Fanny, whose respective rape and attempted rape were written in a suitably serious style, reveal a burgeoning acceptance that women could be

raped. This idea contradicts Dickie's contention that 'sexual violence was still a trivial matter in this culture'.⁸⁷⁰ In spite of the prevalent rape myths and humour surrounding the subject during this period, there was an emerging recognition that women could be raped and an acknowledgment of the physical and psychological implications of this. Analysis of the death of Lovelace reveals a surprising and critically unacknowledged meaning in the novel that contributes to this perception. Clarissa's family do not contest her inheritance, meaning that she is an heiress at the time of death and therefore defining her rape as the crime of ravishment that is legally punished with execution enacted by the law or a family member. Through Lovelace's demise, Richardson thus creates the only portrayal of a legal resolution in a literary rape during this period.

This study demonstrates the requirement for a multidisciplinary approach to the analysis of rape in the early eighteenth century that accounts for the range of discourses about the subject that were available, an approach advocated by critics such as Gravdal and Walker. As demonstrated in the rape scenes discussed earlier, an understanding of the legal and social definitions of rape alters interpretations of the portrayed act; it is critical to appreciate these, at times competing, understandings of sexual assault to interpret the meaning of a scene. Walker's warnings that researchers must be wary not to place too much emphasis on sensational trials and rape myths are valid yet, as suggested by this thesis, such trials are valuable to understanding how eighteenth-century society came to conceive the act.⁸⁷¹ As seen in the parity between classical rape myths and eighteenth-century depictions of the act, the ideas expressed by these myths are persistent through history and society, and continue to contribute to modern responses to the act. Reclaiming the emergence of rape myths, how they are dispersed and their impact, aids analysis of historical rape and rape scenes, whilst supporting advocacy for rape victims.

⁸⁷⁰ Dickie, p.574.

⁸⁷¹ Walker, 'Rape Acquittal' and 'The history of sexuality?'.

The understandings of rape expressed by rape myths and the law are complicated by an ongoing interpretation of women as male property. As Richardson emphasises, male ownership of a woman, through her financial, marital and familial status, confounds the legal interpretation of sexual assault. Many of the ‘rapist’ characters discussed in this thesis demonstrate beliefs in their ‘right’ to sexually attain, and own, the women of their choice with or without her consent. In the studies of the Baron and Lovelace, lack of female consent only appears to heighten their intrigue and desire; ‘The Rape of the Lock’ develops this attitude further, portraying a male perspective of sexual intercourse as a game to be ‘won’. Whilst marital rape exemption is an extension of an understanding of male ownership of women and is given judicial authority, further study is required to ascertain how the understandings of women as property, sexual conquest as a male right, and gendered power relations, are treated more widely in the law and whether this corresponds to the literary portrayals.

Male mediation of the female voice has been the predominant focus of this thesis, offering scope for a comparative analysis of female authored ‘rapes’, which would consider the extent to which female authors appear aware of the laws and legal conventions regarding rape through exploring if and how these issues are present in their writing. Such a study needs to be modified by an awareness of the potential impact of writing about a conceivably licentious subject on reader perceptions of the author’s morality and therefore the credibility of the scene. Investigating eighteenth-century reader responses to female-authored rape scenes in comparison to male-authored incidents would aid in determining perceptions of the female author’s moral character.

The London-centric focus to this thesis leaves opportunities for further study. To ascertain how important the print market was in constructing and supporting perceptions of rape, and its influence in the wider British context requires further study. It would be interesting to study the publication of local trial reports outside of London to compare

the attitudes towards rape portrayed, the engagement with legal, social and literary ideas of rape, and the potential effects on readers. Comparative studies of published literary ‘rapes’ produced in publishing centres such as Oxford and Edinburgh would also provide insight into how rape was represented in different contexts and if this supported or challenged the attitudes expressed in London. It would allow for analysis of whether accusations of rape were reported differently, and if rape narratives held the same appeal in a different context. Attention should be paid to whether they were edited for a different audience and, if so, how this altered their meaning and why. Areas that had a less active publishing industry, including cities and provincial areas, would also provide an important means of extending this study.



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