

Corrections to D Phil Thesis, “Ecstasy or Justice? The Sexual Author and the Law, 1855-1885”
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P. 28: “But he asks this of a period that in Britain saw, as we will see, Old Bailey prosecutions for sodomy triple.” The Proceedings of the Old Bailey 1674-1913 do not reflect the same rates of prosecutions for sodomy found by H G Cocks in *Nameless Offences: Homosexual Desire in the 19th Century* (I. B. Tauris, London, UK: 2010) or Graham Robb in *Strangers: Homosexual Love in the Nineteenth Century* (W. W. Norton, New York, NY: 2003). The Proceedings of the Old Bailey is a digital database that uses machine learning to present sodomy prosecutions, and it yields a far lower number of prosecutions of men for sodomy than H G Cocks and Graham Robb find, by reviewing court records and looking at news reports.

“with penalties [for sex acts] ranging from hard labour for decades, [to sentences, until 1861, of] the death penalty.” Sentence should read with bracketed text inserted.

30: Sentence should read: “From the Vagrancy Act of 1827 to the Obscene Publications Act of 1857 and *Regina v Hicklin* in 1868, to the Matrimonial Causes Act of 1856-7, to the 1864 and 1868 Contagious Diseases Acts, to the Indian Penal Code of 1860 amended in 1873, to the 1873 Comstock Laws, to the 1876 [Custom Laws Consolidations Act and the 1889 Indecent Advertisements Act], to the 1885 Labouchere Amendment”

40: “that the Labouchere Amendment, in fact, was a reform of this increasing criminalization—an insight which coheres with Labouchere’s liberal tendencies in general. [...] The Labouchere Amendment of 1885 placed a two-year upper limit on sentences for sodomy; sentences that in the 1860s and 1870s, before the Amendment curtailed them, had been as much as ten times longer in duration”. “Sodomy” should read “gross indecency”. H G Cocks in contrast found that the Labouchere Amendment had little practical effect: “Labouchere’s amendment of 1885 did not revolutionize the law or move its focus from sexual acts to particular ‘homosexual’ types of people, as has frequently been claimed.” Sodomy’s status he argues remained unchanged.
Cocks, *op. cit.*, p. 31

41: “These turning points for escalating state violence against male homosexuals included a Parliamentary Commission’s 1857 recasting of sodomy as a crime like murder rather than like, as it had been until 1856, coin-clipping or cattle-rustling; the debate in Parliament from 1855 to 1857 about the Matrimonial Causes Acts, that led Gladstone and other heterosexual Parliamentarians to direct hostile new moral and legal outrage at “rape, sodomy, bigamy” as the only categories of male sexual perfidy that could cause [broadly available civil] divorce [now affecting the population as a whole], thus privileging male heterosexual adultery as carrying no legal penalty; the 1857 introduction of penal servitude for the sodomy offense; the 1871 Boulton and Park trial that included criminalizing the wearing of women’s clothing; the 1871-3 [1873] update of the 1860 Indian Penal Code that [had] also criminalized “effeminacy”; the rise of venereology in 1870s sodomy accusations mentioned above; the extensive press coverage of these invasive examinations; the 1885 Labouchere Amendment, the only statute that is well known among many literary critics of the period; the cycle of escalation actually climaxes in 1898, the year when the revised 1827 Vagrancy Act criminalized male-male consorting as

prostitution, and brought back whipping as a punishment for sodomy.” Sentence should read with bracketed text included.

P. 49. The British Periodicals Online database search for “sodomy” did not yield all of the convictions that H G Cocks and Graham Robb found by cross-referencing with a greater number of search terms such as “indecent offence” and “indecent assault,” as cited above. “Sodomy was legally classed with such offenses as sheep-stealing and the forging of coins, and the few convictions often involved offenses against children, or violence against adults.” While a regional newspaper reported this change in classification, sodomy was a capital offense since 1533: Paul Johnson, “Buggery and Parliament, 1533-1917”, *Parliamentary History*, Vol. 38, Issue 3, October 2019. Pp. 325-341.

“After 1857, “penal servitude” was introduced, and the trials for sodomy moved from juries to the courts of magistrates; thus conviction rates shot up.” This was the case in a review of the Proceedings of the Old Bailey 1674-1917. But Graham Robb and H G Cocks found conviction rates peaking at various times in the 19th century, due to their different methodologies. Graham Robb, *op. cit.*, pp. 272-273, “Appendix I: Criminal Statistics.” H. G. Cocks, “Figure 8: Committals for Sodomy (dark line), Indecent Assault and “Other Unnatural Misdemeanors” (light line) in England and Wales, 1806-1892”, *op. cit.*, p 30.

P. 49: “From 1827 to 1856, prosecutions were rare.” This is according to the results in the British Periodicals database. H. G. Cocks found much higher levels of prosecution than did the results in the searches of this database: “Using this variety of sources, I have found collected information on 750 cases out of the 8,000 or so committals which took place in the nineteenth century.” Cocks, *op. cit.*, p. 21.

“Sodomy was legally classed with such offenses as sheep-stealing and the forging of coins, and the few convictions often involved offenses against children, or violence against adults.” Sodomy was a capital offense since 1533. Johnson, *op. cit.*, pp. 325-341.

“After 1857, when a new law brought sodomy convictions out of the realm of juries of one’s peers, and into magistrates’ courts, sodomy was recategorized by a Parliamentary Committee: now to be weighed along with such crimes as arson and murder rather than such offenses as sheep-stealing.”

“Since execution was the only penalty at that time for sodomy, the number of men in prison for this offense would not have been larger than those awaiting either execution or appeal.” H G Cocks finds higher figures for arrests and committals for same-sex offences, as cited above. See also Graham Robb, who also does: “Appendix I: Indictments for Sodomy and Related Offences in England and Wales per 100,000 of Population, 1810-1900.” Robb, *op. cit.*, p. 272.

P 53. “Finally, whereas in the previous quarter-century there were almost no sodomy executions [...]” The record of British Periodicals Online showed this result; but Graham Robb shows 55 executions between 1805 and 1835. “Appendix I: Executions for Sodomy in England and Wales, 1805-35”, Robb, *op. cit.*, p. 273.

The British Periodicals Online database showed “a sharp statistical escalation of risk for the writers whose work we address.” H G Cocks and Graham Robb show convictions for sodomy

and related offences peaking at various points in the 19th century; they have different outcomes using different metrics, by using a different methodology cross-referencing court trial records with publications, as shown above. Cocks, op. cit., p. 44, “source: Parliamentary Papers”, and Robb, op. cit., “Appendix I,” p. 272;

“Physical dangers to men prosecuted successfully for sodomy in England thus escalated, as we saw above, quite slowly from 1827 to 1855 and then far more rapidly from 1856 to 1885.” Graham Robb and H G Cocks show convictions peaking at various points in the 19th century, as noted above.

54: “Whereas in the prior quarter-century sodomy had been classed with crimes of property, or of social disruption, after the 1857 Parliamentary committee convened, sodomy was reclassified with the most heinous, immoral and violent of crimes: along with arson, manslaughter and murder. We will see the crucial connection between these two events.” H G Cocks and Paul Johnson point out that sodomy was classified as a capital offence since 1533, as noted above.

56: “This was the first time in the record that two men were named together, without the suggestion of violent assault or the involvement of minors.” Graham Robb and H G Cocks found men arrested together earlier, by using a different set of methodologies, as noted above.

57: “The wording that entered the final bill was historically novel: it was the then-much-repeated phrase, “rape, sodomy, bestiality” as the lone carve-outs that would allow a woman to divorce a heterosexual man.” Dr Paul Johnson points out that sodomy had been a cause of divorce in ecclesiastical law. Johnson, op. cit., pp 325-341.

58: “Sodomy, it appears from the Parliamentary debates, was criminalized more drastically in 1855-7.” Sentence should read, “Was criminalized in a new public context” since it was already a capital offense.

58: “The linkage of “sodomy” and “bestiality” was now for the first time established in the law.” Should read “in a law that affected thousands of people who now would seek divorces”. Sodomy and bestiality as we understand the word in its modern sense had been linked linguistically in other legal contexts before 1857 and were at times lumped together as an offence. Robb, op. cit., p. 21

“Sodomy was now for the first time a category of inquiry in [the new divorce law that would affect the population in general]; thus for the first time, now open for scrutiny from the state [in that context].” Bracketed text should be included. Sodomy had been a factor in ecclesiastical divorce, which affected very few, as noted above.

59: “Rape, sodomy and bestiality” were codified into law as the horrific misbehaviors that alone would let a woman reject a man. “ Should read: ‘were codified into this law that alone would let a woman reject a man in the context of newly accessible civil divorce.’”

60: “The precedent here was set -- that when a third party or the state demanded that sodomy be scrutinized, it must be.” Should read: “that sodomy be scrutinized in the context of generally available civil divorce, it must be.” Ecclesiastical divorce had allowed scrutiny of sodomy in the context that affected very few, see above.

“What followed, which Queer Theorists seem not to reflect in their identification of 1885 as a flashpoint, was twenty-three years of escalating sentences at hard labour. “ That is according to my search of British Periodicals Online in 2013 and the Proceedings of the Old Bailey 1674-1913. H G Cocks and Graham Robb found peaks of conviction at various points in the 19th century, as noted above.

61: “It is reasonable to conclude from this analysis that the extremely negative cultural valence assigned to sodomy, and the association of sodomy with a high likelihood of criminal sentencing, was essentially invented by a small group of heterosexual male peers in Britain in 1857 -- to serve heterosexual male legal goals.” This conclusion is based on results from my search of British Periodicals Online and The Proceedings of the Old Bailey, 1674-1913. Cocks and Robb find peaks of conviction at various points in the 19th century, as noted above.

62: “In 1855, “GEORGE AYRES was indicted for a like offence [to sodomy....].” He was found “GUILTY . [...] — Death Recorded.” [...] In 1856 28-year-old Robert Baker was found guilty of a similar offense: “DEATH recorded.”” This phrase did not mean that these prisoners were executed but that judges were able to assign other sentences.

62: “But the same year twenty-year-old Robert Enstone was executed: “indicted for b—st—l—y.” He was found “GUILTY .— Death Recorded.” Robert Enstone was not executed.

63: “[A]nd even executions” should be cut. A “recording” of a death sentence did not mean an execution.

“[A]nd a death sentence for the act itself.” After 1861 sodomy was punishable by ten years to a lifetime at hard labour but was no longer a capital offence.

63: “Also in 1857, that watershed year, twenty-eight-year-old John Thomas Burns was confined for two years” should be “sentenced to two years”; “sixteen-year-old John Williams was imprisoned for a year” should be “sentenced for a year”.

64: “fifteen-year-old Thomas John Davey was imprisoned” should read “Thomas John Davey was sentenced”.

65: “In 1859, sentences began to extend from a year for “the attempt” at sodomy, to eighteen months: “JAMES VOUSDEN (37), was indicted for b—s—ty [...] Confined Eighteen Months.”” Bestiality and what we would call child molestation were included in sodomy law along with consenting sex between adult males. These were not separate offences in the same way that they are today.

“The same year—the year Symonds began to write “In Memoriam Arcadie”—the State executed a “perpetrator” who was essentially a child: fourteen-year-old Thomas Silver was executed for committing sodomy: Silver “was indicted for an unnatural offence. [...] GUILTY — Death recorded.”” “Executed” should read “sentenced to death.” Thomas Silver was not executed but served two and a half years at hard labor per the Digital Panopticon, which was linked to the Proceedings of the Old Bailey in 2017.

66: “Now “the attempt” at sodomy resulted in [sentences of] between 18 months and two years’ imprisonment”. Sentence should include bracketed text.

“43-year-old William Mephram was “indicted for b--st--y. [...] GUILTY of the attempt.” He was imprisoned for two years.” Should read: “was sentenced for two years.”

“John Spencer [was] executed.” Should read: “sentenced to death.”

“i[I]mprisoned for eight months” should read “sentenced for eight months.”

67: “received [a sentence of] a year’s imprisonment”. Clause should include bracketed text.

“Twenty-four year old Thomas Cook was found guilty of “the attempt” of “B—g—y,” and confined for a year and a half. “ “[W]as sentenced to be confined for a year and a half.”

68: “The same year, 1866, twenty-one-year-old John Crick also received a decade’s penal servitude for the offence: “JOHN CRICK (21), B—stl—y. [...] .” Should be: “received a sentence of a decade’s penal servitude for the offence”:

“fifteen-year-old Stephen Alexander received six months’ imprisonment for “the attempt”:

“GUILTY of the attempt. Recommended to mercy by the Jury, on account of his youth.” Should be: “received a sentence of six months’ imprisonment” ...

69: “In 1869, twenty-seven-year-old James Russell received [a sentence of] three months’ prison time for “the attempt” at “b—st—lty. [...] .” Sentence should include bracketed text.

“The same year, thirty-three-year-old Henry Herbert and twenty-year-old Henry Middleditch received a year’s and six months’ imprisonment, respectively, for “[u]nlawfully attempting to commit an unnatural offence” as well as for “indecent exposure”.” Should be: “received sentences of a year and six months’ [...]”

70: “In 1870, a seventh teenager, 18-year-old, Richard Farmer, and a 21-year-old, Alfred Biggs, were each imprisoned at The Old Bailey for a year on average, for ‘attempting’ the act:

“Unlawfully attempting to commit b—y. [...] FARMER— GUILTY .— Eight Months' Imprisonment. BIGGS— GUILTY .— Twelve Months' Imprisonment.” Should be: “were each sentenced at the Old Bailey to be imprisoned for a year on average [...]”

71: “Thirty-two-year-old Isaac Church was imprisoned for six months that year “for a like offense.”” Should be “was sentenced to be imprisoned for six months that year [...]”

“and the young Mahoney was imprisoned for two months. “ Should be: “was sentenced to be imprisoned for two months.”

“1871 was also the year of the Boulton and Park trial, which tried the two men for “conspiring” to commit sodomy, a newly minted legal approach.” This is according to just the Proceedings of the Old Bailey database.

75: “That year, too, another sixteen –year-old boy, Alfred Cope, received [a sentence of] eighteen months in prison for “the attempt” at “ b—st—y.” Thirty-three-year-old Francois Garcia also received [a sentence of] eight years at penal servitude for “the attempt” at “b—g—y with William Elvin.” Bracketed text should be included.

76: “still another case resulted in [a sentence of] eighteen months for “the attempt”: “JAMES MACKENZIE (30) was indicted for b—y. [...]” Bracketed text should be included. “In 1881, the phrase “abominable crime” entered the legal record as new language, as does “indecent assault”—an example of the offense of sodomy being codified as a violent crime even if it is consensual and between adults.” This term was found earlier by H G Cocks and other scholars. Cocks, *op cit.*, p. 28.

77. “In 1882, the case of forty--year-old Herbert Milward and twenty-two-year-old David Eadie showed that they were sentenced for “[u]nlawfully attempting to commit—” the proscribed act, and the phrase “indecent assault” enters the legal record for the second time to describe a consensual act between adults [...]” This is the case for the Proceedings of the Old Bailey 1674-1913. Other scholars found such phrases earlier, see above.

“Kent received [a sentence of] “Six Months' Hard Labour.” ‘ Bracketed text should be included.

79: “This record shows that for a decade before the Labouchere Amendment, male homosexuals were receiving severe criminal sentences for same-sex approaches short of sodomy that would have been legal in 1827 under ecclesiastical law.” H G Cocks argues that “related misdemeanors” were illegal earlier: Cocks, *op. cit.*, p. 23

“This record shows [...]” according to my search of the Proceedings of the Old Bailey database. H G Cocks and Graham Robb find many more committals and convictions before 1857 by using a different methodology, as cited above.

“The convictions and in some cases executions of twelve male adolescents between 1855 and 1885 would have intensified the shock waves throughout the culture as this criminalization escalated.” “Executions” should be replaced with “death sentences”.

81: “Michael Kirby calls sodomy law “England’s Least Lovely Export” and “an unlovely legacy of Empire,” stressing its historical novelty in the Victorian period [in terms of colonial law].” Sentence should include text in brackets.

81: “So same-sex male sexual activity was not illegal in Britain then, as long as one could respond to the charge of sodomy that one had withdrawn before ejaculation, even if ejaculation then took place.” H G Cocks argues that according to case law, all sex acts between men were illegal previously, see above citation.

83: “Most duplicated was the Indian Penal Code of Macaulay, 1872 [based on the 1860 Indian Penal Code].” Bracketed text should be included.

86: “Law, as we saw, began to criminalize gender ambiguity in the 1870s:” Hijras were also criminalized in the 1860 Indian Penal Code.

86: “Penalties for sodomy became more serious throughout the 1840s.” This is the case in the Proceedings of the Old Bailey database results in 2013, but H G Cocks and Graham Robb find convictions rates peaking at various points throughout the 19th century, as noted above.

“Any male-male sex act was now an offense, even in private.” H G Cocks argues that this was the case throughout the 19th century, see above.

89: “From 1827 to 1885, fellatio and masturbation between men, while considered unacceptable in Britain, had not, in fact, been illegal.” H G Cocks argues that case law showed that these acts were already illegal, see above.

92: “[w]ould be executed.” Should read: [could face banishment]

<http://hansard.millbanksystems.com/lords/1819/dec/09/blasphemous-libel-bill>. The discussion of the Blasphemous Libel Bill included booksellers’ fears of fines, transportation, banishment and the pillory: <https://hansard.parliament.uk/Lords/1819-12-09/debates/b8dbde5f-b418-4611-9351-b22a40d0282e/BlasphemousLibelBill>

<https://hansard.parliament.uk/Lords/1819-12-10/debates/f086f569-e27a-4656-8ad8-e233c0735d71/BlasphemousLibelBill?highlight=blasphemous%20libel%20bill%201819#contribution-a97574a9-5ff5-45b7-9093-8e79c05f4908>; The Dec 23 1819 Parliamentary discussion included fears of banishment for life. <https://hansard.parliament.uk/Commons/1819-12-23/debates/b343bb97-4ff3-4887-a491-0f64f288a0b4/BlasphemousLibelBill?highlight=blasphemous%20libel%20bill%201819#contribution-acec8b00-3234-4db2-ae6a-b8075a6da8c8>.

95: “The first half of the nineteenth century thus saw an immense proliferation of British obscene publications outside of the theatre (which had always been regulated by the Lord Chamberlain) [...]” “Always” should be replaced with “since 1737.” See <https://www.thestage.co.uk/features/2018/victorian-values-vetoed-censorship-given-boot/>

141: “The years 1867, 1872-3, 1876 and 1882, which I have identified as turning points, all represent escalations in the legal record and in criminalization of obscenity and/or sodomy.” This is true for the Old Bailey database and the British Library database of news accounts, in my searches of 2013. But H G Cocks and Graham Robb find various peaks of prosecution for sodomy and related offences in the 19th century, as cited above.

P. 141-2: Footnote: “Hicklin v. Regina” should be “Regina v Hicklin”

P. 148: “Hicklin v. Regina” should be “Regina v. Hicklin”

P. 149: “Hicklin v. Regina” should be “Regina v. Hicklin”

P. 160: “the revised Obscene Publications Act in 1867” should be “Regina v Hicklin” in 1868

P. 166: “Acts” should be “Act.”

P. 167: “was made illegal” should be “was illegal.”

“the Boulton and Park trial established a new legal precedent fifteen years before Labouchere: it ensured that the act of sodomy itself was no longer, as it had been up to that point, the only actionable crime”. H G Cocks argues that case law had made other sex acts between men actionable previously, as cited above.

P. 169: “Hicklin v. Regina” should be “Regina v. Hicklin”.

P. 176: “A man in Britain could legally imprison his wife in pursuit of his conjugal rights, and legally rape her, until 1891.” Should read: “and could legally rape her until 1991.”

P. 185: “The revised Obscene Publications Act in 1867” should be “in 1868”

P. 200: “stereoptical” should be “stereotypical”.

P. 226: “On The Convent Stair” should be “The Convent Threshold”

P. 242 “homosexual congress [and male-to-female cross-dressing]”. Bracketed text should be included.

P. 250: “Penal codes” should be “court proceedings”.

P. 255: “the [amended] Indian Penal Code”. Bracketed text should be included.

P. 257: After “until 1894”, “Though he continued to be privately collected, Simeon Solomon did not exhibit widely after his arrest” should be added.

P. 261: ‘to [a sentence of] penal servitude for decades’. Bracketed text should be included.

P. 268: “These groups created a typology for the idea of social or state intrusion into what had been seen in the 1840s through the late 1850s in both countries as private sexual behavior,”. H G Cocks argues that male-male sex acts were illegal as seen in case law by then, as noted above.

P. 295: ‘Hicklin v Regina’ should be “Regina v Hicklin”

P. 298: “With the Indecent Advertisements Act, it was not just books and prints that were illegal to produce, but now posters, displays and the advertisement of contraceptive objects or obscene material could trigger a prison sentence.” Replace “Indecent Advertisements Act” with “Customs Consolidation Act”.

P. 299: “The Indecent Advertisements Act also had an impact on fiction, especially as it coincided with the highly publicized trial, a few years after its passage, of birth control advocates Annie Besant.” Replace “Indecent Advertisements Act” with “Customs Consolidation Act”.

P. 312: 1871 should be 1873; 1873 should be 1874

P. 318: replace “the 1889 Indecent Advertisements Act would make it illegal” with [that it was illegal]

P. 320: “1889 also saw the return of public whipping as a penalty for sodomy, in the revised Vagrants Bill after an absence since 1827.” “Flogging was allowed as a punishment for such immoral acts; in particular for “solicitation by a male person for immoral purposes.” Angus

McLaren, *The Trials of Masculinity: Policing Sexual Boundaries, 1870-1930*, Chicago: University of Chicago Press, 2008, pp. 16-17. “1889” should be “1898”

326: 1876 should be 1877

366 “de Maurier” should be ‘Du Maurier”

389: “1871: The Arrest of Simeon Solomon for Attempted Sodomy (UK)” should be “1873”
“Hicklin v. Regina should be “Regina v Hicklin”