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## A Love That Dare Not Speak: Empire's Impact on Sodomy Persecutions in Victorian London

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**A Love That Dare Not Speak:**  
Empire's Impact on Sodomy Persecutions in Victorian London

By

Kristina Kelehan

Accepted in Partial Completion  
of the Requirements for the Degree  
Master of Arts

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GRADUATE SCHOOL

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Kristina Kelehan

24 May 2022

**A Love That Dare Not Speak:**  
Empire's Impact on Sodomy Persecutions in Victorian London

A Thesis  
Presented to  
The Faculty of  
Western Washington University

In Partial Fulfillment  
Of the Requirements for the Degree  
Master of Arts

by  
Kristina Kelehan  
May 2022

## Abstract

The last few decades of 19<sup>th</sup> Century Victorian London witnessed a dramatic spike in sodomy persecutions. Some of these trials are well known, such as Oscar Wilde, while many others are mere blots on the historical record. Historians have examined this period, and the corresponding trials, to outline the development of the modern homosexual identity in England. This thesis, rather, examines how this period witnessed a resurgence of heteronormative gendered expectations, particularly regarding masculinity. In outlining these changes, particular attention is focused on grounding the (in)famous Labouchere Amendment, or Clause 11 of the Criminal Law Amendment Act, 1885, back into its historical roots of the Contagious Diseases Acts of the 1860s. Previous scholars have treated this amendment as unrelated to the larger bill, however, in tracing this root, this thesis argues that the laws reflect larger societal shifts within Victorian England. These larger social shifts are rooted in connections between masculinity and empire, as connected through a militarized society. As England became the empire the sun never set on, imperial concerns, rooted in a militarized masculinity, were a constant focus for contemporaries who viewed sodomy as a threat to masculinity, and hence the empire. By analyzing the intersection of empire, militarization, and masculinity, this thesis seeks to answer why this period witnessed an increase in sodomy trials – a crime that had been prosecuted for centuries – to understand how the British understood sexual deviancy in the metropole, and its relation to their Empire.

## Acknowledgements

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## **Introduction**

## The Love that Dares Not Speak

*'What is thy name?' He said, 'My name is Love.'  
Then straight the first did turn himself to me  
And cried, 'He lieth, for his name is Shame,  
But I am Love, and I was wont to be  
Alone in this fair garden, till he came  
Unasked by night; I am true Love, I fill  
The hearts of boy and girl with mutual flame.'  
Then sighing, said the other, 'Have thy will,  
I am the love that dare not speak its name.'<sup>1</sup>  
Lord Alfred Douglas, 1894*

Lord Alfred Douglas, remembered as the lover of Oscar Wilde and the root of Wilde's fall from grace, dubbed sodomy the 'love that dare not speaks its name'. Many euphemisms have described the crime of sodomy, but Douglas' phrase has remained a constant since Wilde's trials in 1895 where he was eventually convicted of 'acts of gross indecency' (the legal euphemism starting in 1885 in England) and sentenced to hard labor. However, before this famous trial, sodomy was explicitly condemned in English civil law.

Sodomy entered the civil law code in 1533 in England.<sup>2</sup> Prior to this change, it fell under ecclesiastical courts as a sin. With minor changes in the sixteenth century, sodomy continued to be considered a civil crime until the 1950s. As Britain amended its civil law code throughout the nineteenth century, based on rising liberal ideologies, sodomy as a civil crime was amended as well. The (in)famous Clause 11 of the Criminal Law Amendment Act, 1885 is well known by scholars of homosexuality in England. This clause, commonly referred to as the Labouchere Amendment, was introduced to Parliament by Member of Parliament (MP) Henry Labouchere and changed how sodomy was prosecuted to include regulation of consensual sex between men in the

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<sup>1</sup> Lord Alfred Douglas, "Two Loves" in *The Chameleon*, December 1894

<sup>2</sup> This process began as part of Henry VIII's split from the Pope and his attempt to assert dominance over the Church. As Queen Mary and Queen Elizabeth came to the throne, a Catholic and Protestant respectively, this law moved between the ecclesiastical and civil courts in the sixteenth century.

private sphere. Legally, sodomy included anal sex between men, anal sex between men and women, and bestiality, however the definition became blurred during the nineteenth century as trials focused almost exclusively on sex acts between men. Scholars such as Jeffery Weeks have identified this law, the Labouchere Amendment, as the root of the modern homosexual identity and the cause for the increase of sodomy prosecutions in the last two decades of the nineteenth century. At first glance, this change in law and increase in cases appear to coincide. However, these changes are a culmination of legal changes that reflect broader social and cultural concerns already in place before the passage of the Labouchere Amendment.

Victorian England witnessed a steady rise in the prosecution of the crime of sodomy with a significant spike in the 1880s and 1890s. This spike in prosecutions has been analyzed by historians for decades (listed below). Historians have focused on the cultural changes of masculinity and femininity and the impacts of sexology, psychoanalysis, and the term 'homosexual' to explain this increase. However, historians have not explored the intersection of empire and its connection to masculinity. By adding this aspect to existing literature, I will not only answer how and why this rise in cases happened, but it will give further credence to understanding how the British understood sexual deviancy, and its relation to their Empire and standing in the world.

While scholars like Graham Dawson have long studied British military masculinities, and others like Ronald Hyam the history of sexuality within the empire, little attention has been paid to how these come together at the end of the nineteenth century and in the context of Africa where interests of empire were hotly contested. In fact, much of the work on queerness and the military stems from the late-eighteenth and early nineteenth centuries where the sexual acts of men in the British Navy were of particular concern. This work will critically consider how ideas about masculinity, especially concerning the military and the importance of the modern British man

within the empire, were shaped by competing understandings of sex and sexuality. I argue that the concern for protecting the empire was a militarizing force upon society that impacted ideals of masculinity for all men, regardless of military or civilian status. Scholars such as Sean Brady and Harry Cocks have examined the role of masculinity in studying these cases, and Ed Cohen and Charles Upchurch have examined larger cultural shifts to explain this increase in cases. This thesis, which argues that fears and ideals of empire impacted these concerns, contributes to a broader understanding of the intersectionality between social controls of gender and gender as performance.

I seek to ask how themes of inclusion and exclusion functioned when it came to questions of same-sex intimacy, how societal expectations interacted with laws and the legal system, and how those deemed queer are policed by society. Connecting these themes with my work, I want to explore how queer individuals, and other marginalized groups, are treated and/or excluded from the societal center of cultures. Alongside Edward Said's theory of orientalism, I see representations of "othered" and marginalized groups reflecting concerns of those in the center of power. I view masculinity as a construct to keep the modern British male aligned with British military and imperial ideologies. Those who epitomize the ideal are celebrated heroes of the empire, but those who do not toe the line, such as Oscar Wilde, are ostracized. These cultural aspects are evidenced in public discourse, and they can eventually merge into legal practices as visible in the Labouchere amendment, which made it easier to prosecute the crime of sodomy. This public and legal discussion is an ongoing and continuous didactic dialogue within societies.

Since before the advent of Michel Foucault's *History of Sexuality*, scholars of sexuality have sought to understand how the aspects of law and crime have coincided. Jeffrey Weeks, arguably one of the most prolific scholars on the topic, connects the rise in sodomy cases as the

starting point for reform organizations that culminated with the Gay and Lesbian Liberation movements in England of the 1960s and 1970s. Weeks' primary argument in *Coming Out: Homosexual Politics in Britain, from Nineteenth Century to the Present* is the correlation of Victorian sexual mores in relation to a capitalistic society concerned with producing more individuals to work.<sup>3</sup> By focusing on capitalism within society, Weeks argues that sodomy is a crime because by definition it is not procreative. Weeks focuses on sodomy laws as identification of a homosexual culture of deviants.<sup>4</sup>

Adding to Weeks' understandings, Ed Cohen analyzes the broader cultural discussions that led to this rise in cases and the Labouchere Amendment, culminating in the Oscar Wilde trials in 1895. Cohen's work looks at the sodomy trials of Oscar Wilde, but instead of solely focusing on the trials themselves, Cohen looks at the public discourse around them, both what was specifically discussed and what was left for contemporaries to weed out. Cohen adds to the broader historical context of the discourses around masculinity during the late nineteenth-century. Cohen's work is not an addition to the scholarship focusing on Oscar Wilde's trials, but instead it contributes to historicizing the societal framework Wilde's trials occurred in, and its longer-term social and cultural implications by "charting the transformations in the meanings ascribed to the criminalization of sexual acts between men."<sup>5</sup> In doing so, Cohen is able to identify how Wilde came to represent the "decadent dandy"<sup>6</sup> that was scorned by respectable Victorian England, and reasserts Weeks' argument of this period being the formation of a homosexual identity that was juxtaposed to its binary heterosexual ideal within masculinity.<sup>7</sup> Cohen spends an inordinate amount

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<sup>3</sup> Jeffrey Weeks, *Coming Out*, p. 4-6

<sup>4</sup> Jeffrey Weeks, *Coming Out*, p. 20

<sup>5</sup> Ed Cohen, *Talk on the Wilde Side*, p. 5, 92

<sup>6</sup> Ed Cohen, *Talk on the Wilde Side*, p. 99

<sup>7</sup> Ed Cohen, *Talk on the Wilde Side*, p. 18-19, 28

of time focused on school reforms, particularly the anti-masturbatory programs and the developing focus on sports for school boys. This link is an intricate aspect of cultural norms surrounding masculinity, beginning with boyhood to develop an appropriately masculine man.

Maintaining a microcosmic view of cases, Morris Kaplan's *Sodom on the Thames: Sex, Love, and Scandal in Wilde Times* analyzes notorious sodomy scandals in the late nineteenth century. With this approach, Kaplan works to complicate the previous assumptions of "attitudes toward male homoeroticism."<sup>8</sup> In focusing on the scandals of 'Stella and Fanny,' the 'Cleveland Street Affair,' and the disgraceful resignation of an Eton school Master, Kaplan outlines how these events impacted society that led to the eventual downfall of Oscar Wilde. Kaplan's analysis is a microcosmic view not only of the trials (both inside the courtroom and one that never materialized in the courts) connected to apprehensions of homosocial connections, namely male friendships.

Harry Cocks picks up the thread of examining masculinity and its connections to the sodomy trials. However, Cocks' pushes against Weeks and Cohen that the Labouchere Amendment was a break from previous legal practices and identifies this law as "part of a process which had begun a century before."<sup>9</sup> Within this approach, Cocks traces the development of the silencing of homosexuality (i.e., the development of 'the closet') and instead examines changes in the middle of the nineteenth century as a starting point for the homosexual identity and regulation that culminated in the 1880s and 1890s.<sup>10</sup> In his work, Cocks examines the crime of sodomy as well as the lesser charges of assault with sodomitical intent, to argue that the 1830s and 1840s were the high points of sodomy prosecutions in England during the nineteenth century. During this

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<sup>8</sup> Morris Kaplan, *Sodom on the Thames*, p. 6

<sup>9</sup> Harry Cocks, *Nameless Offences*, p. 17

<sup>10</sup> Harry Cocks, *Nameless Offences*, p. 1

period, as argued by Cocks, the change with policing, along with the Christian traditional view of sodomy, is the root cause of this increase.<sup>11</sup>

Although Cocks' inclusion of the lesser charges is important, scholars should not ignore that the late 1880s and 1890s witnessed an increase in sodomy trials - as compared to sodomy and its lesser charges which Cocks focuses on. The evidence for sodomy charges were significant as it required "at least two eyewitnesses and evidence of both penetration and ejaculation."<sup>12</sup> Although various laws altered minute aspects of the law and requirements necessary for a conviction, the increase in cases reflects an increase in reporting of the crime to the authorities, an increase in the willingness of police to investigate this crime, an increase of the courts willingness to prosecute this crime, and an increase of individuals willing to serve as witnesses for the prosecution to obtain a conviction. Being charged with sodomy, not simply a lesser charge of intent, elucidates a growing concern surrounding sodomy as more cases were brought to trial. Along with this focus, the numbers Cocks uses are not reproducible making it difficult to blindly accept his assertions.

Within Cocks' reframing of the starting point of a homosexual identity, Charles Upchurch's *Before Wilde: Sex between Men in Britain's Age of Reform* seeks to understand how British society understood and discussed sodomy beyond the legal sphere. Upchurch looks at the morals of the period and seeks to historicize them within this larger conversation of masculinity and sodomy.<sup>13</sup> Exploring how these cases changed and how they were reported for the public during this period, Upchurch distinguishes how individuals who committed sodomy were able to maintain their masculine identities within society. Along with this grounding, Upchurch also traces

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<sup>11</sup> Harry Cocks, *Nameless Offences*, p. 7

<sup>12</sup> Clive Emsley, Tim Hitchcock, and Robert Shoemaker, "Communities - Homosexuality"; the evidentiary requirement of emission of sperm was solidified in 1781 according to H. Cocks, and was removed in 1828 – Harry Cocks, *Nameless Offences*, p. 32-34

<sup>13</sup> Charles Upchurch, *Before Wilde*, p. 1

the families and communities of the men who practiced sodomy.<sup>14</sup> Then Upchurch analyzes the larger societal changes during the first half of the nineteenth century.<sup>15</sup> Although Upchurch's work is important, his focus and sources remain primarily outside the purview of the law and attempts to understand the individuals who practiced sodomy and how they saw themselves within society. Instead, I seek to understand how those who practiced sodomy were understood by society.

Building on aspects of masculinity within society is John Tosh's *A Man's Place: Masculinity and the Middle-Class Home in Victorian England*. Tosh explores the Victorian household as foundational to notions of masculinity and Victorian society. Within this 'private sphere,' typically deemed the sphere of the wife, was still under the control of the husband/father and this dynamic of the Victorian household was the root of the social order and a microcosm of the state.<sup>16</sup> With these ideals, men were expected to always act like an ideal father figure and husband while maintaining their existence in the public sphere of men.<sup>17</sup> Concentrating on the domestic sphere, Tosh traces the cultural shifts regarding masculinity and how this outlook impacted societal expectations of men and the role these men were expected to exemplify.

Sean Brady, in his work *Masculinity and Male Homosexuality in Britain, 1861-1913*, focuses solely on the ideals of manhood and masculinity during this period. In identifying the proscriptions for masculinity, Brady elucidates the facets of an ideal (heterosexual) Victorian man. In doing so, Brady recognizes the importance of family within masculinity in the late nineteenth century, the juxtaposition in which deviant men were viewed, and why "public discussions of sex and sexuality" was perpetuated.<sup>18</sup> Brady argues that masculinity was a social status during this

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<sup>14</sup> Charles Upchurch, *Before Wilde*, p. 2

<sup>15</sup> Charles Upchurch, *Before Wilde*, p. 4

<sup>16</sup> John Tosh, *A Man's Place*, p. 5

<sup>17</sup> John Tosh, *A Man's Place*, p. 4-5

<sup>18</sup> Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913*, p. 1



period that sodomy challenged to help understand “the self-making of British homosexual men”.<sup>19</sup> Within this context, Brady demonstrates this crucial aspect for understanding homosexuality and the crime of sodomy during this period which, Brady argues, is lacking in the previous scholarship.

Further expounding the connection between respectability as a social status and manhood is George L. Mosse. Mosse looks at the connections between nationalism and respectability in his article "Nationalism and Respectability: Normal and Abnormal Sexuality in the Nineteenth Century." Mosse argues that contemporaries viewed crime "as affecting the whole personality" and those infected were a threat to both their own well-being and the well-being of the nation.<sup>20</sup> Mosse puts forth a foundational connection between masculinity and Empire, but he largely explores these connections in relation to Germany and leaves it open for others to explore this connection in England.

Scholars examining sodomy and homosexuality in Victorian England have not yet explored the connection of these trials, and the rise of concerns around the 'homosexual' in general, with British Imperialism and ideas of protecting the empire. John MacKenzie argues that the "effects of Empire" gave "the British a world view which was central to their perceptions of themselves. Even if they knew little and cared less about imperial philosophies or colonial territories, nonetheless imperial status set them apart, and united a set of national ideas which coalesced in the last three decades of the nineteenth century."<sup>21</sup> And Philippa Levine argues that “[t]hroughout the colonial period, in Britain as well as in the colonies, sexuality... was the literal subject of an endlessly mapped metaphor for the necessity of colonial rule.”<sup>22</sup> Within this process it “becomes apparent [there] is a widespread concern in Britain” regarding “sexuality” as “many in Britain

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<sup>19</sup> Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913*, p. 2

<sup>20</sup> George L. Mosse, “Nationalism and Respectability,” p. 226

<sup>21</sup> John M. MacKenzie, *Propaganda and Empire: The Manipulation of British Public Opinion, 1880-1960*, p. 2

<sup>22</sup> Philippa Levine, “Sexuality and Empire” in *At Home with the Empire*, p.129

understood empire *as* sexuality, in which everything about and in the colonies took on a sexualized quality.”<sup>23</sup> This connection to empire and ideas held by the British in the last decades of the nineteenth century influenced many aspects of daily life, including ideals and concerns around sexual deviancy. This ideological impact on sodomy is a significant aspect of fully understanding the prosecution of sodomy and why this crime was feared by contemporaries.

More importantly, Levine argues in *Gender and Empire* “sex was a significant imperial policy issue and a ‘key site of colonial anxieties’... [as s]ex was something that needed regulating and managing. Unrestrained sexuality was an unending threat to Empire; it undermined notions of British moderation and rationality.”<sup>24</sup> Within this work Levine focuses on how colonists sought to change and control colonized peoples, and these practices were supported by Whitehall in London. Within the British empire, “masculinity connoted sexual dominance and power... [a]nd in as masculine an environment as the Empire, male sexuality was an issue governments [*sic*] could ignore only at their peril.”<sup>25</sup> This aspect of male sexuality was important to the empire, but Levine’s focus is on how this concern was regulated in colonized spaces.

Another scholar of British empire, Ronald Hyam, analyzes how the elite of the empire understood sex and sexuality. By looking at the sex lives of several prominent men and women in the empire who were viewed as scandalous. Then he traces public servants and their ideals about marriage, celibacy, and women, especially General Gordon and his supposed a-sexuality and platonic love of young boys. Within these narratives, Hyam identifies the British purity movement as influencing and changing sexual practices throughout imperial locales – including prostitution, sodomy, and concubinage. Within this campaign, it was thought that “the imperial race must

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<sup>23</sup> Philippa Levine, “Sexuality and Empire” in *At Home with the Empire*, p.129

<sup>24</sup> Philippa Levine, “Sexuality, Gender, and Empire” in *Gender and Empire*, p. 134

<sup>25</sup> Philippa Levine, “Sexuality, Gender, and Empire” in *Gender and Empire*, p. 137

exercise sexual restraint, and [the] government must intervene to enforce it.”<sup>26</sup> Although Hyam focuses on how these attitudes played out in various imperial spaces instead of England itself, his observations are important for understanding the connections between sexual deviance and imperial concerns within the metropole.

With these varying starting points, scholars have acknowledged that the increase in cases at the end of the nineteenth century were influenced by fears surrounding the British Empire, but I am not aware of any who have explored this relationship.<sup>27</sup> As this period is largely viewed as the height of the Pax Britannica, I explore how these aspects connected. England expanded into Africa, both in Egypt to protect and control the Suez Canal (her quickest access to India and the 'Crown of the Empire') and South Africa where gold and diamond mines had been discovered in the second half of the nineteenth century. These events, along with the Boer Wars, explorer's discoveries, and Christian missions, were covered in detail in the London newspapers. The middle and upper classes were routinely informed of the precious and precarious place their empire held within the world. I view the concerns of empire, and its connections to masculinity, as intricately linked to explanations regarding this increase in sodomy cases at the end of the nineteenth century as individuals attempted to control and correct sexual deviancy at home to defend their empire. Along with this, the state justified taking a more active role in prosecuting the crime of sodomy in private spaces as society became militarized. I argue these issues converge at the intersection between empire and the need for masculine men to protect its empire at home and abroad.

Cynthia Enloe adds what is the crux of the connection between sexuality, and in particular the crime of sodomy, and empire. Enloe's work *Does Khaki Become You?* traces the militarization of sexuality, particularly the militarization of prostitution. Although Enloe's work focuses on the

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<sup>26</sup> Ronald Hyam, *Empire and Sexuality*, p. 1

<sup>27</sup> Ed Cohen, *Talk on the Wilde Side*, p. 211

militarization of women's sexuality, her analysis can be extrapolated and applied to the militarization of male sexuality and how sodomy was viewed as a threat to the militarized society of Imperial Victorian England.

Within this process, I attempt to historicize the Labouchere Amendment by placing it back into its larger legal context as a law within a continual process. I agree with Cocks that "Labouchere's amendment of 1885 did not revolutionise [*sic*] the law or move its focus from sexual acts to particular 'homosexual' types of people."<sup>28</sup> However, I see the root of this process in the emergence of a militarized society in England in light of her empire as statute law "confirm[s] patterns of policing, sentencing and prosecution which had grown up in response to local necessity."<sup>29</sup> Using Enloe's definition of militarization "as a process with both a material and an ideological dimension" I see this specifically applying to sodomy with "the gradual encroachment of the military institution into the civilian arena."<sup>30</sup> The root of this militarization within society that became codified in statute law is visible in the connections between the Contagious Diseases Acts and the Criminal Law Amendment Act, 1885.

The Contagious Diseases (C.D.) Act was passed in 1864, with edits and alterations in 1866 and 1869. These C.D. Acts sought to curb the spread of venereal diseases by prostitutes in military port towns. In other words, the Contagious Diseases Acts were meant to protect the health of military men. In practice, the Contagious Diseases Acts allowed police to indiscriminately inspect women, who were thought to be prostitutes, for venereal disease.<sup>31</sup> This meant that women were prone to invasive inspections by police and military doctors, but not soldiers or sailors. This double-standard outraged feminists and they worked to end these laws and hold men accountable

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<sup>28</sup> Harry Cocks, *Nameless Offences*, p. 31

<sup>29</sup> Harry Cocks, *Nameless Offences*, p. 22

<sup>30</sup> Cynthia H. Enloe, *Does Khaki Become You?*, p. 9

<sup>31</sup> Judith R. Walkowitz, *Prostitution and Victorian Society*, p.72-74

for their sexual proclivities, not women. A part of this argument, according to feminists, was the sexual immorality of men being unchecked and poor women having no alternative means of income. These protests led to the Criminal Law Amendment Act, 1885, with a focus of preventing women and girls from entering prostitution in the first place.

Within Parliamentary debates discussing ways to prevent girls and women from entering prostitution and punish those who kidnapped them as part of the ‘white slave trade’ in England and her empire, Member of Parliament (MP) Henry Labouchere introduced his amendment. The inclusion of the Labouchere Amendment at first glance seems askew and unrelated to the broader aspect of the Act, and as such, it has been viewed by scholars as separate from the larger process the Criminal Law Amendment Act sought to address. However, in tracing the origins of this law, one can see that these concerns both reflect the fears surrounding empire during this period and its connections to concerns over sex and sexuality.

I look at the trend of growing increases of cases that culminated in the 1890s (with almost 300 cases tried). Scholars like Cocks have focused on understanding when and why the increase started (by looking at sodomy and lesser charges in comparison to population increases) and limited themselves to one decade as a turning point. I want to understand the trend as a whole and I see the 1890s as the culmination of this trend. My work does not seek to contribute to historical understandings of homosexual identity formation, such as Weeks and Brady, but instead seeks to understand the larger societal values that both pigeonholed these individuals into groups while at the same time prosecuting them with more fervor. By focusing on the cases reported in the *Old Bailey Sessions Papers*, I focus on the trends of these cases and go beyond the limited sensational trials typically discussed by scholars. In connecting this increase to empire, I do not argue that Britons had empire constantly on their mind, but rather, it is in the location of empire where

continental European competition played out that was a concern to the tiny island and her people - at least the ruling elite who concerned themselves with it.

By focusing on trials within the Old Bailey, these sources are primarily focused on issues within London. Scholars such as Matt Cook have outlined the importance of London as an imperial space. With an understanding that London is the Metropole of the empire, understanding these cases within this larger context further illuminates the connections between concerns of imperial success and societal controls of sex and sexuality within this space. Along with this physical connection, the importance of concentrating on aspects of laws and criminal records allows one to see, as Thomas McGinn calls, “law in society”<sup>32</sup> as a “social control”<sup>33</sup> for the “maintenance of social order.”<sup>34</sup> Cultural events, such as Oscar Wilde’s trials and the ensuing spectacle, do not happen in a vacuum from political and legal concerns. Within this process one views the policing of social boundaries of the ‘normal’ and ‘abnormal’ as determined by the society and reinforced by the state.

Prior to the 1860s, sodomy cases were reported in the *Sessions Papers* in explicit detail for the public to read as it contained the indictment, a summary of discussion points, questions and answers from witnesses, details of the actions the men were being charged with, and the verdict from the trial. These cases were treated as sensational events for the public as there were fifteen or fewer cases per decade prior to the nineteenth century.<sup>35</sup> I focus on pamphlets (the *Sessions Papers*), published with the approval of the London Mayor, which summarize the cases in the Old Bailey Sessions trials. The records that remain are not complete trial records, but the changes

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<sup>32</sup> Thomas A. J. McGinn, *Prostitution, Sexuality, and the Law in Ancient Rome*, p.4

<sup>33</sup> Thomas A. J. McGinn, *Prostitution, Sexuality, and the Law in Ancient Rome*, p.7

<sup>34</sup> Thomas A. J. McGinn, *Prostitution, Sexuality, and the Law in Ancient Rome*, p.8

<sup>35</sup> Tabulating decade where offence category is sodomy, between January 1674 and December 1899. Counting by offence.

witnessed in these records reflect larger social and cultural concerns. And as Laura Ann Stoler has argued, reading the archive as it exists is still useful and insightful for the scholar.<sup>36</sup>

Within this process, I examine three main aspects of this debate. Chapter one begins with a brief *long durée* approach to situate the reader regarding the crime of sodomy in England to demonstrate how the changes in the nineteenth century, particularly the last few decades of the nineteenth century, were dramatic shifts in how this crime was viewed, reported, and understood by contemporaries. Alongside this historical focusing, I discuss aspects of Victorian masculinity and its connections to fears of sodomy.

In the second chapter I focus on the legal changes, particularly the debates surrounding the introduction, implementation, and repeal campaigns of the Contagious Diseases Acts. In tracing this discussion, I locate the emergence of the Criminal Law Amendment Act, 1885 (and the debate surround the Labouchere Amendment in Parliament) with its roots firmly planted in concerns of the military. Within these debates one can view the emergence of a militarized society seeking to control gender, sex, and sexuality.

Finally, in the third chapter I examine the cases from the 1860s until the end of the century. I focus on the aspects of how these cases were reported to the public and the emerging patterns that are visible within these reports. Accompanied by this, I explore how the public was kept informed of these cases without the press risking the pollution of public morals. After the 1860s, as Victorian England became militarized and found previous levels of detail from these trials unacceptable, details disappeared and what replaced it was an unemotional formula that served the purpose of information the public while (mostly) avoiding scandal and public outrage.

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<sup>36</sup> Laura Ann Stoler, *Along the Archival Grain*

In the conclusion I connect these elements to solidify an ‘outside looking in’ approach to understand, not how homosexuality or those accused of sodomy understood themselves, but rather how society viewed and understood sexual deviancy. Within this process I connect activities of Empire to the fears surrounding masculinity to understand why sodomy was a threat to the British Empire that needed policing and legislation.

Within these chapters, it is important to note that although Michel Foucault’s work has shaped my understanding and reading of this history, his theories of the ‘repressive hypothesis’ and the ‘panoptic’ are not explored in this work. Also, during this period, although sex between women did occur, and some feared the moral ineptitude of women who were thought to have same-sex desires, sex between women was not legally a crime. Due to its lack of criminality and limited sources, this thesis will not examine society's concerns and issues with regards to sex between women. I also do not include military court records and laws as my focus is that of society outside of the military and how imperial ideals influenced the broader culture.

Victorian England witnessed a steady rise in the prosecution of the crime of sodomy during the second half of the nineteenth century, with a significant spike in the 1880s and 1890s. This spike in prosecutions has been analyzed by historians for decades (listed above). Historians have focused on the cultural changes of masculinity and femininity, Christian thought and reforms, the impacts of sexology, psychoanalysis, and the creation of the term 'homosexual' to explain this increase. However, historians have not explored the intersectionality of empire and its connection to masculinity. By adding this aspect to existing literature, I will not only answer how and why this rise in cases happened, but this will give further credence to understanding how the British viewed the importance of maintaining moral superiority in the metropole and the threat of sexual deviancy to their Empire.



## Chapter 1

## **Masculinity and the Crime that Threatened it: Sodomy in England until the 1860s**

*“Passion is selfish; fancy is fickle; they go by the name of love till passion is burnt out and you see the ghastly ashes; or till fancy flits and shows the vacancy behind. You have not begun to love till you have begun to sacrifice, till you feel that your chief spring of joy is denial of self”<sup>37</sup> –  
James B. Baldwin, 1883*

Sodomy is a highly gendered crime that historically focuses on the role of men during sex. In Ancient Greece and Ancient Rome, the rejection of sex between men was linked to notions of controlling oneself and only in controlling one's desires could one serve the state effectively. Their ideas were intricately linked to notions of what role one should play during sex – the man should be the 'active' partner while the woman should be 'passive'. These principles reemerged in Victorian England connecting ideas of sex and citizen as part of the Victorians valorization of the Greeks and Romans. During the Middle Ages, this fear of sex between men was subsumed by the Church and became a moral crime. According to Mark D. Jordan, medieval theologians invented the term sodomy in the eleventh century.<sup>38</sup> Granting the invention of the term *sodomia* to Peter Damian, Jordan argues that the term originally identified the "sin of denying God" and was linked to the story of Sodom in the Old Testament.<sup>39</sup> This shift of understanding sex between men, now sodomy, again altered in England, under Henry VIII in 1533, to become a crime that the state was concerned with policing and punishing and the attempt to (re)assert the state, especially the King, over the Church.<sup>40</sup> Although this crime moved between the state and ecclesiastical courts throughout the sixteenth century, afterwards it remained a solidly civil and state concern. By the eighteenth century, England viewed the crime of sodomy as both abhorrent and sensational as evidenced by the trials (below). And this change continued as nineteenth century England once

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<sup>37</sup> James Brown, *The Home: In Its Relation to Man and to Society*, p. 18

<sup>38</sup> Mark D. Jordan, *The Invention of Sodomy in Christian Theology*, p.1

<sup>39</sup> Mark D. Jordan, *The Invention of Sodomy in Christian Theology*, p.29

<sup>40</sup> Rictor Norton, *Mother Clap's Molly House*, p. 15

again altered its response to sodomy trials and its meanings. The consistent between all these changes, however, was the concern and focus on sodomy's connections to masculinity, anxieties surrounding the role men played in society, and how their sexual activities reflected their ability to achieve a socially defined masculine ideal.

In the eighteenth and nineteenth centuries, sodomy trials in London took place at the Central Criminal Court in the Old Bailey Courthouse (called the Old Bailey). The Old Bailey Proceedings (or *Sessions Papers*) are summaries of the cases the Old Bailey tried each session - or meeting of the Court – and were published regularly for the general public, but are not complete trial records.<sup>41</sup> Although the printers and the editors of the *Sessions Papers* (and after 1775, with the influence and monitoring of the City) determined what to publish, their focus was on both cost and readership.<sup>42</sup> There was an expectation by contemporaries that these *Sessions Papers* were an accurate reflection of the trials, as even the Crown used them for potential pardons for those convicted and "sentenced to death".<sup>43</sup> Keeping in mind that the *Sessions Papers* are not complete trial records, the recordings are a useful source for what was remembered from and viewed as important to disseminate to the public after the trials concluded.<sup>44</sup> This is especially important as common law relies heavily on precedent, and influenced later views and opinions regarding the crime of sodomy. Within these *Sessions Papers*, one sees the typical sensationalism and abhorrence this crime, and particularly those who were found guilty, faced. These reports also detail the public's knowledge of this crime and its participants.

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<sup>41</sup> Clive Emsley, Tim Hitchcock, and Robert Shoemaker, "The Proceedings - Publishing History of the Proceedings"

<sup>42</sup> Robert B. Shoemaker, "The Old Bailey Proceedings and the Representation of Crime and Criminal Justice in Eighteenth-Century London," p. 563

<sup>43</sup> Robert B. Shoemaker, "The Old Bailey Proceedings and the Representation of Crime and Criminal Justice in Eighteenth-Century London," p.564

<sup>44</sup> Robert B. Shoemaker, "The Old Bailey Proceedings and the Representation of Crime and Criminal Justice in Eighteenth-Century London," p. 566

Within these trials one can trace the influence of reforming societies such as the Reformation of Manners which emerged in 1690 which sought to rectify sexual misconduct in English society. The Reformation of Manners was a movement led by Evangelicals and others with the goal of “moral policing of towns” with an ideology “that such morals should apply equally to... [all] classes.”<sup>45</sup> However, the Reformation of Manners often focused on identifying and taking down “prostitution, profanity, general public immorality”, and groups congregating in bawdy houses, including Molly Houses.<sup>46</sup> Although the Reformation of Manners primarily worked through the state to curb these vices, sodomy was a significant concern, and they blamed those from the empire (from “hotter climates”) for the return of sodomy to England:

Once more; since that most detestable and unnatural Sin of *Sodomy*, which but rarely appears in our Histories, and that among Monsters and Prodigies, has been of late transplanted from the hotter Climates to our more temperate Country, and has dared to shew its hideous Face among a People that formerly had it in the utmost Abhorrence; it is now become the indispensable Duty of the Magistrate to attack this horrible Monster in Morality, by a vigorous Execution of those good Laws, that have justly made that vile Sin a Capital Crime... However, for the Sake of the Dignity of our Nature, and the Honour of the Reformed Christian Religion, our most zealous Efforts ought to be exerted against this abominable Sin... the Laws have severely punished this execrable Crime.<sup>47</sup>

This sermon both attacks the crime itself and praises the state for severely punishing the crime. Religious condemnation of sodomy is evident in the understandings and reporting of sodomy cases to the public. This society not only denounced sodomy and influenced the language used to understand this “vile sin,” it worked to identify and bring to the attention of the courts those partaking of “this execrable Crime” for appropriate punishment.

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<sup>45</sup> Cocks, Harry. "Safeguarding Civility" p.125

<sup>46</sup> Rictor Norton (Ed.), "Reformation Necessary to Prevent Our Ruin, 1727," *Homosexuality in Eighteenth-Century England: A Sourcebook*. Updated 29 April 2000, amended 24 July 2002  
<<http://www.rictornorton.co.uk/eighteen/1727ruin.htm>>.

<sup>47</sup> Rictor Norton (Ed.), "Reformation Necessary to Prevent Our Ruin, 1727," *Homosexuality in Eighteenth-Century England: A Sourcebook*. Updated 29 April 2000, amended 24 July 2002  
<<http://www.rictornorton.co.uk/eighteen/1727ruin.htm>>.

One of the most famous cases the Reformation of Manners informers are credited with is the raid on Mother Clap's molly house in 1726.<sup>48</sup> A 'molly house' refers to a "network of alehouses [where] homosexual men met" and it is here that we find evidence of both male prostitution and homosexual activities.<sup>49</sup> The term 'molly' is an eighteenth-century slang term for gay men "taken from the Latin *mollis* meaning "soft".<sup>50</sup> The trials following the raid on Mother Clap's molly house give insight to the activities of those who frequented such locales in the eighteenth century.

Mother Clap's molly house and the subsequent raid that brought several patrons, including the owner of the house (Margaret Clap) to trial, is one of the most popular molly houses known to historians. One reason this case is significant is how many individuals were caught and brought to trial with sufficient evidence for a conviction and subsequent death. An insider turned informant (a key aspect of these 'victimless' crimes) brought a constable, Samuel Stevens, with him to Mother Clap's house pretending the constable was his "husband" to ensure Stevens was accepted into the house without question.<sup>51</sup> This setup led to the arrest and prosecution of several persons.

Although not a participant of sodomy herself, Margaret Clap was tried for keeping a house "in which she procur'd and encourag'd Persons to commit Sodomy."<sup>52</sup> Within her trial, constable Stevens testifies that he went to her house (with the informant) and "found near Men Fifty there, making Love to one another as they call'd it" where some of the men would "sit in one anothers Laps, [and] use their Hands indecently."<sup>53</sup> Stevens continues sharing details about the activities of the house, including the rooms in the back of the house where men would perform marriage ceremonies, and upon their exit of these rooms the men would return to the group and "brag in

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<sup>48</sup> Clive Emsley, Tim Hitchcock, and Robert Shoemaker, "Communities - Homosexuality"

<sup>49</sup> Clive Emsley, Tim Hitchcock, and Robert Shoemaker, "Communities - Homosexuality"

<sup>50</sup> Clive Emsley, Tim Hitchcock, and Robert Shoemaker, "Communities - Homosexuality"

<sup>51</sup> Rictor Norton, *Mother Clap's Molly House*, p. 55

<sup>52</sup> *OBP*, July 1726, trial of Margaret Clap (t17260711-54)

<sup>53</sup> *OBP*, July 1726, trial of Margaret Clap (t17260711-54).

plain Terms, of what they had been doing" as well as "Dance and make Curtsies and mimic the Language of Women" in the main room of the house.<sup>54</sup> Mother Clap's crime, as articulated by Stevens, was her presence throughout these activities and allowing these men to act in this way in her home. At the time of her trial, several men who had been arrested at her house had been tried, convicted, and hanged for sodomy, which held significant weight in the deliberations, and she was found guilty. This type of support and acceptance for those who practiced sodomy disgusted the public. Her punishment was "to stand in the Pillory in Smith field, pay a Fine of 20 Marks, and suffer two Years Imprisonment."<sup>55</sup> There is no known record of Margaret Clap after this incident.

In William Brown's trial, one can see how sodomy practices existed outside of the molly houses. Thomas Newton, while working as an informant for the constables, gives insight into how men would solicit sex in a public location with other men. While walking "in the upper Moorfields, by the Side of the Wall" Newton knew "a Place that Sodomites frequented, and was well acquainted with the Methods they took in picking one another up." Newton then recounts how the prisoner (Brown) walked past Newton, and after a little while Brown proceeded to lean "up against the Wall as if he was" urinating on the wall and slowly moved back to where Newton was standing. When Brown was close to Newton, Brown started up a conversation and took Newton "be the Hand, and" as Newton did not protest, Brown "guides" Newton's hand to Brown's "Breeches, and puts his Privities into it."<sup>56</sup> This type of activity is likely more common than those frequenting molly houses, but the only insight available is those found in these trials. Discussing how men would proposition each other for sex, Newton discloses men knew locations and codes to solicit sex in public places and what types of activities they would partake in. During the trial Brown

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<sup>54</sup> *OBP*, July 1726, trial of Margaret Clap (t17260711-54).

<sup>55</sup> *OBP*, July 1726 (s17260711-1).

<sup>56</sup> *OBP*, July 1726, trial of William Brown (t17260711-77).

brought "several Men and Women to his Reputation who depos'd that he had been married 12 or 13 Years, had the Character of on honest Man, a kind Husband, and one that loved the Company of Women better than that of his own Sex" but to no avail as Brown was found guilty based on the evidence presented against him.<sup>57</sup>

An example of cases brought to trial later in the eighteenth century is visible in the trials of Robert Crook and Charles Gibson in 1772<sup>58</sup> and Thomas Burrows in 1776.<sup>59</sup> Crook and Gibson were acquitted of the crimes brought to the courts, but Burrows was found guilty and put to death. With a difference of about four years in their trials, these men were tried for having sexual relations with another man. Both the Crook and Gibson trial, and Burrows' trial, are very detailed in their reporting to the public and filled with sexual innuendoes. The *Sessions Papers* summarized some key points of the trials including both the courts questions and individuals' responses to the events that occurred. The Crook and Gibson case begins with a summarization of the indictment followed by witnesses who were called by the prosecution to ask the details of the affair in question and character witnesses of the two men. When questioning John Brittles, a shop mate who lived with Crook, recalled when Crook came home "on the 3d of September" Crook told Brittles that "some man had been treating him [Crook] with six pints of beer, in order to make him drunk." Brittles did not know who the man Crook mentioned was, but while drinking, Crook was asked to "go out to the back yard" with this man and when

he went to make water... the man followed him, put his hand in his breeches, and pulled out his y-d<sup>60</sup>, and said it was a very good one, and he liked it very well; and so he pushed onward to the vault; that after he came there he worked his y - d till he made it f - d<sup>61</sup> in his hand; that afterwards he pushed him down upon the seat, sit

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<sup>57</sup> *OBP*, July 1726, trial of William Brown (t17260711-77).

<sup>58</sup> *OBP*, September 1772, trial of Robert Cook Charles Gibson (t17720909-18).

<sup>59</sup> *OBP* December 1776, trial of Thomas Burrows (t17761204-2).

<sup>60</sup> y-d is slang for 'yard' which was another word often used for penis

<sup>61</sup> f-d is slang for 'frigged' which meant 'to masturbate'

upon him, laid hold of his y - d, and pushed it into his b – e.<sup>62</sup> I asked him if he perpetrated the fact; he said no he did not in the least.<sup>63</sup>

Based on this report, nothing is left to the imagination or reliant on euphemisms and readers are capable of quickly identifying that the two men had anal sex. This detail continues throughout the trial report for almost four pages (in the *Sessions Papers*) and is also visible in Burrows' trial. The questions and answers were very detailed in how these men were brought to trial and the crimes for which they were indicted. Many cases prior to 1800 contain this type of explicit information akin to these two cases.<sup>64</sup>

The beginning of the nineteenth century witnessed a shift in how trials were covered in the *Sessions Papers*. In this shift one can see the continuance of religious condemnation with the addition of links to moral masculinity. Moral masculinity was tied with respectability, good character, and moral resoluteness.<sup>65</sup> Manhood during the nineteenth century had “an exclusive code of manly behaviour and... sexual ambivalence became more and more outlawed.”<sup>66</sup> Compared to previous centuries, sexual desire during the nineteenth century was viewed as a natural passion that “stood out as an untamed and potentially destructive natural impulse” with the need for restraint as central to (a man’s) respectability.<sup>67</sup> Respectable men were thought to have control of their desires and their ability to control themselves was a test of their moral character.<sup>68</sup>

Cases from the beginning of the nineteenth century reflect the budding notions of moral masculinity as specifics surrounding the sexual acts themselves decreased, but during this period the crime was still explicitly acknowledged for the public. This moral concern is evidenced by the

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<sup>62</sup> b-e is likely slang for ‘bumfiddle’ which was a slang word for the buttocks

<sup>63</sup> *OBP*, September 1772, trial of Robert Cook Charles Gibson (t17720909-18).

<sup>64</sup> For example, see *OBP* cases December 1721, trial of George Duffus (t17211206-20); April 1726, trial of George Redear, alias Regar (t17260420-66); October 1761, trial of William Bailey (t17611021-35).

<sup>65</sup> Harry Cocks, *Nameless Offences*, p.119

<sup>66</sup> A.D. Harvey, *Prosecutions for Sodomy in England at the Beginning of the Nineteenth Century.* p. 946

<sup>67</sup> John Tosh, *A Man's Place: Masculinity and the Middle-Class Home in Victorian England*, p.46

<sup>68</sup> Charles Upchurch, *Before Wilde: Sex between Men in Britain's Age of Reform*, p.190



religious condemnation as found in an example case from 1802 where James Fox and Henry Proby were indicted for sodomy but found not guilty of the charges. In the *Sessions Papers* a religiously damning picture is painted for the public as the men

were indicted, the first, for that he, not having the fear of God before his eyes, but being moved and seduced by the instigation of the Devil, upon Henry Proby, wickedly and feloniously did make an assault, and that he diabolically, and against the order of nature, had a venereal affair with the said Henry, and then and there did carnally know him, and did perpetrate that abominable and detestable crime, called sodomy; and the other, for feloniously, wickedly, and diabolically consenting with the said James Fox, and permitting the said James carnally to know him, and commit the said detestable and abominable crime, called sodomy.<sup>69</sup>

This extremely indirect detail reflects how these cases were continually reported to the public with limited sexual specifics and reinforcing the religious condemnation of the crime itself. This focus on condemnation, compared to previous cases, in the reporting of the trial outlines the changing opinion regarding the crime, cultural feelings regarding sodomy, as well as how it was discussed publicly. As well as condemning the crime, the men were judged for “perpetrating” and “consenting” to these acts as they were “seduced” by “the Devil”. This language demonstrates the moral judgements these men faced, not just the condemnation of the crime itself.

Questions, answers, or even details of the crime were not reported on for the public to read as had been done in previous cases (above). This change in the practical elimination of details reported to the public for sodomy cases heard at the Old Bailey, and the increase in public condemnation of these men’s moral failings, reflect the changing ideals of respectable morals and proper public discourse during this period, along with reasserting ‘correct’ masculine behavior. Within this change, however, the crime itself is still explicit for the reader. And in cases such as this where individuals tried were not convicted, the *Sessions Papers* make sure they include an

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<sup>69</sup> *OBP*, July 1802, trial of James Fox Henry Proby (t18020714-25).

explanation for the public to justify why these men were found not guilty of the charges. In this case, the jury felt there was not enough evidence to convict the men of a capital offense.<sup>70</sup>

Following this pattern of condemnation and moral masculinity is one of the most famous cases of the early nineteenth century - the Vere Street Brothel Scandal at the White Swan club. With the public fascination surrounding the case, the *Sessions Papers* report mimicked the later decades formula (discussed in chapter three) for brevity, but other newspapers followed the previous *Sessions Papers* blueprint for religious condemnation while avoiding specifics of the trial itself. Commentators in *The Times* report on the police raiding a club on Vere Street that was “for the purpose so detestable and repugnant to the common feelings of our nature, that by no word can it be described without committing an outrage upon decency.”<sup>71</sup> In discussing the arrest, *The Times* notes that “for some time” this brothel has

been suspected by the Magistrates of Bow-street; who cautiously concealing the odious secret, abstained from taking any steps on the information they had received, until an opportunity should offer of surprising the whole gang. About 11 o'clock last Sunday evening, three separate parties of the patrol, attend by constables, were detached from Bow-street on this service... The enterprize was completely successful. -We regret most deeply, that the information given at the office was found to be so accurate, that the Officers felt themselves justified in seizing no fewer than 23 individuals...<sup>72</sup>

Both observing and praising the police raid, the reporter retains the moral condemnation of the crime itself. The morning after the individuals were arrested, the police took the men “to the watch-house” for “a long examination” where “several were discharged, the proofs against them not being sufficiently strong to warrant their detention for trial” but they were attacked by a mob of both men and women as they left the magistrate’s court.<sup>73</sup> There were eight men eventually “committed

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<sup>70</sup> *OBP*, July 1802, trial of James Fox Henry Proby (t18020714-25).

<sup>71</sup> Chris White, ed., *Nineteenth-Century Writings on Homosexuality*, *The Times*, 13 July 1810

<sup>72</sup> Chris White, ed., *Nineteenth-Century Writings on Homosexuality*, *The Times*, 13 July 1810

<sup>73</sup> Rictor Norton, ed., "Police: Bow-street 9 July," *Homosexuality in Nineteenth-Century England*, *The Times*, 10 July 1810

to prison” that also received the wrath of the crowd as they were moved from the court to prison to await trial.<sup>74</sup>

After the trials in September 1810, *The Times* reported the names of the individuals, their respective punishments, and how the mob outside the court room “assailed them with sticks and stones” as the condemned men left the court room and returned to prison.<sup>75</sup> In a commentary on the pillorying of these men (which was reportedly vicious), *The Times* argues that these men, and those like them, “must be crushed, or the vengeance of Heaven will fall upon the land.”<sup>76</sup> Of those arrested and tried in the Vere Street scandal, two men – both former soldiers – were sentenced to death with the Prince Regent’s consent.<sup>77</sup>

As the century progressed, a new pattern emerges where the name of the crime itself becomes obfuscated for the readers. In 1828 a sample case tried against Martin Mellett and James Farthing would not spell the name of the crime, and instead printed it as “b-gg-y” (buggery – another term for sodomy, itself a euphemism) and only reported to the public that these men were indicted, found guilty, and punished to death.<sup>78</sup> This continued decrease of public discourse regarding sodomy continued into the mid-nineteenth century. Again in 1839 a man, David Pikesley, was “indicted for b - -” (buggery), found guilty, and punished to death.<sup>79</sup> In 1846 this unwillingness to mention sodomy (or even buggery) was further decreased as the *Sessions Papers* stopped attempting to list the name of the crime and instead referred to it by implication. This is

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<sup>74</sup> Rictor Norton, ed., “The Vere Street Club, 1810”, *Homosexuality in Nineteenth-Century England*, *The Times*, 10 July 1810

<sup>75</sup> Chris White, ed., *Nineteenth-Century Writings on Homosexuality*, “The Detestable Wretches” *The Times*, 30 September 1810

<sup>76</sup> Chris White, ed., *Nineteenth-Century Writings on Homosexuality*, “The Pillorying of the Vere-Street Club” *The Times* 28 September 1810

<sup>77</sup> Rictor Norton, ed., “The Vere Street Club, 1810,” *Homosexuality in Nineteenth-Century England*, “The Prince Regent’s Court,” *Morning Chronicle*, Friday, 1 March 1811

<sup>78</sup> *OBP*, September 1828, trial of Martin Mellett James Farthing (t18280911-234).

<sup>79</sup> *OBP*, November 1839, trial of David Pikesley (t18391125-144).

visible with the case against George Green and Thomas Roberts, who were “indicted for unlawfully meeting together for certain unnatural purposes.”<sup>80</sup> This case is an example of how the trials were continually reported for the public but, by alluding to the crime instead of stating it, continued into the 1880's as is shown in 1886 when Edgar Miller was indicted for “an act of gross indecency,” the latest obfuscation for sodomy in public discourse during this period.<sup>81</sup>

With the removal of explicitly naming the crime, societal concerns of the visibility of the crime and its entrance into public discourse is evident. This fear was founded on the idea that the more it was talked about openly, it would inadvertently lead more people to participate in the disdainful crime, which could lead to its acceptance within society.<sup>82</sup> This period witnessed a resurgence of the Reformation of Manners which had an important leading role in decreasing the public's discussion of sodomy in general.<sup>83</sup> Ultimately, reformers wanted to keep the respectable separated from the criminal classes and controlling speech was used as a way to keep these worlds apart while also preventing the increase of sodomitical acts.<sup>84</sup> By preventing this public discourse, the society reasoned, they were protecting those who were not prepared to fight “against its possibly insidious appeal.”<sup>85</sup> The concept of sodomy was plausible to most Englishmen as men had natural sexual urges, but a respectable man was thought to be in control of his body and therefore able to control those urges.<sup>86</sup>

Masculinity was rooted in a man's ability to control his desires and his failure to do so would lead to social disorder as he would stop fulfilling his responsibilities by becoming a husband and father. The fear that men would “be enslaved by irresponsible, exclusively pleasure-orientated

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<sup>80</sup> *OBP*, August 1846, trial of George Green Thomas Roberts (t18460817-1578).

<sup>81</sup> *OBP*, May 1886, trial of Edgar Miller (60) (t18860503-541).

<sup>82</sup> Cocks, Harry. "Safeguarding Civility," p.143

<sup>83</sup> Cocks, Harry. "Safeguarding Civility", p.122

<sup>84</sup> Cocks, Harry. *Nameless Offences*, p.8

<sup>85</sup> Cocks, Harry. *Nameless Offences*, p. 77

<sup>86</sup> John Tosh, *A Man's Place*, p.46; Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913*, p. 38

sex with other men and abandon their wives” was thought to threaten “the fabric and stability of society.”<sup>87</sup> These views were linked to the resurgence of Ancient Greek ideals, particularly concerning the physical body and its beauty, within British society. During this period, beauty was prized, as it was closely connected to outward representations of inward purity and moral correctness. Along with beauty, the Greeks and Victorian Britains, valued notions of controlling one’s desires, particularly sexual desires. The ability to control one’s desires was intricately connected to their ability to contribute to the best interests of the state. In Greece (and Rome), those “passive” in sex, especially men, were deemed a danger to the state not because of homophobia but because they could not control their desires, and if they could not control their body, it meant they could not contribute to the state because they would be more concerned with what benefitted themselves over the best interests of the state. Health of the individual reflected health of the state, and the ‘deviant’ was viewed as unhealthy and a risk to the health of the state.<sup>88</sup>

For the health of the state, men in the nineteenth century had to fulfill the authoritative father and husband role. This role was fundamental to the foundation of society – men’s roles were woven into their role in the home and “authority relations of the household were a microcosm of the state: disorder in one boded ill for the stability of the other.”<sup>89</sup> As James Brown, a minister who published educational tracts for men, wrote, “[s]ociety is in the main what its homes are. The sanctification of the home is, in the end, the sanctification of the State. And this truth has during these last years [*sic*] continually impressed itself more firmly on mankind. Deeper research has but made it more evident that the roots of all the most sacred and powerful human institutions are to be found in the family.”<sup>90</sup> Recognizing the expanding role of Britain in the world, Brown goes on

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<sup>87</sup> Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913*, p. 46

<sup>88</sup> George L. Mosse, “Nationalism and Respectability,” p. 224

<sup>89</sup> John Tosh, *A Man’s Place*, p. 3

<sup>90</sup> James Brown, *The Home: In Its Relation to Man and to Society*, p. viii-ix

to claim that his “aim is to show how the home is the key to the life of man as a citizen of a yet wider world.”<sup>91</sup> Along with this connection to citizenship, Brown articulates that “the home-life is the model to which the State-life must conform itself, if it is to save itself from wreck.”<sup>92</sup> This rhetoric repeatedly emphasized the importance for contemporaries of the home, a man’s important role within the home as a husband and father, and how the state and home were deeply interconnected.

These ideas of the home, masculinity, and the state “affected and influenced cultural and social perceptions of... sex and sexuality between men.”<sup>93</sup> Households were first formed when men married women, and therefore become husbands, and achieved their “adult masculine status”<sup>94</sup> and began having children to make them fathers.<sup>95</sup> Men were expected to maintain authority over their wives and children but also had to maintain self-control and not give into their desires such as alcoholism, gambling, and the desire for sex with another man.<sup>96</sup> Victorian society focused on responsibilities of men in their role as patriarchs and effeminate men were viewed as a form of a “dissident” male.<sup>97</sup> This ideal of masculinity dominated Victorian society and to maintain one’s masculine social status one needed to continually prove these aspects of their lives to maintain both their “independence and citizenship” within society writ large.<sup>98</sup> A man successfully maintaining a household was inextricably linked to his place within the public sphere, and specifically within political society.<sup>99</sup>

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<sup>91</sup> James Brown, *The Home: In Its Relation to Man and to Society*, p. x

<sup>92</sup> James Brown, *The Home: In Its Relation to Man and to Society*, p. 235

<sup>93</sup> Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913*, p. 25

<sup>94</sup> John Tosh, *A Man’s Place*, p. 122

<sup>95</sup> Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913*, p.1-2

<sup>96</sup> Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913*, p. 22

<sup>97</sup> Harry Cocks, *Nameless Offences*, p. 111

<sup>98</sup> Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913*, p. 47

<sup>99</sup> John Tosh, *A Man’s Place*, p. 140

Men as heads of household were the foundation of the societal structure that was based on ideals of moral masculinity. Ideal Victorian men were firmly rooted in both the public and private spheres. The idea that men could maintain another domestic option, such as men having sex with other men, would have shaken the society at its base by challenging a fundamental ideal regarding the structure of Victorian society.<sup>100</sup> Masculinity was how Victorians understood their role in their homes and within society, as men fulfilled one role while women were their opposite, and thus binaries. Ideals of manliness and the importance it played within society can be viewed in all classes of society during this time as important aspect of social order.<sup>101</sup> Alongside their roles within the household, men were also expected to maintain associations with other men in all-male “public associations.”<sup>102</sup> This balance of work, home, and male associations required a careful balance but was extremely important to masculinity in Victorian England. This careful balance was kept intact but the balancing act exposed fears about the possible challenges to masculinity, such as sodomy, which lead to social insecurities.<sup>103</sup>

Any challenge or alternative to the roles prescribed for manliness that one acted on or discussed were thought to be highly threatening and this is evident is how many men were charged with sodomy during the second half of the nineteenth century. Sodomy showed an alternative option to the existing order and this option was treated as a threat to the masculine identity, and hence the social order. Increased sodomy persecutions in this period reflect this fear of men not fulfilling the masculine ideal within the home, and therefore within society. As the British empire became more important for those in the metropole, and an increasingly important factor of the

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<sup>100</sup> Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913*, p. 1-2

<sup>101</sup> Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913*, p. 28

<sup>102</sup> Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913*, p. 1-2

<sup>103</sup> Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913*, p. 1-2

British social identity, masculinity also became linked with supporting, serving, and protecting the Empire along with the state. This shift is visible in the beginning alterations of another gendered crime, that of prostitution, as it was incorporated into the service of the military, and therefore the Empire, and the subsequent legal linkage of prostitution and sodomy in England.



## Chapter 2

## Becoming One: Sodomy and Prostitution in British Law

*“It is a well known maxim that the law cannot remedy every wrong, or insist upon the fulfilment of every obligation... In like manner the legislature is compelled to leave to the individual conscience questions of morals and of honour.”*<sup>104</sup> William Acton

*“Law does not create public opinion but it does shape and reinforce it.”*<sup>105</sup> – Jeffrey Weeks

On August 6<sup>th</sup>, 1885, the House of Commons briefly discussed an additional clause to the Criminal Law Amendment Act. Member of Parliament (MP) Henry Labouchere introduced ‘Clause 11’, or the ‘Labouchere Amendment’ as it became known, and combined prostitution and sodomy in English civil law for the first time, and solidified the enforcement of heterosexuality in English law until the Wolfenden report in 1957. In his analysis, Jeffrey Weeks argued that the Labouchere Amendment was a starting point for the creation of a homosexual identity.<sup>106</sup> Scholars following Weeks’ work, regardless of their agreement with his starting point, have viewed the Labouchere Amendment as regulating homosexuality.<sup>107</sup> However, the roots of the Criminal Law Amendment Act of 1885 elucidate a differing picture. These seemingly disparate sexual acts, that of prostitution and sodomy, are interconnected in the regulation of heterosexual norms. Weeks and others have taken the application of the Labouchere Amendment out of its larger historical framework to analyze the implications of it, within the court system, on the homosexual identity. But in placing the Labouchere Amendment back into the discursive aspects that supported the creation of this Amendment within the Act, a different picture emerges that displays this Amendment, and its application within the legal structure, as a society entrenching heterosexual norms, and fears over the protection of its empire, even further.

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<sup>104</sup> William Acton, *Prostitution Considered*, p. 187

<sup>105</sup> Jeffrey Weeks, *Coming Out*, p. 11

<sup>106</sup> Jeffrey Weeks, *Coming Out*

<sup>107</sup> For example, see Ed Cohen, *Talk on the Wilde Side*

British Parliament introduced the Contagious Diseases (C.D.) Acts in 1864 under the guise of protecting the physical health of soldiers and sailors. In their effort to curb the spread of venereal disease within the ranks, the government allowed the civilian police force to detain women in specific port and garrison towns suspected of prostitution and inspect them for potential venereal diseases. Under the auspices of the Admiralty and the War Office, these laws were enforced with the help of local police, “provincial magistrates, doctors, and hospital authorities to enforce the sanitary and penal requirements.”<sup>108</sup> Widespread outrage ignited after civilian moralists attempted to expand the application of the Acts to more locales, and the outrage led to the eventual repeal of the Acts. Within this process, I argue that the passing of the Criminal Law Amendment Act, 1885, was intricately linked to its roots in the C.D. Acts (and the repeal campaigns) and clearly illustrates the process of militarization within British society.

After the Crimean War, which the British lost more soldiers in hospital than in battle, many military reformers sought ways to improve the mental and physical health of the rank-and-file soldiers and sailors, in the Army and Navy respectively.<sup>109</sup> According to Cynthia Enloe, “[m]ilitary reformers were especially worried about reconciling soldiers’ presumed male ‘sex drive’ with military efficiency. Left uncontrolled, soldiers’ ‘natural sex drive’ led them into a vicious downward spiral of indebtedness, drunkenness, illness and poverty.”<sup>110</sup> There was also the ever present concern of men turning to homosexuality to fulfill their sexual desires, which was viewed “as potentially threatening for military effectiveness” because “homosexuality somehow made men less able and willing to serve as effective fighting men.”<sup>111</sup> These combined concerns led to

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<sup>108</sup> Judith R. Walkowitz, *Prostitution and Victorian Society*, p. 2

<sup>109</sup> Judith R. Walkowitz, *Prostitution and Victorian Society*, p. 73; Florence Nightingale, “Army Sanitary Administration”, p.4 <https://hdl.handle.net/2027/uc2.ark:/13960/t8hd84r29>.

<sup>110</sup> Cynthia H. Enloe, *Does Khaki Become You?*, p. 22

<sup>111</sup> Cynthia H. Enloe, *Does Khaki Become You?*, p. 22

an unofficial military policy of acquiescing to the ‘usefulness’ of prostitution to maintain efficiency of the military, while avoiding the potential of men turning to homosexuality. However, increasing concern focused on the spread of venereal disease within the ranks from prostitutes.

In his report to the House of Commons on the ‘Health of the Navy’ during 1860, Lord Clarence Paget reported that 119.5 sailors per 1,000 stationed at the Home Ports were afflicted with venereal disease, and those in the Irregular force reported 202.3 out of 1,000 were inflicted.<sup>112</sup>

it appears that venereal affections [*sic*] were most numerous in the Irregular Force, but... they were nearly all contracted in the Home Ports; the ration of cases is also high in the force employed exclusively on the Home Stations; in both instances, compared with the preceding year, there is a considerable increase in the number of cases. From this it may be interred that these affections [*sic*], notwithstanding the futile efforts which have been made to prevent them, are still as rife in our seaport towns as they ever were.<sup>113</sup>

Although the report details the low numbers of infections leading to invalid status or death,<sup>114</sup> the sheer number of sailors alone inflicted with venereal diseases (either syphilis or gonorrhoea) was of concern for naval leaders as it was the “greatest loss of service” for sailors stationed at Home Ports.<sup>115</sup> For comparison, there were “260 cases of primary fever, of which nine terminated in death”<sup>116</sup> and venereal diseases “amounted to 2,716... and three terminated in death.”<sup>117</sup> Within these cases, the report identifies that sick lists on the ships reflect increases in venereal cases after stops at Home Ports and compares those numbers to stops at ports on the continent.<sup>118</sup>

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<sup>112</sup> Lord Clarence Paget, “Statistical Report of the Health of the Navy, for 1860”, p.215; These are only two of the highest of the reported groups – per 1,000 sailors in each station, the following ratios are listed: Mediterranean, 98.4; North American and West Indian, 62.7; Brazil, 54.4; Pacific, 101.5; West Coast of Africa, 42.2; Cape of Good Hope, 30.5; East India and China, 123.1; Australia, 50

<sup>113</sup> Lord Clarence Paget, “Statistical Report of the Health of the Navy, for 1860”, p.215

<sup>114</sup> Lord Clarence Paget, “Statistical Report of the Health of the Navy, for 1860”, p.220

<sup>115</sup> Lord Clarence Paget, “Statistical Report of the Health of the Navy, for 1860”, p.2

<sup>116</sup> Lord Clarence Paget, “Statistical Report of the Health of the Navy, for 1860”, p.2

<sup>117</sup> Lord Clarence Paget, “Statistical Report of the Health of the Navy, for 1860”, p.7

<sup>118</sup> Lord Clarence Paget, “Statistical Report of the Health of the Navy, for 1860”, p.6-7

As for the Army, these statistics were equally concerning. From 1860-64, in just ‘Syphilis, Primitive’ statistics, the Dragoon Guards and Dragoons reported 118.8 per 1,000; the Foot Guards showed 153.7 per 1,000; and the Infantry of Line displayed 106.8 per 1,000.<sup>119</sup> Although the report on the Army statistics does not elaborate on reasons for these numbers or examine other diseases afflicting the army, these rates show that a significant number of men were impacted by venereal diseases.

With these numbers and their corresponding concerns, the first C.D. Act was introduced in 1864. As a ‘public health’ bill in alignment with other military reforms for the health of sailors and soldiers, this bill focuses solely on the health of the military to guarantee their ‘readiness’ and protect soldiers and sailors from venereal diseases. As argued by Enloe, “[t]he ideological beauty of ‘readiness’ is that it can be used to refer to *everything* [sic]...”<sup>120</sup> By combining military ‘readiness’ with its ability to serve the Empire, a soldier’s or sailor’s physical health was of the utmost importance. In June of 1864, Lord Clarence Paget (the same Lord who authored the statistics for the Navy), “presented a Bill for the prevention of Contagious Diseases at certain Naval and Military Stations.”<sup>121</sup> This Bill, in all its forms, focused on how to control and maintain the health of soldiers and sailors when they were in Home Ports, to maintain the military’s readiness.<sup>122</sup> According to Judith Walkowitz, “many doctors and public officials came to assess syphilis as a serious health hazard for the British population” during this period as “[n]ewly available medical statistics on the incidence of venereal disease... alerted public authorities to the

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<sup>119</sup> Robert Lawson, “The Operation of the Contagious Diseases Acts among the Troops in the United Kingdom”, p.34

<sup>120</sup> Cynthia H. Enloe, *Does Khaki Become You?*, p. 68

<sup>121</sup> The Journals of the House of Commons – Vol.119, p.347

<sup>122</sup> Notably, only a few months prior Parliament discussed issues concerning the Suez Canal (18 March 1864) and the Ashantee War (10 May 1864). Concerns and defense of the empire, and the need for military readiness, was surely not far from the M.P.’s minds

problem and convinced them of the need for preventive measures.”<sup>123</sup> These numbers show that over one third of the military force were affected and the “average number of soldiers constantly in hospital with venereal diseases was 23.69 per 1000.”<sup>124</sup> Within these Acts, authorities followed gendered assumptions that “that syphilis was spread through promiscuous sexual contact with diseased prostitutes” and that existing systems for treating diseased prostitutes “were ineffective” but there were “adequate” methods available to regulate and manage this problem.<sup>125</sup> The statistics for the Army and Navy, along with civilian concerns, “convinced medical and military authorities that an epidemic of venereal disease was sweeping the nation.”<sup>126</sup> With this broader concern, politicians pushed through the C.D. Acts successfully, with minor public critic – which came, most notably, from Florence Nightingale.

Florence Nightingale, who reached hero status after her interventions in hospitals during the Crimean War, continued to advocate for health reforms for the military and civilian population when she returned to England. Nightingale was “directly responsible for the creation” of the committee in 1862 to research “venereal disease among the military.”<sup>127</sup> Nightingale’s solutions went beyond simply addressing venereal disease and “[h]er solution was to improve soldier’s conditions, for instance by providing day rooms, institutes, clubs – and thus raise moral and physical standards simultaneously.”<sup>128</sup> Although not on the committee, Nightingale influenced both those who were selected to be on it and their eventual report, which did not suggest the regulation of prostitutes but instead advocated for ‘lock’ hospitals to treat those infected.<sup>129</sup> In a

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<sup>123</sup> Judith R. Walkowitz, *Prostitution and Victorian Society*, p. 48

<sup>124</sup> Lynn McDonald, *Florence Nightingale on Women, Medicine, Midwifery, and Prostitution*, p. 411

<sup>125</sup> Judith R. Walkowitz, *Prostitution and Victorian Society*, p. 48; Robert Lawson, “The Operation of the Contagious Diseases Acts among the Troops in the United Kingdom”, p.31

<sup>126</sup> Judith R. Walkowitz, *Prostitution and Victorian Society*, p. 50

<sup>127</sup> Judith R. Walkowitz, *Prostitution and Victorian Society*, p. 75

<sup>128</sup> Paul McHugh, *Prostitution and Victorian Social Reform*, p. 35

<sup>129</sup> Judith R. Walkowitz, *Prostitution and Victorian Society*, p. 75

tract written by Nightingale, she argues that “[t]here is absolutely no evidence that there is less syphilis among populations under police restrictions” and that “[t]here is no satisfactory evidence that syphilis is propagated *only* [*sic*] by contact with infected persons.”<sup>130</sup> Although Florence Nightingale opposed regulations of prostitutes (for its lack of sufficient evidence to succeed and because she thought regulation by police would sanction prostitution), even Nightingale argued for any military regulations to also apply to the civilian population when she wrote:

[a]s regards [to] civil populations, the proof of protection from syphilis by police regulation is *absent* [*sic*]. Yet any repressive measures for protecting the army must include repressive measures for the whole civil population among whom the army is placed, so that we are asked to recognize vice on hypothetical grounds, in order that we may hypothetically diminish its consequences after recognition.<sup>131</sup>

Acknowledging the importance of curbing the issue of venereal disease in the military, even a prominent anti-regulationist like Nightingale supported some action to address and curtail this issue within the ranks. However, politicians were not convinced by these arguments (against regulation of prostitution) and passed the first C.D. Act in 1864.

Initially, the C.D. Act applied to eleven cities in the South of England and Ireland for three years, with the ability to expand and/or extend after that time.<sup>132</sup> However, Parliament did not debate the Act so the public knew little about it when it was passed.<sup>133</sup> In 1866 and 1869 Parliament extended the C.D. Acts to seven more port and garrison towns (for a total of 18 locales – see Figure 1).

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<sup>130</sup> Florence Nightingale, “Note on the Supposed Protection Afforded Against Venereal Diseases,” in *Nightingale on Women*, p.428

<sup>131</sup> Florence Nightingale, “Note on the Supposed Protection Afforded Against Venereal Diseases,” in *Nightingale on Women*, p.429

<sup>132</sup> The cities listed in the Act include Portsmouth, Plymouth, Woolwich, Chatham, Sheerness, Aldershot, Colchester, Shorncliffe, The Curragh, Cork, and Queenstown.

<sup>133</sup> Paul McHugh, *Prostitution and Victorian Social Reform*, p. 38

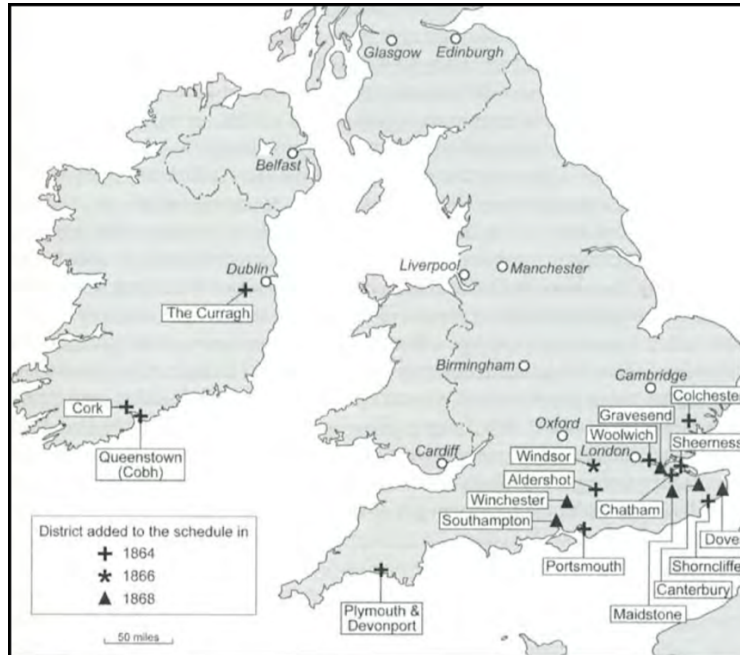


Figure 1<sup>134</sup>

Uniquely, “[t]hese were pieces of national legislation, officially overseen by the Admiralty and the War Office, employing metropolitan police under the Home Office; yet they had to rely on provincial magistrates, doctors, and hospital authorities to enforce the sanitary and penal requirements.”<sup>135</sup> This connection between the civilian authorities enforcing a law to protect military personnel at Home Ports, under the direction of military authorities clearly illustrates this process of militarizing the civilian locales. In responding to this issue officials inside and outside of the ranks were concerned with ensuring the military would be prepared to serve and protect the empire at any time should the need arise at home or abroad.

Any woman suspected of being a prostitute in these towns could be stopped by a plainclothes Metropolitan Police Office and expected to voluntarily submit to the ‘internal examination’ by a doctor. If the woman refused, she would be taken to a magistrate and would be bound to his

<sup>134</sup> Map of subjected districts under the Contagious Diseases Acts from Jenny Katherine Jarrard. “Contagious Disease: The Rise and Fall of Nineteenth-Century British Prostitution Regulation.” (2010).

<sup>135</sup> Judith R. Walkowitz, *Prostitution and Victorian Society*, p. 2



instructions, after of course dealing with the publicity that would expectedly come with going to the magistrate in the first place. Suspected prostitutes, which were not defined within the law and ensured extensive police interpretation, if forced to submit to this painful internal examination and found to have a venereal disease (either syphilis or gonorrhea), she would be kept in a “certified lock hospital” for up to nine months.<sup>136</sup> These Acts, although put forth as a “pragmatic response to a pressing social problem,” reinforced heterosexual norms and practices regarding sexual practices.<sup>137</sup>

Instead of focusing their control on soldiers and sailors, which are inherently subordinate to their commanders and the state, Parliament focused on controlling the women presumed to consort with them. This focus reflects larger societal notions of gender and sexuality where women needed to be controlled, and men having a ‘natural lust’ that must be satisfied to maintain a virile masculinity. According to Cynthia Enloe, “[t]he government formula was this: the military could control male soldiers’ sexuality by controlling the poor women with whom they were most likely to have sexual relations.”<sup>138</sup> These Acts reasserted the Victorian ‘double standard’ of sexual acts which justified male sexual desires, or ‘needs’, while conversely expecting women to maintain sexual virtuousness. Within this process, those involved with upholding the various aspects of the Acts were militarized as the suspected prostitutes, “local police, health, and court officials... all were made to serve the needs of the Victorian British military.”<sup>139</sup> As the Acts worked to improve the health and readiness of the military, the overall force was better prepared to serve and protect the empire.

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<sup>136</sup> Judith R. Walkowitz, *Prostitution and Victorian Society*, p. 2

<sup>137</sup> Judith R. Walkowitz, *Prostitution and Victorian Society*, p. 3

<sup>138</sup> Cynthia H. Enloe, *Does Khaki Become You?*, p. 21

<sup>139</sup> Cynthia H. Enloe, *Does Khaki Become You?*, p. 21

As the C.D. Acts were expanded, however, a growing repeal movement became a force to reckon with. The movement to repeal the acts was led by Josephine Butler (and other future leaders of the feminist movement in England) and strongly supported by Florence Nightingale. With their repeal campaigns, Butler and the other reformers brought increased scrutiny and attention to prostitution as an issue, and the ‘double standard’ of Victorian sexual attitudes.

According to Paul McHugh, opposition to the C.D. Acts “was first raised by the committee of the Rescue Society, an evangelical body engaged in the reclamation of” prostitutes in 1868.<sup>140</sup> The Rescue Society sent letters protesting the extension of the C.D. Acts “to all members of both Houses of Parliament” and was a sign of the opposition to come.<sup>141</sup> Parliament successfully extended the Acts once more in 1869 “to six more stations... lengthening the maximum period of detention to nine months” (the 1864 Act limited the detainment period to three months) for women infected with venereal disease in a lock hospital, and giving local authorities the power to detain “women for five days if they were unfit for examination, i.e. menstruating” when arrested.<sup>142</sup> This final extension of the “Act completed the system of military regulation of prostitution” and the militarization of prostitution within Victorian England.<sup>143</sup>

Although these Acts faced intense opposition in the 1870s, the C.D. Acts were touted “as national defense legislation” that reflects a militarized state intervening in the name of public health to ensure a continued healthy military.<sup>144</sup> These Acts, along with the “[f]ears and laws around sexuality” shaped colonial thinking that “made sex a key site of imperial fear, concern and action” that had significant impact in the colonies and within England.<sup>145</sup> Within this process, one

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<sup>140</sup> Paul McHugh, *Prostitution and Victorian Social Reform*, p. 47

<sup>141</sup> Paul McHugh, *Prostitution and Victorian Social Reform*, p. 47

<sup>142</sup> Paul McHugh, *Prostitution and Victorian Social Reform*, p. 52; Judith Walkowitz, *Prostitution and Victorian Society*, p. 76

<sup>143</sup> Paul McHugh, *Prostitution and Victorian Social Reform*, p. 52

<sup>144</sup> Judith Walkowitz, *Prostitution and Victorian Society*, p. 73, 88

<sup>145</sup> Philippa Levine, “Sexuality and Empire” in *At Home with the Empire*, p. 123

can view “the campaign to repeal the Acts” as a rejection of “the expanding state control of *all* [*sic*] women’s sexuality” but repealing of the C.D. Acts “did not end” the militarization of prostitution.<sup>146</sup>

Joining the opposition to the C.D. Acts, which had previously “been confined to Florence Nightingale and her associates,” Josephine Butler became one of the key advocates for the repeal campaign.<sup>147</sup> As proponents for the C.D. Acts continually published pamphlets touting the success of the regulations, such as William Acton’s *Prostitution, Considered in Its Moral, Social, and Sanitary Aspects*, the opposition groups followed their lead by publishing works discrediting and challenging the effectiveness of the legislation.

William Acton, a doctor who wrote extensively in support of the legislation, published his analysis of the causes of prostitution and the impact of venereal diseases on both the military and civilian populations. Some of Acton’s first works were published prior to the Acts, but he did so to “rouse attention to a question that seemed... of national importance,” namely “prostitution, with its attendant evils.”<sup>148</sup> Acton praised the legislation as it both sought to identify ways “of protecting the army and navy from the ravages occasioned by venereal disease” and reduce prostitution within England in general.<sup>149</sup> In Acton’s opinion, the C.D. Acts successfully improved “the health of our army and navy, and the sanitary and moral improvement wrought in the unhappy women” along with raising public awareness of these issues.<sup>150</sup> Acknowledging the opposition, Acton argues that the legislation was necessary “for the sake of the community at large” and for “the women themselves” while also defending the moral righteousness of the legislation.<sup>151</sup> Arguing for the

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<sup>146</sup> Cynthia H. Enloe, *Does Khaki Become You?*, p. 25

<sup>147</sup> Paul McHugh, *Prostitution and Victorian Social Reform*, p. 55

<sup>148</sup> William Acton, *Prostitution Considered*, p. v

<sup>149</sup> William Acton, *Prostitution Considered*, p. v

<sup>150</sup> William Acton, *Prostitution Considered*, p. v

<sup>151</sup> William Acton, *Prostitution Considered*, p. vii

extension of the Acts even further to address the health issues presented by venereal diseases, Acton uses extensive statistical analysis to show how the legislation had been successful.<sup>152</sup> Acton painstakingly works to outline “how great is the enemy we have to deal with” to justify the need for the C.D. Acts, the success witnessed thus far, and argue for their expansion.<sup>153</sup> Within this work, Acton continually calls for the extension of the C.D. Acts for “the interest of society in its being well ordered.”<sup>154</sup> Acton represents a powerful voice for the militarization of society as ‘order’ is important for the function of any military and, in this case, for the health of society at large.

Epitomizing the other end of the debate about the C.D. Acts is Josephine Butler. One of the organizations for the Ladies’ National Association for the Repeal of the Contagious Diseases Acts (LNA), Butler worked with a large group of reformist women, who previously often focused on rescue work (i.e., ‘rescuing’ prostitutes and rehabilitating them back into ‘respectable’ society), worked to rally the nation to remove the “absolute power over women” given to the police with these Acts and the immorality of supporting and encouraging vice for men.<sup>155</sup> Butler published several works attacking the morality of the C.D. Acts, and even challenged the constitutionality of the Acts.<sup>156</sup> Although Butler argues that “[t]he moral side of the question [about the Acts] is undoubtedly the most important” her focus was on “the constitutional aspect, including the effect which such legislation must have on” the “social and moral life as a nation.”<sup>157</sup> In breathtaking detail, Butler continually reasserts the repealer’s issues from a legal and constitutional aspect of the

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<sup>152</sup> William Acton, *Prostitution Considered*, p. xi-xii

<sup>153</sup> William Acton, *Prostitution Considered*, p. 63, 187-188

<sup>154</sup> William Acton, *Prostitution Considered*, p. 202

<sup>155</sup> Judith Walkowitz, *Prostitution and Victorian Society*, p. 93; Paul McHugh, *Prostitution and Victorian Social Reform*, p. 56

<sup>156</sup> Josephine Butler, *The Constitution Violated*, p. 1

<sup>157</sup> Josephine Butler, *The Constitution Violated*, p. 1-2

C.D. Acts and how they will “destroy” the “bulwarks of English liberty.”<sup>158</sup> In Butler’s skillful analysis, she clearly outlines that the C.D. Acts “in no way whatsoever apply to the army and navy, but entirely and exclusively to the civil population.”<sup>159</sup> Calling for repeal, even Butler utilizes militant language when she describes “[t]he battle which we have now to fight is in its essential character the same as those which resulted formerly in confirmations of our liberties, and in a firmer establishment of a just and virtuous state.”<sup>160</sup> In order to protect the morality of the state, the campaign itself saw itself at war with the legislation.

Butler and the repeal campaign argued that the C.D. Acts, and the underlying justification for them, “was the belief that women must serve men and male institutions” such as the state, and more significantly, the deeply masculine institution of the Empire.<sup>161</sup> By 1870 the ‘repealers,’ as they came to be known, had made enough noise for the government to take them seriously. In 1871 a commission was set up to “study the administration and operation of the acts” but after six months of testimony the Acts remained, without acting on the few recommendations for adjustments of the Acts that received support of the commission.<sup>162</sup> As the campaign continued to wane, public notoriety and commentary did as well, even though “[r]epeal bills were introduced into the House of Commons almost every year throughout the 1870s.”<sup>163</sup> As the government leadership shifted back and forth, the debate between “repealers and regulationists” stagnated.<sup>164</sup> However, when the C.D. Acts were suspended in 1883 (although not repealed), “Butler and other purity reformers turned their attention to publicizing the evils of child prostitution and white

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<sup>158</sup> Josephine Butler, *The Constitution Violated*, p. 21

<sup>159</sup> Josephine Butler, *The Constitution Violated*, p. 22

<sup>160</sup> Josephine Butler, *The Constitution Violated*, p. 123

<sup>161</sup> Cynthia H. Enloe, *Does Khaki Become You?*, p. 25

<sup>162</sup> Judith Walkowitz, *Prostitution and Victorian Society*, p. 95

<sup>163</sup> Judith Walkowitz, *Prostitution and Victorian Society*, p. 96

<sup>164</sup> Judith Walkowitz, *Prostitution and Victorian Society*, p. 97-98; Paul McHugh, *Prostitution and Victorian Social Reform*, p. 203

slavery.”<sup>165</sup> However, their efforts to enact legislation, along with the official repeal of the C.D. Acts, also stagnated in Parliament. It took a public shockwave, printed in the *Pall Mall Gazette* in 1885, for legislation to finally take hold.

On 4 July 1885, W.T. Stead, the editor of the *Pall Mall Gazette*, published “A Frank Warning” for readers about the impending series about the ‘Maiden Tribute of Modern Babylon’. Justifying the reason for the publication, Stead argued that the ‘Maiden Tribute’ sought to bring public attention to the issue enshrined in the stalled Criminal Law Amendment Bill regarding the protection of girls and the suppression of brothels.<sup>166</sup> Stead, like Butler, “was a larger-than-life crusader for democracy, morality, and women’s rights” who used his position as editor to amplify concerns pertinent to “mobilize public outcries” of sexual immorality.<sup>167</sup> Augmenting existing fears of sexual immorality and danger, Stead used the ‘Maiden Tribute’ to link “sexual concerns to national and class concerns” in his writings.<sup>168</sup>

‘Maiden Tribute’ proports to expose the dreadful realities of “sexual criminality” flourishing in England. Claiming to have spent “four weeks, aided by two or three coadjutors” to investigate these realities, Stead “oscillated between the noblest and the meanest of mankind, the saviours [*sic*] and the destroyers of their race, spending hours alternately in brothels and hospitals, in the streets and in refuges, in the company of procuresses and of bishops.”<sup>169</sup> In exhaustive detail, Stead traces the horrors of the ‘white slave trade’ in London.

Utilizing aspects of ‘New Journalism’ of investigative and undercover exposés, and an estimated “one and a half million unauthorized copies,” Stead reignited calls for legislation

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<sup>165</sup> Judith Walkowitz, *City of Dreadful Delight*, p. 96

<sup>166</sup> W.T. Stead, “Notice to our Readers: A Frank Warning,” in *The Pall Mall Gazette*, 4 July 1885

<sup>167</sup> Judith Walkowitz, *City of Dreadful Delight*, p. 95

<sup>168</sup> Judith Walkowitz, *City of Dreadful Delight*, p. 84

<sup>169</sup> W.T. Stead, “The Maiden Tribute of Modern Babylon I: the Report of our Secret Commission,” in *The Pall Mall Gazette*, 6 July 1885

surrounding age of consent and suppression of brothels.<sup>170</sup> Age of consent laws had been introduced as part of larger discussions surrounding the curtailment of prostitution, along with the repeal of the C.D. Acts, but said legislation faltered. With the social uproar from the ‘Maiden Tribute’ publication, parliament stopped stalling age of consent legislation and finally moved forward with the third reading of the Criminal Law Amendment Bill.

Working late into the night, the House of Commons debated the amendments for the Criminal Law Amendment Bill. Beginning the debate, Sir S.R. Assheton Cross opened with a proposal to create a misdemeanor for detaining a woman or girl in a brothel or for any purposes that would force her into prostitution. The MPs then focused on an additional amendment that pertained to aspects of consent in relation to the new age of consent for girls, which had been previously agreed upon, raising the age of consent for girls from 13 to 16. Immediately after said debate, Mr. Henry Labouchere introduced a seemingly disparate clause to the Criminal Law Amendment Bill. Labouchere’s Amendment, as it colloquially came to be known, amended the treatment of acts of gross indecency between men, regardless of age, consent, or location (public or private).

Prior to the reading of the proposed amendment, Mr. Warton questioned the applicability of the proposal to the bill being discussed. Clarifying the rules that allowed this introduction, Labouchere proceed with his clause. In full, the amendment stated:

Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding one year with or without hard labour.<sup>171</sup>

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<sup>170</sup> Judith Walkowitz, *City of Dreadful Delight*, p. 11

<sup>171</sup> Hansard Parliamentary Debates, “Criminal Law Amendment Bill Lords – Bill 257”

The new clause was summarized in the minutes as “Outrages on Public decency,” and the only proposed adjustment was to change the limitation of sentencing from “one year” to two years. After this change was agreed to, the House moved on to the next item for debate pertaining to parental authority if they enticed their daughters into prostitution.

Describing ‘acts of gross indecency’ as an assault on another party, MP Labouchere stated his focus was to close the age loophole in the law and ensure that this crime applied to victims under or over the age of 13.<sup>172</sup> The reasons for Labouchere’s introduction of this amendment, although alluded to in the debate briefly, have never been clear for scholars. And the lack of debate on the topic gives credence to the understanding of parliament not wanting to address, discuss, or clarify the laws against sodomy in the nineteenth century.<sup>173</sup> Jeffery Weeks argues that this amendment was the starting point of the creation of a homosexual identity as it changed how the law was applied and prosecuted against men found to commit sodomy.<sup>174</sup> However, in reading both the text of the clause and Labouchere’s comments about his reasons for proposing it, this amendment and its placement within a bill addressing prostitution show how the Labouchere amendment was not a starting point for a homosexual identity, but rather a cementing of heterosexual sexual mores and ideologies.<sup>175</sup> Within these debates, one can see the reassertion of a heteronormative society focused on needs of the empire.

As discussed above, sodomy had been illegal in England for centuries and those in the House discussing the amendment were aware of the laws against sodomy and their successful application over the previous decades. Practically, the change in law allowed the prosecution of

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<sup>172</sup> Criminal Law Amendment Bill debate, Aug 6, 1885

<sup>173</sup> Harry Cocks is one scholar who has discussed this in his work

<sup>174</sup> Jeffery Weeks, *Coming Out*

<sup>175</sup> I am not offering a different starting point for the idea of when a homosexual identity was formed in England, rather my focus is on how sexual deviancy was being stamped out by society to reinforce heterosexual norms.



sodomy to increase as it introduced the state monitoring private sexual acts between consenting male parties. This added layer of observation within a private sphere, and the success of increasing those prosecuted for sodomy, displays the increasing concern of authorities to curtail the crime of sodomy.

Within these debates, it becomes evident that the Criminal Law Amendment Act, 1885, was rooted in military concerns regarding the curtailing of venereal disease in the ranks. Although the Labouchere Amendment is an important piece of legislation regarding sodomy, in its proper historical context it elucidates that it is not a starting point for this legislation but rather part of a larger societal shift focused on notions of a 'moral masculinity' to serve the empire. The increase in sodomy persecutions (discussed below) occurred simultaneously with the development of the Labouchere Amendment, and the Amendment eventually came full circle to reinforce these social ideologies of heteronormativity in Victorian England.

## **Chapter 3**

### Details Unfit for Publication

When MP Henry Labouchere proposed his (in)famous amendment, he unknowingly began the process of intertwining his name with the eventual fate of individuals from Oscar Wilde to Alan Turing. However, the legal changes within the Labouchere Amendment only solidified social changes that were already in progress within Victorian London. During the nineteenth century, the Old Bailey tried these cases for the London district at an increasing rate. At first glance, it is easy to assume this correlates with the introduction of the Labouchere Amendment of 1885, but about half of the trials from the 1880s occurred prior to this Amendment. These cases reflect an increasing concern regarding the crime of sodomy prior to the passing of the Labouchere Amendment and, I argue, this increased concern regarding sodomy was rooted in a militarized society concerned with ensuring the health and heteronormativity of its military to protect its empire.

As discussed previously, during the first three decades of the nineteenth century, there are no more than 15 cases of sodomy recorded for each decade at the Old Bailey.<sup>176</sup> From the 1830s to the 1870s, there are less than 50 cases each decade except for the 1840s which saw 68 trials. However, the 1880s had 96 trials and the 1890s tried 291 cases (see Figure 2). Although there was a growing increase in cases throughout the century, there is a noticeable uptick in the 1880s (and more so in the 1890s) in the number of cases tried. These increases, both in cases and convictions, show an increased concern regarding the crime of sodomy. Increasing cases totals reflects an

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<sup>176</sup> Clive Emsley, Robert Shoemaker, and Tim Hitchcock, “The Proceedings of the Old Bailey,” Results - Central Criminal Court, 2018, Tabulating decade where offence category is sodomy, between January 1800 and December 1899. Counting by offence.

increase of an individual(s) reporting the crime (or suspected crime), an increase in the willingness to investigate said reports, and an increase in the courts desire to try this crime.

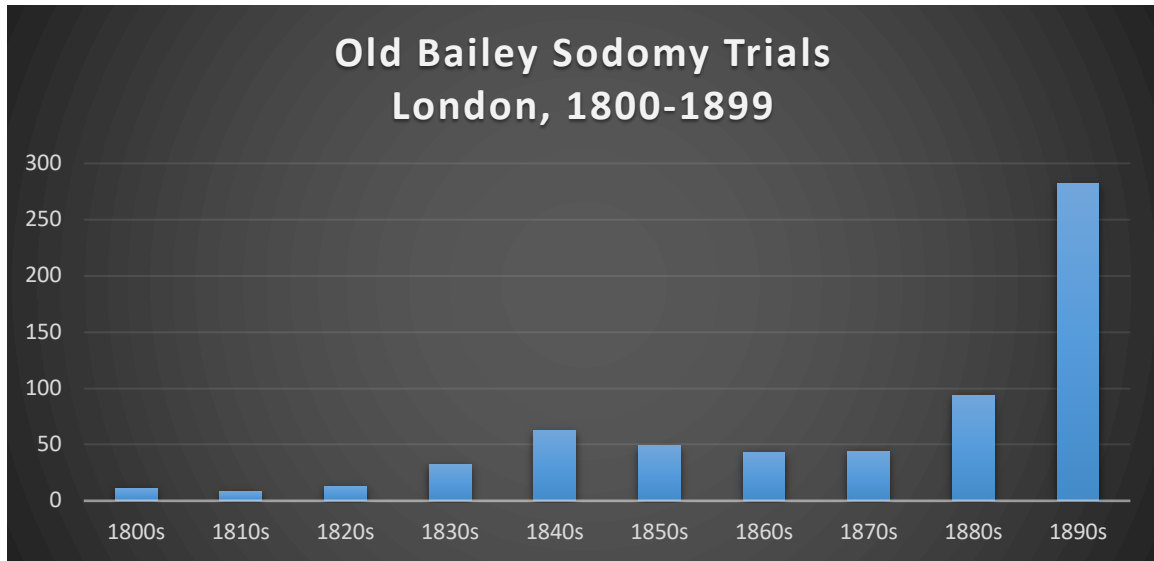


Figure 2

Along with this increase in cases, there was an increase in convictions. Throughout the majority of the nineteenth century convictions (i.e., a guilty verdict) primarily stayed below 50% and the peak conviction period occurred in the 1870s with a 68.9% conviction rate - out of 45 total cases, 31 were found guilty (Figure 3). After the 1870s, the conviction rate stayed above 50%.

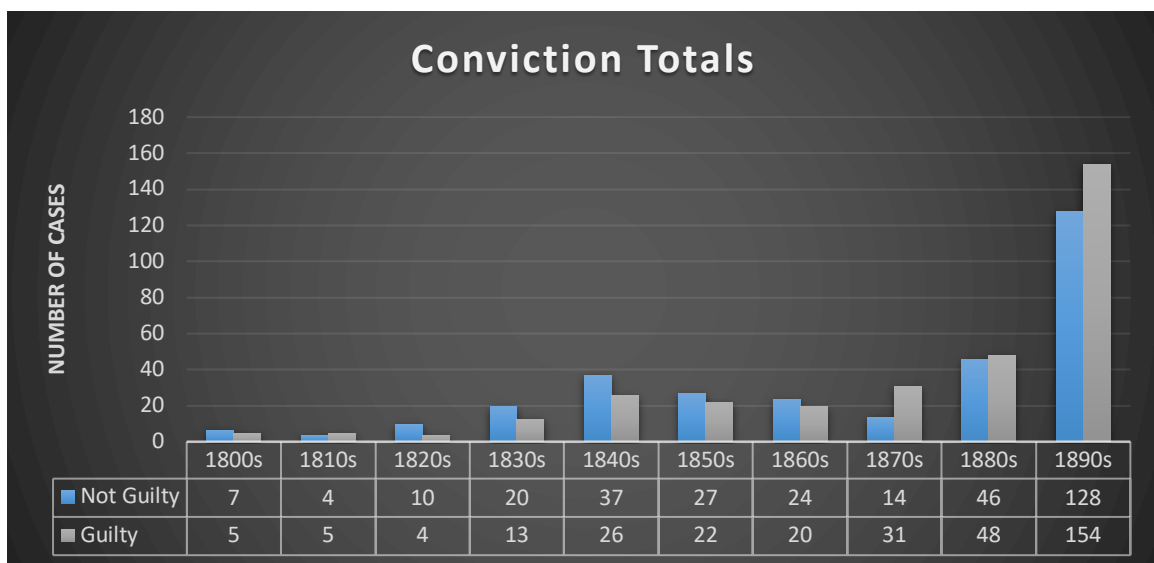


Figure 3

This increase in prosecutions, which notably began – and spiked - prior to the Labouchere Amendment, reveals an increased concern in London during the 1870s to eradicate the crime of sodomy by punishing (convicting and sentencing) at an increased rate.

Along with increasing concern regarding the crime of sodomy, there was another change (as discussed in chapter one) in the public’s discourse on sodomy that reflects the cultural change regarding ideas of respectability. Details from trials disappeared at the end of the nineteenth century in the *Sessions Papers* almost entirely. Cases after 1800 were consistent in their reporting by informing the public of who was indicted, the crime - which was usually listed in veiled language (s-----y or b—g—y), - and the verdict of those charged. The longest detailed case from the 1870s through the 1890s (except for Oscar Wilde’s case discussed below) occurred in Oliver Wright’s and George Drage’s case in 1890, in which the *Sessions Papers* quoted the legislation that the men were charged with:

The Prisoners had been committed for a common law misdemeanour, and indicted for gross indecency under the 11<sup>th</sup> Section of the Criminal Law Amendment Act, 1885. Application was made by Mr. THORNE COLE (for the prosecution) for leave to prefer a Bill for the last—mentioned offence on the facts disclosed in the depositions, the said Indictment having been preferred and found without commitment or leave of the Court being first obtained. After hearing Mr. PURCELL for defendants, and after consulting the RECORDER, leave was given, and the Indictment first mentioned was ordered to be quashed. The Prisoners were then charged with unlawfully committing certain acts of gross indecency.<sup>177</sup>

The reported information did not discuss anything from the trial itself beyond this basic information and finished with the verdict of not guilty.

Within this period (the 1870s to the 1890s), a typical format of reporting the cases to the public in the *Sessions Papers* emerged. Predominately, apart from the above noted case, this pattern was the listing of the individual(s) name on trial, usually their age, the charge or formal

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<sup>177</sup> *OBP*, January 1890, trial of OLIVER WRIGHT (50) GEORGE DRAGE (17) (t18900113-171).

accusation, the verdict, if guilty the sentencing information, and usually the names of the lawyers and judge for the case. A typical example of a guilty verdict is Martin Manetti's case which in full states "MARTIN MANETTIE (29) was indicted for s –y. MR. POLAND *conducted the Prosecution; and* MR. BRINDLEY *the Defence. Guilty. – Penal Servitude for Life.*"<sup>178</sup> A typical example of a not guilty verdict is John Quick's case which in full states "JOHN QUICK (45), Inciting a man unknown to commit an abominable crime with him. MR. PURCELL *Prosecuted; MESSRS. KEITH FRITH and BLACKWELL Defended. NOT GUILTY.*"<sup>179</sup> This pattern persists through the end of the nineteenth century with very few modifications and reflects a militarized formality in the reports.

Three noticeable aberrations to this pattern emerge in three specific instances. The first aberration is the only time an individual's career is listed is if they are associated with the military. Individuals such as Robert Cousins is recorded as "ROBERT COUSINS (19), (artilleryman),"<sup>180</sup> Elliott Pierce is recorded as "ELLIOTT PIERCE (20, a *soldier*)"<sup>181</sup> and Christopher Barnbrook is noted as "CHRISTOPHER BARNBROOK (a soldier, 26)"<sup>182</sup> This inclusion of military professions mirrors the societal concern of sodomy within the ranks and the increased focus to eradicate sodomy within this militarized society. Sodomy challenged the masculine ideal (discussed in chapter one) that was rooted in the ideals of protecting the state and the Empire. Serving the Empire while failing to uphold the Victorian masculine ideal threatened to undermine the success and preservation of the Empire and added to the increased fear of this crime in light of the concerns of imperial dominance.

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<sup>178</sup> *OBP*, March 1878, trial of MARTIN MANETTI (29) (t18780311-375).

<sup>179</sup> *OBP*, May 1883, trial of JOHN QUICK (45) (t18830528-614).

<sup>180</sup> *OBP*, August 1872, trial of ROBERT COUSINS (19) (t18720819-628).

<sup>181</sup> *OBP*, June 1883, trial of ELLIOTT PIERCE (t18830625-681).

<sup>182</sup> *OBP*, April 1890, trial of CHRISTOPHER BARNBROOK (t-18900421-358).

A second deviation is the inclusion of individuals receiving a good character report. An example is the report on Henry Fry who was charged with “[u]nlawfully soliciting Abraham Pye to commit b—y. MR. TICKELL *Prosecuted; and* MR. MONTAGU WILLIAMS *and* MR. MANN *Defended the Prisoner. He received an excellent character. NOT GUILTY .*”<sup>183</sup> However, a good character reference did not ensure a ‘not guilty’ verdict, such as the case of Charles Moore, who was charged with “endeavouring to induce Charles Webb, Sidney Henry Gaines, Percy Bridges, and George Norman to commit immoral acts and practices. (*He received a good character.*)—*Eighteen Months' Hard Labour.*”<sup>184</sup> Still, within these good character notes, a few individuals received reduced sentences such as John Adams who “*received a good character... Recommended to mercy by the Jury, believing him to have been under the influence of drink .— Three Months' without Hard Labour.*”<sup>185</sup> And George White, also guilty, had his “Judgement Respited” while the individual he was “indicted for committing acts of gross indecency with” (George Henry Kniese) was found guilty and received “Three Months’ Hard Labour.”<sup>186</sup> This focus to include notations of good character reflect the concern of both the reporters and the editors of the *Sessions Papers* to justify the reduced sentences or not guilty verdicts as the men charged were not considered to be of a low moral character and only needed minimal, if any, correcting to return as full members of society.

The third aberration is the rare notation of where the crime was committed. Joseph Leiton “was indicted for b—g—y on the high seas within the jurisdiction of the Admiralty.”<sup>187</sup> John Harwood and William Farmer were charged with “committing acts of indecency in Hyde Park.”<sup>188</sup>

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<sup>183</sup> *OBP*, January 1879, trial of HENRY FRY (57) (t-18790113-140).

<sup>184</sup> *OBP*, October 1885, trial of CHARLES EDWIN MOORE (t18851019-999).

<sup>185</sup> *OBP*, June 1892, trial of JOHN ADAMS (34) (t18920627-671).

<sup>186</sup> *OBP*, March 1897, GEORGE WHITE (39) GEORGE HENRY KNIESE (26) (t18970308-219).

<sup>187</sup> *OBP*, August 1862, trial of JOSEPH LEITON (29) (t18620818-832).

<sup>188</sup> *OBP*, September 1886, trial of JOHN GEORGE HARWOOD WILLIAM FARMER (t18860913-875).

Thomas Galley was charged with “committing an act of gross indecency...in a British ship on the high seas.”<sup>189</sup> These locations all refer to physical sites associated with the empire in some way – the Admiralty being the Navy, Hyde Park’s proximity to Buckingham Palace (1 mile distance) and to the Palace of Westminster where Parliament meets (1.6 miles), and a British ship which represents the British imperial strength. Noting these specifics reflects a concern of this crime occurring, literally, at the heart of the British empire. This is also reflected in that the only cases in the *Sessions Papers* from 1860 to 1900 that listed details about the individuals charged beyond their name, charge, the rare notation of receiving a good character reference, and verdict, were those who were associated with the military in some way.

Press reporting on the trials themselves significantly dwindled during the nineteenth century from being explicit to not even mentioning the crime of sodomy for public discourse. This change in reporting was an attempt by the press to simultaneously report on the issues as part of a free press with a responsibility to the public, while also protecting the public's morals. With the “expansion of the print culture” and the increase of “criminal justice” the press was in a difficult position that asked them “to pursue... transparency by recording political, governmental and legal proceedings in great detail” while “at the same time... obliged not to corrupt public morals by referring to the crime of sodomy” in a public way.<sup>190</sup> Not even mentioning the crime itself went against the ideals of “liberalism and publicity” that were beginning to dominate during this period.<sup>191</sup> After the passage of the Labouchere Amendment, the language in the *Sessions Papers* changed again and began, primarily, referring to the crime as ‘gross indecency’ instead of veiled

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<sup>189</sup> *OBP*, May 1894, trial of THOMAS ADDISON GALLEY (30) (t-18940528-513).

<sup>190</sup> Harry Cocks, *Nameless Offences*, p. 78

<sup>191</sup> Harry Cocks, *Nameless Offences* p. 79



or broken terms for sodomy (s-y) or buggery (b-g-y) – although ‘unnatural offense’ or ‘unnatural crime’ was still utilized in a small number of reports.

The changing attitudes of morals during the nineteenth century in how public discourse regarding crimes such as sodomy, revolved around a preference to “[t]he uses of secrecy, censorship, repression and concealment were many. The most prominent of these was the protection of public morals without the... direct intervention in the private sphere on the part of legal or state authority.”<sup>192</sup> The beginning of the nineteenth century experienced a change in public morals and the “state curtailed its record-keeping of trials involving sexual crimes.”<sup>193</sup> As outlined in chapter one, this change was founded on the changing ideals of respectability and masculinity.

The attempt to keep public morals pure during the nineteenth century is evident in how the *Sessions Papers* continually changed their reporting of sodomy to the public. Fear of sodomy spreading, and therefore a threat to public morals, led the press, such as the *Sessions Papers*, to be held accountable for not corrupting public morals but still performing their duties to report on crimes from the courts to the public.<sup>194</sup> This is visible in the change of descriptions with few alterations from the standard reporting format, namely the location – if included – in the report. For example, as some cases listed the specific locales associated with the empire (see above), cases gradually removed the location particulars but retained information regarding the publicity of the act.<sup>195</sup> By removing the location where these crimes occurred, journalists were not encouraging men to find these places and corrupt their masculinity with sodomy.

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<sup>192</sup> Harry Cocks, *Nameless Offences* p. 5

<sup>193</sup> Charles Upchurch, *Before Wilde: Sex between Men in Britain's Age of Reform*, p. 1

<sup>194</sup> Harry Cocks, *Nameless Offences*, p. 78-79

<sup>195</sup> For example, see: *OBP*, February 1887, trial of THOMAS JAMES (24) BENJAMIN WELLMAN (15) (t-18870228-314); *OBP*, May 1888, trial of CHARLES STONE HENRY WILLIAMS (37) (t18880528-535),

While journalists were held to a complicated standard regarding what and how they reported on the Old Bailey sessions, they were influenced by the Reformation of Manners that took hold at the beginning of the nineteenth century. The idea of not spreading the knowledge of sodomy to those who were not aware or prepared to fight against the “unnatural crime against nature” was central to their ideas and understandings that dominated how these cases were reported to the public. The fear of giving individuals ideas of how to commit sodomy or even where to go to take part in the crime was an issue that moral reforms wanted to avoid at all costs.

Scandals, however, still occurred and the public expected extended coverage of three notable cases during these decades – Boulton and Park (aka Stella and Fanny) in 1870, the Cleveland Street Affair in 1889, and Oscar Wilde in 1895. Of the three (in)famous sodomy trials of the late nineteenth century, only Oscar Wilde’s trial was reported in the *Sessions Papers* directly as a sodomy charge. Boulton and Park were tried at Bow Street Police Court and not committed for trial to the Old Bailey, but instead went before the Queen’s Bench with a special jury. Although the Cleveland Street Affair was investigated as a male “homosexual” brothel, the individuals named were tried for maintaining a brothel and the individuals under surveillance for a possible sodomy conviction fled the country before they could be charged.

Thomas Ernest Boulton (who went by Stella when dressed as a woman) and Frederick William Park (who used the name Fanny) were two men arrested in 1870, while in drag, and tried in May 1871. As men who frequently played female parts in the theatre and dressed as women for masquerades, Boulton and Park were consistently out in public dressed as women. Coming to the attention of the police in 1869, they were arrested after leaving the Strand Theatre in April 1870 while they were dressed as women. They were charged with intent to commit a felony (sodomy) and they were tried over a year later – the assumption being that Boulton and Park would entice

unsuspecting men into sexual liaisons with them. Upon searching their lodgings, police found letters implicating Lord Arthur Clinton (a member in the House of Lords), Mr. John Fiske (an American representative at the consular in Leith, Scotland), and two others.<sup>196</sup> With these letters, it was thought that Boulton (Stella) posed as Lord Clinton's wife and even "had visiting cards printed with the name 'Lady Arthur Clinton'"<sup>197</sup> and told fellow lodgers that he was Lord Clinton's wife.<sup>198</sup> Although Lord Clinton died before the trial (many have assumed suicide to avoid the trial)<sup>199</sup> his connection to Boulton and Park added to the spectacle and focus of the public surrounding the trial.

Although it was never denied that Boulton and Park went out in public as women and "acted extravagantly" by repeatedly dressing as women in public, the judge ended the trial by summing up the case to the jury and reminding them that although Boulton and Park continuously acted against public decency and acted in an "odious and offensive manner"<sup>200</sup> (i.e., dressing as women), this was not the charge the jury needed to rule on. With this, the jury found Boulton and Park not guilty on all charges, which was so shocking to Boulton that he fainted in the courtroom, while the public cheered and shouted 'Bravo'.<sup>201</sup> Boulton and Park's trial, or the 'Stella and Fanny' trial as it has come to be known, touches on multiple issues that were pertinent to the time. Not only did it face questions about gender, sexuality, class, and urban life, it brought these connections close to the ruling elites with Lord Clinton and Fiske.<sup>202</sup>

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<sup>196</sup> Boulton, Ernest. The trial of Boulton and Park, p.1-2

<sup>197</sup> H. M. Hyde, *The Love That Dared Not Speak Its Name*, p.94

<sup>198</sup> Boulton, Ernest. The trial of Boulton and Park, p.20

<sup>199</sup> Rose Staveley-Wadham, "'Women Personators'- The 1871 Trial of Boulton and Park" in *The British Newspaper Archive*

<sup>200</sup> Boulton, Ernest. The trial of Boulton and Park, p.56

<sup>201</sup> Boulton, Ernest. The trial of Boulton and Park 1871, p. 59-60

<sup>202</sup> Morris Kaplan, *Sodomy on the Thames*, p. 86

The second scandalous sodomy trial during this period is that of the Cleveland Street Affair. In July 1884, a Post Office messenger, Charles Swinscow, was questioned by his employer for possessing more money on his person than he should have had from his work. During the questioning Swinscow admitted he “received the money as payment for having sex with men at Number 19 Cleveland Street” and another messenger, Alfred Newlove, had introduced Swinscow and others to go 19 Cleveland Street for this purpose.<sup>203</sup> These ‘Telegraph boys’ worked for a man named Charles Hammond (an army colonel) and George Veck and this house had has its clients “army officers, businessmen, and aristocrats.”<sup>204</sup> The trial focused on the maintenance of a brothel and the *Sessions Papers* maintained their minimal detail format for the public:

GEORGE DANIEL VECK (40) and HENRY HORACE NEWLOVE (18) were indicted (with CHARLES HAMMOND , not in custody) for procuring George Alma Wright and others to commit certain obscene acts, and also to conspiracy. VECK PLEADED GUILTY to the Sixteenth and Seventeenth Counts. — *Nine Months' Hard Labour*. NEWLOVE PLEADED GUILTY to the first Thirteen Counts. — *Four Months' Hard Labour*.<sup>205</sup>

Along with Newlove and Veck being charged with “procuring the Telegraph boys and attempting to commit sodomy,” prominent aristocratic men were thought to be frequent visitors to this male “homosexual” brothel but were being protected by the government.<sup>206</sup> Within this trial however, a more concerning aspect was involved. Testimonies acquired by the police asserted that Lord Arthur Somerset, the individual in charge of the Prince of Wales’s horse stables and closely connected to the next in line, was a frequent patron of the brothel. And although never printed in Britain (but printed elsewhere)<sup>207</sup>, Prince Albert Victor, the eldest son of the Prince of Wales and

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<sup>203</sup> Harry Cocks, *Nameless Offences*, p. 144

<sup>204</sup> Harry Cocks, *Nameless Offences*, p. 144

<sup>205</sup> *OBP*, September 1889, trial of GEORGE DANIEL VECK (40) HENRY HORACE NEWLOVE (18) (t18890916-696).

<sup>206</sup> Harry Cocks, *Nameless Offences*, p. 145

<sup>207</sup> “Prince Victor,” *The Oshkosh Northwestern*, Monday, 26 May 1890

second in line for the British crown, was rumored to have visited the brothel and one of the likely aristocrats being protected by the government from prosecution.<sup>208</sup> This fueled previous attitudes that sodomy was an aristocratic vice that was corrupting the nation. This case, which did not become a high-profile case until after the proceedings concluded, followed the standard format of attempting to eradicate the crime while discussing as little as possible within the public sphere.

The final famous sodomy trial began with Oscar Wilde's initial libel charge against the Marquess of Queensberry, for insinuating Wilde posed as a sodomite, was reported in the *Sessions Papers* with minimal details of the trial specifics. In total, the *Sessions Papers* stated:

JOHN SHOLTO DOUGLAS, MARQUESS OF QUEENSBERRY, was indicted for unlawfully publishing a false, scandalous and malicious libel of and concerning Oscar Wilde. To this the defendant pleaded NOT GUILTY, and put in a plea of justification, stating the contents of the alleged libel to be true in substance and in fact, and that it was published for the public benefit. SIR EDWARD CLARKE, Q.C., MESSRS. CHARLES MATHEWS and TRAVERS HUMPHREYS, *Prosecuted*; MESSRS. CARSON, Q.C., C. F. GILL and A. GILL, *Defended*. *The details of the case are unfit for publication. At the close of the case for the prosecution, and whilst MR. CARSON was opening the defence, SIR EDWARD CLARKE interposed and stated that he had consulted with his client, and was prepared to accept a verdict of NOT GUILTY, which the JURY at once pronounced, adding that they considered that the publication was justified and for the public benefit.*<sup>209</sup>

Fulfilling their obligation to the public, the *Sessions Papers* included the necessary information in their report while specifying that the details were not fit for publication. With Wilde's high-profile status, however, other newspapers reported on his trial in detail to fulfill the public's journalistic expectations.<sup>210</sup> Repeating this pattern during his sodomy trials, the *Sessions Papers* again listed

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<sup>208</sup> Theo Aronson, *Prince Eddy and the Homosexual Underworld*, p. 177

<sup>209</sup> *OBP*, March 1895, trial of JOHN SHOLTO DOUGLAS, MARQUESS OF QUEENSBERRY (t18950325-336).

<sup>210</sup> For example, see: "SERIOUS CHARGE OF LIBEL." London Evening Standard, Monday 4 March 1895, p.2; "MR. OSCAR WILDE AND LORD QUEENSBERRY." Morning Post, Monday 11 March 1895, p.6; "SILK AND STUFF." Pall Mall Gazette, Thursday 14 March 1895, p.1 (all accessed via the British Newspaper Archive Online).

as minimal information as possible to ensure they informed the public of the expected information while attempting to refrain from detailing immoral details.

OSCAR FINGAL O'FFLAHARTIE WILLS WILDE (40) and ALFRED TAYLOR (33), were indicted for unlawfully committing acts of gross indecency with Charles Parker and other male persons. *Other Counts*, for conspiracy. MESSRS. C. F. GILL and H. AVORY Prosecuted, and SIR EDWARD CLARKE, Q. C., with MESSRS. CHARLES MATHEWS and TRAVERS HUMPHREYS, *Defended*. At the close of the case for the prosecution, MR. GILL stated that he should not ask for a verdict on the Counts for Conspiracy; and the JURY were directed to find a verdict of NOT GUILTY as to those Counts, and also as to four of the other Counts, charging acts of indecency with certain of the witnesses. As to the remaining Counts, the JURY, being unable to agree, were discharged without returning any verdict, and the case was postponed until the next Session.<sup>211</sup>

With Wilde's first trial, the proceedings retain the format of other sodomy trials, and the only additional information details the verdict. After the second trial, the *Sessions Papers* reverts to the above format of listing only their names, charge, lawyers and judge of the case, verdicts, and sentences. In total, the *Sessions Papers* reported:

OSCAR FINGAL O'FFLAHARTIE WILLS WILDE (40) and ALFRED WATERHOUSE SOMERSET TAYLOR (33) were indicted for unlawfully committing acts of gross indecency with certain male persons. THE SOLICITOR-GENERAL (SIR FRANK LOCKWOOD, Q.C.), with MESSRS. C. F. GILL and HORACE AVORY Prosecuted; SIR EDWARD CLARKE, Q.C., with MESSRS. CHARLES MATHEWS and TRAVERS HUMPHREYS, *appeared for Wilde*; MR. J.P. GRAIN *for Taylor*. Upon the joint application of SIR EDWARD CLARKE and MR. GRAIN, the defendants were tried separately. TAYLOR thereupon was first tried; he was FOUND GUILTY on certain counts. WILDE was then put on his trial, and also being FOUND GUILTY, both the defendants were sentenced to Two Years' Hard Labour.<sup>212</sup>

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<sup>211</sup> *OBP*, April 1895, trial of OSCAR FINGAL O'FFLAHARTIE WILLS WILDE (40) ALFRED TAYLOR (33), (t18950422-397).

<sup>212</sup> *OBP*, May 1895, trial of OSCAR FINGAL O'FFLAHARTIE WILLS WILDE (40) ALFRED WATERHOUSE SOMERSET TAYLOR (33), (t18950520-425).

In Wilde's second trial, where the court upped the ante with the Solicitor General as the prosecutor to have a better chance at a guilty verdict, the *Sessions Papers* did not attempt to reprint the details of the case, nor did they state that the points were indecent for publication.

Within these sensational cases reported by newspapers such as *The Times*, it is evident that akin to the standards set by the *Sessions Papers*, journalists and editors followed a thin line of balancing public moral conversations while informing the public regarding high profile cases. This balancing act served to protect not only accepted public morals, but more importantly to reassert the appropriate form of masculinity. By identifying the deviant male, albeit at a distance, heteronormative masculine ideals were reasserted by demarcating the appropriate boundaries for men (as well as women).

Englishmen viewed nationalism and respectability as interconnected and "condemned the unconventional as threatening to the state and to society" as abnormal behavior, such as sodomy, was believed capable of destroying the fabric of society.<sup>213</sup> With Britain's expansion of the Empire during the nineteenth century, masculinity became fundamental to the success of the nation and effeminate behavior threatened the nation's safety and prestige.<sup>214</sup> The representation of proper morals put the ideal male above the deviant "who lacks self-control and follows his morbid fantasies."<sup>215</sup> English society viewed "crimes against respectability... as affecting the whole personality, and those who did not share the norms of respectability" were feared to negatively infect the respectable society and the British Empire.<sup>216</sup>

The concept of masculinity was inherently tied to the success of the nation. Patriarchal ideals were the foundation of a successful nation, and the fear of an effeminate man was increased

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<sup>213</sup> George L. Mosse, "Nationalism and Respectability," p. 221

<sup>214</sup> Karen Harvey, "The History of Masculinity, circa 1650-1800." p. 308

<sup>215</sup> George L. Mosse, "Nationalism and Respectability," p. 227

<sup>216</sup> George L. Mosse, "Nationalism and Respectability," p. 226

by the fear of Britain's position in the world. Any permissiveness of sex between men “not only undermined masculinity as a social status... but also threatened the cultural self-perception of pre-eminence in the wider world” for British men during their increasing Empire expansion.<sup>217</sup> Increasing prosecutions against sodomites reflects the societal fear of a threat against masculinity and therefore the British Empire.

The fears of the nation revolved around the ideals of masculinity and middle-class morals. Fears of the declining middle-class intensified “public anxiety” regarding sodomy, specifically sex between men, as it was thought to threaten “Britain's place in the world.”<sup>218</sup> Britain's concern with its place in the world was of the utmost concern during the nineteenth century. Although Ashis Nandy analyzes the psychological rejection of the colonial ideology in Wilde’s actions, Nandy’s understanding of the culture Wilde lived in is insightful. By focusing on Wilde’s actions as a rejection of masculine ideals held by the Marquess of Queensberry, who was viewed as a representative of the said ideals.<sup>219</sup> With the Marquess ideal of masculinity, not only did Wilde reject all forms of femininity in men (such as the effeminate actions of sodomy), but he endorsed “rule-bound violence and conformity to” the “ultimate virtue of aggressive British masculinity.”<sup>220</sup> With this rejection of masculine ideals, Wilde represented to the Marquess, and his contemporaries, a rejection of the British imperialism and nationality.<sup>221</sup> With this rejection,

Wilde threatened, however indirectly, a basic postulate of the colonial attitude in Britain by demonstratively using his homosexuality as a cultural ideology, Wilde threatened to sabotage his community’s dominant self-image as a community of well-defined men, with clear-cut man-woman relationships. What the élite culture of England could not tolerate was his blatant deviation from rigidly defined sexual

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<sup>217</sup> Harry Cocks, *Nameless Offences*, p. 24

<sup>218</sup> Charles Upchurch, *Before Wilde: Sex between Men in Britain's Age of Reform*, p. 1

<sup>219</sup> Ashis Nandy, *The Intimate Enemy*, p. 44

<sup>220</sup> Ashis Nandy, *The Intimate Enemy*, p. 44

<sup>221</sup> As a psychologist, Ashis Nandy views Wilde’s actions as a “pathology” of rejecting imperialism. I am not asserting to understand Wilde’s actions as a pathology, rather, my focus here is on how Wilde’s actions were perceived by his contemporaries to understand the vehemence with which his actions were publicly received.



roles in a society which, unknown to the hyper-aesthete Wilde, was working out the political meanings of these definitions in a colony thousands of miles away.<sup>222</sup>

Thus, Wilde, and his sodomy trials, were viewed by contemporaries as a threat to the British imperial ideal that needed to be stomped out to preserve the empire.

Central to the fear of the nation being threatened by sodomy was the concept of masculinity. The increase of prosecutions regarding sodomy shows the increase in fear of men not fulfilling the ideal role within their society. Masculinity (as discussed in chapter 1) itself was a social status within society “and men were the norm.”<sup>223</sup> Effeminate men were feared in society as they were not seen to fulfill the patriarchal role of the male head of house and the imperial role as the king among nations. Victorian England not only saw a change of morals within the society, British masculinity was treated as “the pre-eminent and moral exemplar” throughout the expanding Empire.<sup>224</sup> Sodomy tarnished this concept of masculine superiority in England as it “threatened the balances of power within gender relations and therefore society as a whole.”<sup>225</sup> Many late Victorian male friendships had aspects of homoeroticism and “society tacitly accepted situations that were full of potential for sex between men, as long as these were not alluded to in public discussion. When exposed in sexual scandal... journalists presented the 'unnatural crime' as exceptional.”<sup>226</sup> Victorian society was aware of the existence of the sodomite but did not want to perpetuate this concept by discussing it in attempt to protect the ideal masculinity.<sup>227</sup>

The rising issues of masculinity added to the fears of British society regarding effeminate men and sodomites. With the concern of public morals and the importance of masculinity in

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<sup>222</sup> Ashis Nandy, *The Intimate Enemy*, p. 44-45

<sup>223</sup> Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913*, p. 21

<sup>224</sup> Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913*, p. 53

<sup>225</sup> Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913*, p. 52

<sup>226</sup> Charles Upchurch, *Before Wilde: Sex between Men in Britain's Age of Reform*, p. 2

<sup>227</sup> Charles Upchurch, *Before Wilde: Sex between Men in Britain's Age of Reform*, p. 1

England, the Old Bailey witnessed a significant increase in those prosecuted for sodomy and while the *Sessions Papers* reporting only the absolutely necessary elements of those crimes to the public. The ideals of masculinity and respectability, combined with public discourse regarding sodomy, and a fear of the crime itself destroying the Empire, explains the increase of cases prosecuted while also decreasing public discourse on sodomy.

Concerns of the empire, and fear of its failure, were immensely connected to these ideals and manifested in various ways, including the increasing persecution of sodomy.<sup>228</sup> Fears of losing the empire were viewed and witnessed on the male body and male actions. These expectations of masculinity for the protection of empire manifested in the policing of sexual deviancy which led to the regulation and reinforcement of heteronormativity within society. Within this system, all men were expected to meet the ideals of a man who could serve and protect the empire, regardless of the military or civilian status because of the militarization of this society during this period.

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<sup>228</sup> Also, this process is reflected in the colonial cultural as discussed by Ashis Nandy in *The Intimate Enemy*, but that discussion is beyond the scope of this paper.

## **Conclusion**

## Pax Britannica

Although not the only (in)famous sodomy trial of the late nineteenth century, Oscar Wilde is perhaps one of the best known due to his international fame prior to his downfall. Wilde, along with the other sensational sodomy trials of this period, including Stella and Fanny and the Cleveland Street Scandal, these men became the anthesis to the Victorian Masculine ideal as their trials played out for the public. Within the Victorian gendered society, binaries were reinforced, and all men were expected to meet the ideals of a man who could serve and protect the empire, with individuals such as General Gordon espousing the ideal man (discussed below) and those such as Wilde the abhorrent ‘other’ (as discussed previously).

Previous scholars have focused on identifying a ‘homosexual self’ and trying to understand how men charged with sodomy (or the rare diaries outlining their sexual ‘adventures’) understood themselves in a society that viewed them as the deviant ‘other’. Missing from this conversation is a more important question – why did (and does) society identify sexual deviance in the first place and why do societies persecute these ‘deviant others’ more forcefully at specific times. Instead of an ‘inside looking out’ approach to these cases and the men involved, I take an ‘outside looking in’ view to focus on how these men were portrayed by their contemporaries, and why this categorization was needed. In this process, I see the events of 1884, beginning with the Congress of Berlin and imperial expansion and competition between European powers for extended influence, resources, and prestige as a solidification point (begun in the 1860s with the C.D. Acts) in the British view of sodomy, masculinity, and militarization.

As Hyam argues, “[t]he entire British expansionist enterprise overseas was infused with and energised [*sic*] by a profound sense of moral and religious purpose.”<sup>229</sup> In the gendered

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<sup>229</sup> Ronald Hyam, *Understanding the British Empire*, p. 24

Victorian English society, masculinity was the ideal and empire was dependent on ideal manhood. To accomplish this, masculinity was militarized. This process is evident in the legal changes surrounding prostitution and sodomy during the mid-nineteenth century in England. As society worked to protect ideals of masculinity, legal changes were implemented to support and reinforce heteronormative gender roles, which became a cyclical process.

Within this process, the Victorian British viewed sexuality as “a key component... of the imperial world” where “[e]mpire and sexuality were linked, and inextricably, by the multiple ways in which representations and definitions of what it meant to be British” and not British.<sup>230</sup> This view is also evident in Richard Burton’s *The Sotadic Zone* from 1885. Burton’s exhaustive detail about the “Vice” (his euphemism for sodomy) was found in specific “geographical and climatic” zones.<sup>231</sup> Within these zones, Burton argues “there is a blending of the masculine and feminine temperaments” that leads to, and causes, the ‘Vice’.<sup>232</sup> This acknowledgment only adds further credence to the ideals of British Victorian masculinity being superior throughout the world and the need to maintain the ideals of manhood. The idea of sodomy was viewed as threatening the balance of power amongst the genders and therefore society as a whole and recognizing sex between men would have destabilized society.<sup>233</sup> John Addington Symonds, a prominent writer known for defending homosexual acts, attacked “Richard Burton for his claim that same-sex sexual relations in the Arab world or the South Pacific are caused by geographical and climatic factors.”<sup>234</sup> In a rebuttal, Symonds notes that even in Burton’s argument it is evident that “[t]he problem is therefore not geographical and climatic, but social.”<sup>235</sup>

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<sup>230</sup> Philippa Levine, “Sexuality and Empire” in *At Home with the Empire*, p.141

<sup>231</sup> Richard Burton, *The Sotadic Zone*, p. 18

<sup>232</sup> Richard Burton, *The Sotadic Zone*, p. 20

<sup>233</sup> Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913*, p. 52

<sup>234</sup> Emily Rutherford, “Impossible Love and Victorian Values,” p. 616; Symonds’ widow asked to have Symonds’ name removed from the initial publication, Emily Rutherford, “Impossible Love and Victorian Values,” p. 617

<sup>235</sup> John Addington Symonds, “On the Sotadic Zone,” in *The Sotadic Zone*, p. 107

This social shift, as acknowledged by Symonds' rebuttal of Burton's work, explains why sodomy trials in Victorian London witnessed a spike. By tracing the roots of the militarization of society to the Contagious Diseases Acts of the 1860s through to the Criminal Law Amendment Act, 1885, one can see how Victorian English society viewed sodomy as a threat to her military, and hence her empire. By reinforcing the masculine ideal of self-control to serve the nation (read: empire), society sought to prevent sodomy while working to eradicate it. Within these larger cultural shifts regarding masculinity, fears over empire, and the process of Victorian society becoming militarized, sodomy was viewed as a threat to the British Empire. As Britain continually expanded during this period (and truly became the empire the sun never set on), what it meant to be British was a fraught question. Burton travelled the length of the empire, and upon his return he worked to explain that the binary of gender and heteronormativity were unique to the British mainland and the colonized world was where same-sex desires came from and genders became blurred. These ideas followed the British ideals of self and sexuality, which were pushed against by individuals such as Symonds, and the ideas the Gay Liberation movements fought in the 1960s and 1970s.

The second half the nineteenth century witnessed both the mass expansion of the British Empire and repeated challenges to it. After the Crimean War – which was the first war to have war correspondents at the front sending daily reports home via the telegraph – the British public became informed of events abroad regularly. In 1857-8, the Sepoy Rebellion (or 'Mutiny' as it was called in England) broke out in India. In response, the East India Company was replaced by Parliament as the *defacto* ruler and established the British Raj making India an official British colony, and in 1876 Queen Victoria was formally named the Empress of India. In 1869 the Suez Canal opened offering a faster route to India, and in 1875 England became the majority shareholder

of the Canal. In 1877 England annexed the Transvaal, followed by the first Boer War in 1880. In 1882 England invaded Egypt to defend the Suez trade route. And Khartoum fell, along with Gordon, in 1885. Irish Home Rule debates began in 1885 with the first bill rejected by Parliament in 1886. And the century ended with the second Boer War (1899-1902), followed shortly by the death of Queen Victoria in 1901 - until recently the longest reigning monarch in England. Empire, and the reality of its instability, was never far from the Victorian English mind.

Along with the events directly impacting the imperial locales, England was conscious of the island's vulnerability from continental competition. In 1859 a Royal Commission was formed to identify how well England could defend herself against (based on concerns of) potential French invasion. Leading this fear was the naval arms race first with the Second French Empire under Napoleon III, followed by the new German state. England began the nineteenth century ahead of other European nations due to the Industrial Revolution, but the continent worked to catch up to England in the second half of the nineteenth century. This competition fomented in 1884 during the Berlin Conference which began the 'Scramble for Africa.' Although England never (directly) went to war with another European power during this period (the end of the Crimean War until the First World War), competition for resources and territory was constantly played out on the African continent.

Particularly, events in Africa were viewed as part of European competition more than anything else. "British prestige' was a significant motive in the partition of Africa, as it had been in the occupation of Egypt" and "the scramble" was viewed "mainly as a problem of maintaining British power and prestige in an increasingly hostile world" where "considerations of national prestige and territorial possession were more decisive than any supposed imperial defence [*sic*]

strategy” within Africa.<sup>236</sup> Authors such as W.T. Stead acknowledged that “[t]he scramble for the world has begun in earnest” but questioned how capable England was “able to prevent” their “own possessions being scrambled for by” her “neighbours [*sic*].”<sup>237</sup> Stead’s concern was not only England’s “imperial position, but the daily bread of twenty millions” and “[i]f that is lost, or even endangered” their “existence” would be “at stake.”<sup>238</sup> Stead’s alarmist language voiced a national fear of losing British military dominance and prestige.

Unpredictability of Empire abroad led to a policing and correcting at home to justify continued dominance against European competition. Internal policing of society was akin to the civilizing mission abroad, which itself used militant language to describe its objectives.<sup>239</sup> This ‘white man’s burden,’ as Rudyard Kipling called it, impacted not only how the English saw themselves abroad, but it also impacted their expectations of morals within the metropole. Although “[t]he British firmly believed that Britain (essentially England) represented a beacon of civilization and that its inhabitants were, at best, the most civilized people in the world,” they continually worked to maintain their superiority and needed to ensure they maintained moral standards within the metropole.<sup>240</sup> As Ashis Nandy says, “Britannia not only rule[d] the waves; for its inhabitants and for its many admirers in Europe it also ruled the future of human self-consciousness.”<sup>241</sup> The metropole, London, was the physical site of the empire that needed to reassert and clearly demonstrate this ‘human self-consciousness’. As the metropole, London most clearly witnessed this connection between empire and policing (i.e., legislation and trials) at home.

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<sup>236</sup> Ronald Hyam, *Understanding the British Empire*, p. 113

<sup>237</sup> W.T Stead, “What is the Truth about the Navy?” in *The Pall Mall Gazette*, 15 September 1884

<sup>238</sup> W.T Stead, “What is the Truth about the Navy?” in *The Pall Mall Gazette*, 15 September 1884

<sup>239</sup> Judith Rowbotham, “Criminal Savages? Or “Civilizing” the Legal Process” in *Criminal Conversations*, p. 97

<sup>240</sup> Judith Rowbotham, “Criminal Savages? Or “Civilizing” the Legal Process” in *Criminal Conversations*, p. 99

<sup>241</sup> Ashis Nandy, *The Intimate Enemy*, p. 35



The connections between empire and sexuality exist beyond the confines of the late nineteenth century and sodomy, and has impacted British legislation through the mid-twentieth century.<sup>242</sup> Sexuality in imperial England “was something to be restrained and controlled” to ensure it did not “overwhelm... reason.”<sup>243</sup> And the fear of losing moral superiority, based in reason, justified legislation in the metropole. Masculinity and empire were repeatedly interconnected by contemporaries, and “it was increasingly urged that, if the British empire was to survive, the imperial race must exercise sexual restraint, and [the] government must intervene to enforce it.”<sup>244</sup> This connection between manhood and empire led, not only to government action, but it did so by militarizing society to encourage the policing by contemporaries outside of the official structures.

Along with these manifestations, sexual deviancy needed policing from public discourse, such as the euphemisms developed to report on sodomy trials. In not allowing sodomy to enter the public discourse, those concerned with public morality felt they were limiting “the spread of sodomy.”<sup>245</sup> Ideas surrounding the safeguarding of public morals by simply not discussing the acts by name persisted even into the early twentieth century in England as evidenced in Parliamentary debates about adding female same-sex acts to the Criminal Law Amendment Bill, where in 1921 the House of Lords removed the clause that would apply the same penalties to ‘acts between women’ as already applied to men because “it maligned all good women, the overwhelming majority of whom would not know anything about the law was trying to cover” and by codifying this in law, Parliament would make formerly innocent women aware of, and even encourage, them

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<sup>242</sup> Philippa Levine, “Sexuality and Empire” in *At Home with the Empire*, p.122

<sup>243</sup> Philippa Levine, “Sexuality and Empire” in *At Home with the Empire*, p.123

<sup>244</sup> Ronald Hyam, *Empire and Sexuality*, p.1

<sup>245</sup> Harry Cocks, *Nameless Offences*, p. 77

to act on this ‘new’ idea.<sup>246</sup> These types of laws were “a conscious attempt by governments to establish a moral standard by specifying the illegality of same-sex acts.”<sup>247</sup> In connecting morality to sexuality within statute law, Victorian England justified the intervention of state power to control “the body in the name of preserving its life.”<sup>248</sup> This line of reasoning is also visible with the Contagious Diseases Acts where “venereal cases among the British Army and Navy” were “perceived as a threat to the national defense and therefore to the “health” [*sic*] of the nation”<sup>249</sup> Although prostitution is “[o]ne of the most common arenas in which” scholars see “anxiety over... sexuality expressed at home,” the connections between prostitution and sodomy are evident (as previously discussed), and one can see how these intertwined to support the empire, via a militarized masculinity, at home.<sup>250</sup>

Controlling public discourse is also evidenced in how newspapers balanced the fine line between reporting and reinforcing ‘correct’ morals. Newspapers were regarded by the Victorians “as crucial in promoting and mediating mass consent to the operation of the legal system and the accompanying sociocultural processes of identifying and punishing transgressors.”<sup>251</sup> The press balanced this line by ensuring they reported on “cases and trials from” the lower courts as well as “the higher courts” and “[p]ress conversations helped ensure the maintenance of popular consent to the operation of the legal system, which was in turn dependent upon a sociocultural spirit of agreement which reinforced... legal decisions.”<sup>252</sup> However, in sexual deviancy cases such as sodomy trials, the press employed euphemisms to allude to the crimes to avoid encouraging the

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<sup>246</sup> Vern L. Bullough, *Homosexuality: A History*, p. 45

<sup>247</sup> Harry Cocks, *Nameless Offences*, p. 22

<sup>248</sup> Ed Cohen, *Talk on the Wilde Side*, p. 74

<sup>249</sup> Ed Cohen, *Talk on the Wilde Side*, p. 75

<sup>250</sup> Philippa Levine, “Sexuality and Empire” in *At Home with the Empire*, p.130; this connection is also evident in the colonies, but that discussion is beyond the scope of this thesis

<sup>251</sup> Judith Rowbotham and Kim Stevenson, *Criminal Conversations*, p. xxiii

<sup>252</sup> Judith Rowbotham and Kim Stevenson, *Criminal Conversations*, p. xxiii

crime. In not allowing sodomy to enter the public discourse, those concerned with public morality felt they were limiting “the spread of sodomy.”<sup>253</sup> This process reinforced for contemporaries how this crime was the ‘love that dare not speak its name.’

At first glance, the regulation of sodomy as codified in the Labouchere Amendment seems unrelated to the law it was included in. And the combination of regulating sodomy and prostitution is at first odd. However, when looking at the connections between empire and sexuality, these concerns are clearly connected. As Ronald Hyam argues, “sexual dynamics crucially underpinned the whole operation of British empire and Victorian expansion.”<sup>254</sup> And Philippa Levine argues “that many in Britain understood empire *as [sic]* sexuality.”<sup>255</sup> As England expanded the empire the sun never set on, ensuring the British maintained appropriate sexual activities was of the utmost importance to contemporaries. I view the concerns of empire, and its connections to masculinity, as intricately linked to explanations regarding this increase in trials as individuals attempted to control and correct sexual deviancy at home to defend their empire abroad.

Defending the empire was rooted in gendered expectations of masculinity. Men such as General Charles Gordon and Cecil Rhodes, were held up as ideal examples that other men should aspire to during this period. Although these men were purported to fulfill “national tropes that figured heterosexuality and masculinity as definitely British,” their successful service for the empire seems to have eclipsed possible sexual transgressions.<sup>256</sup> Gordon and Rhodes were both ideal men who served the empire and continuously served, defended, and expanded the British empire. Their rise to prominence, and their ability to maintain an appropriate masculine public image enshrined their imperial deeds in the British canon.

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<sup>253</sup> Harry Cocks, *Nameless Offences*, p. 77

<sup>254</sup> Ronald Hyam, *Empire and Sexuality*, p. 1

<sup>255</sup> Philippa Levine, “Sexuality and Empire” in *At Home with the Empire*, p.129

<sup>256</sup> Philippa Levine, “Sexuality and Empire” in *At Home with the Empire*, p.139

General Gordon's preeminence began with his command and leadership in defeating the Taiping rebellion and "saved China."<sup>257</sup> Gordon was an outstanding soldier for the empire and met the ideal of self-restraint for the nation, and therefore the empire. Gordon never married and spent much of his life surrounding himself with young boys. However, these actions were not deemed 'deviant' as they were explained away with the guise of Gordon maintaining a moralizing mission, and appropriate homosocial behavior, by protecting these young boys and ensuring they lived a 'good' Christian life. However, "Gordon was quite happy provided he could give the occasional bath to a dirty urchin and talk to him of God."<sup>258</sup> In a summary of his attributes upon his second assignment to Egypt, W.T. Stead summarized the popular feeling towards Gordon: "with all his supreme devotion to duty, and his Christ-like self-sacrifice in the cause of the poor and oppressed and those who have no helper, he is very human. But his faults, like those of a wayward but brilliant child, increase the hold which he has upon the popular imagination."<sup>259</sup> Attributing masculine and military ethos, Stead claimed that "Duty and Responsibility" were "Gordon's watchwords."<sup>260</sup> In this valorization, masculine and Christian ideals are attributed to Gordon to justify his popularity. Gordon's second assignment to Egypt was celebrated as he was "the ablest Englishman who ever held command in Equatorial Africa."<sup>261</sup>

The decision to send Gordon was celebrated, however the results were not as expected. Gordon expected to rely on Egyptian troops to defend Egypt (as he relied on Chinese troops to squash the rebellion in China), but his success in China was not readily followed in Egypt and English troops were, eventually, called to support him. However, Parliament delayed in sending

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<sup>257</sup> W.T. Stead, "Chinese Gordon," August 1884

<sup>258</sup> Ronald Hyam, *Empire and Sexuality*, p.14

<sup>259</sup> W.T. Stead, "Chinese Gordon," August 1884

<sup>260</sup> W.T. Stead, "In Memoriam," *Pall Mall Gazette*, 11 February 1885

<sup>261</sup> W.T. Stead, "Chinese Gordon for the Soudan," *Pall Mall Gazette*, 9 January 1884

troops to support Gordon in Egypt, and this delay led to public outrage, until troops were finally sent in early 1885. Before reinforcements arrived, Gordon was “stabbed by traitors in the midst of his faithful troops when Khartoum was betrayed.”<sup>262</sup> This news saddened many in England and was one more shockwave to the presumed strength of the empire abroad. After the blow of losing Gordon, Parliament sought to memorialize him, and the same week Parliament debated the Criminal Law Amendment Act, 1885 and the Labouchere Amendment, they also discussed a monument for Gordon. Even in death Gordon was praised for maintaining the “stoic” ideal of manhood.<sup>263</sup> This ideal of projecting a model of masculinity, Gordon was able to avoid suspicion from contemporaries well enough to avoid prosecution for impropriety. Instead, Gordon was hailed as a ‘good Christian Englishman’.

Another ideal British man of the period is found in Cecil Rhodes. Rhodes, with all his riches and leadership within the empire, was known to only employ “unmarried male secretaries in his household” and transferred these men to other posts when they married as “he considered their marriage an act of disloyalty” to him.<sup>264</sup> With this, rumors always followed him that he was attracted, and at times acted on his attraction, to boys and it was well known that he disliked “English female company” and maintained and “openly displayed [his] collection of phallic cult carvings.”<sup>265</sup> However, Rhodes was a quintessential imperial, funding his own militias to conquer parts of southern Africa for the British empire. Rhodes was extremely wealthy, especially after he received backing from the Rothschild family to purchase DeBeers Mining Company. Rhodes famously wanted to build a railroad from the ‘Cape to Cairo’ to connect the British colonies on the African continent, and he even dreamed of recovering the American colonies for the British

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<sup>262</sup> W.T. Stead, “In Memoriam,” *Pall Mall Gazette*, 11 February 1885

<sup>263</sup> John Tosh, *A Man’s Place*, p. 174

<sup>264</sup> Ronald Hyam, *Empire and Sexuality*, p.39

<sup>265</sup> Ronald Hyam, *Empire and Sexuality*, p.39

crown. With this power and prestige, Rhodes was not only able to avoid prosecution - Rhodes was also celebrated and viewed as a model imperial man.

At the opposite end of these ‘outstanding’ soldiers was Sir Hector Macdonald. Macdonald was viewed as “a national hero” until he was accused of “indulging in pederasty” and “running a big ‘vice ring’” before taking his own life.<sup>266</sup> Coming from a middle-class background, Macdonald never amassed a fortune, and his military prestige was harmed when his multiple exploits were brought to the Governor in Ceylon. Macdonald was known for sexual activities in Africa, where he was literally caught with his pants down during a “mutual masturbation session,” and his “habitual crime of misbehaviour [*sic*]” could no longer be ignored by authorities.<sup>267</sup> In his fall from grace, Macdonald was removed from ‘hero status,’ although the military was able to stifle most of the reporting (though not all – as Macdonald shot himself after a story broke identifying that he would be court-martialed for “serious charges” in Ceylon, alluding to sexual impropriety).<sup>268</sup> After his demise, Macdonald was viewed as Scottish, as opposed to British, to separate him from the proper British masculine ideal. Macdonald was known for his sexual exploits, but unlike Gordon and Rhodes, he was caught multiple times by the public and could no longer avert prosecution. Both society and the government stepped in to regulate and reinforce proper militarized masculinity.

Men such as Gordon and Rhodes represented the ideal man with a focus on their characters as “character, which had a particular meaning and value within Victorian discourses of masculinity, was increasingly regarded as the basis of the social order.”<sup>269</sup> And the lack of a social order and sodomite decadence, were viewed as the downfall of empires from Greece and Rome to

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<sup>266</sup> Ronald Hyam, *Empire and Sexuality*, p.32

<sup>267</sup> Ronald Hyam, *Empire and Sexuality*, p.34

<sup>268</sup> Ronald Hyam, *Empire and Sexuality*, p.34

<sup>269</sup> Harry Cocks, *Nameless Offences*, p.132

Napoleon III.<sup>270</sup> Men such as Macdonald and Wilde were tied to the downfall of empires and abhorred by Victorian Britain. Men like Wilde and MacDonald were known to lack sexual restraint and faced government intervention to uphold the empire.

Appropriate masculinity was linked with the notion of controlling the self. According to George Mosse, Victorian society was deeply concerned with controlling chaos, and this started by controlling the self.<sup>271</sup> Modern society was speeding up due to railways and industrialization, and this was terrifying to Victorians. As Cocks points out, “the Victorians were more disturbed than excited by dissimulation”<sup>272</sup> and their constant desire of “imposing order on apparent chaos”<sup>273</sup> were part and parcel of the middle-class ideals such as “notions of duty, moral purpose and manliness and as such contributed to the association of sexual deviance with Wildean decadence of 1895.”<sup>274</sup> According to Cohen, “the apotheosis of bourgeois masculinity” comes “from a process of self-regulation that engenders a mode of embodiment *distinctly recognizable* [sic]... [f]or, it is only by visibly bodying forth these standards for middle-class propriety... that the middle-class male is positioned to accumulate the property that will ensure his standing as a bourgeois Englishman.”<sup>275</sup> Victorian England was rooted in both class distinctions, with the middle-class emerging as dominant, as well as a highly gendered society.

Scholars such as Foucault have looked at this process to identify the roots of the modern homosexual identity and the discourse encompassing sexuality. However, Foucault bases his arguments on medico-legal texts written and circulated on the European continent that were banned in England (as pornography) during the same period. Illegal copies did make their way

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<sup>270</sup> Harry Cocks, *Nameless Offences*, p.144, 149

<sup>271</sup> George L. Mosse, “Nationalism and Respectability,” p. 223-225

<sup>272</sup> Harry Cocks, *Nameless Offences*, p.95

<sup>273</sup> Harry Cocks, *Nameless Offences*, p.96

<sup>274</sup> Harry Cocks, *Nameless Offences*, p.110

<sup>275</sup> Ed Cohen, *Talk on the Wilde Side*, p. 34

into Britain, but their lack of accessibility and limited underground circulation also limited conversations amongst peoples in England about these works while preventing them from significantly influencing public opinion during this period. Although the term ‘homosexual’ was first coined in the 1860s in German, it was not translated into English until the 1880s. These shifts are important, but they are missing the larger cultural and social shifts that occurred prior to these works and new terms being circulated in England.

Many of the works Foucault relies on, and scholars after him, look at works by individuals such as John Addington Symonds and Edward Carpenter. Symonds moved his family to Switzerland in the 1870s and his works and thoughts on homosexuality, were not easily accessible in England. Although Symonds penned his essay *A Problem in Greek Ethics* in 1873, he did not print it until 1883 – and even then, he only printed ten copies to share with friends.<sup>276</sup> And although Symonds work on his *A Problem in Modern Ethics* relied on theories from Karl Heinrich Ulrichs and Richard von Krafft-Ebing, Symonds “English audience read his analyses of” these writers, but they were likely “encountering them for the first time.”<sup>277</sup> And even the work Symonds started before his death with Havelock Ellis was attacked in England upon publication as indecent for public consumption and legally restricted to medical professionals.<sup>278</sup>

Carpenter remained in England, but he too wrote for a small audience of close friends who limited the circulation of his ideas. These men and others, particularly in Germany, were writing in response to legal changes already occurring in their countries. These works are important, but an important question I have sought to identify is why these legal changes began to occur in the first place. Works by those such as Symonds and Carpenter were a response to these societal shifts,

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<sup>276</sup> Emily Rutherford, “Impossible Love and Victorian Values,” p. 612 n31

<sup>277</sup> Emily Rutherford, “Impossible Love and Victorian Values,” p. 615

<sup>278</sup> Editors of Encyclopaedia Britannica, "Havelock Ellis." Encyclopedia Britannica, January 29, 2022. And Symonds name was removed from its original publication as requested by his widow.



but the societal shifts have not been previously explored. I argue that the societal shift causing these legal changes in England, and the subsequent pushback by these men and others, was rooted in empire.

Imperialism is deeply hierarchical. Scholars have examined how this hierarchy impacted the lives of those in the colonies during the Pax Britannica (and since), but few have examined how this hierarchy impacted the metropole. Masculinity was one of the most important hierarchies in this period and as England rapidly expanded her empire, societal concerns shifted to support and reinforce the empire abroad by policing masculinity at home. Sodomy, a threat to British masculinity, is one visible aspect of this policing during this period. British masculinity was policed by a militarized society to protect her empire, and those publicly accused of sodomy were viewed as a threat to the empire.

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