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Sexual Pleasures and Dangers: A History of Sexual Cultures in Wellington, 1900–1920

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Abstract

This thesis examines sexual cultures between 1900 and 1920. It is based on court records of trials for 'sex crime' in the Wellington Supreme Court district, which covered the lower north island. Although sex crimes were an extreme manifestation of sexual practice, and court records represent only partial and constructed accounts of it, the sources can provide insight into attitudes toward sexuality in the past. In this thesis, a crime is posited as an 'extraordinary moment', capable of illuminating a variety of cultural beliefs about sexuality. Victims, their families, the accused men, criminal justice authorities and many others expressed views about codes of sexual behaviour in response to sex crimes. Combined, they form a multi-layered and, at times, contested grid of understandings about sexual mores. This thesis is focused on the reconstruction of these codes of sexual behaviour. To do this, a case study method has been employed which traces the construction of sexuality by individuals and within the courts.

The possibilities of sexual pleasure and sexual danger – autonomy and victimisation – framed the meaning attached to sexual encounters by the parties involved, and by others. Such understandings were predominantly shaped by the variables of age and gender. Very young children lacked sufficient sexual knowledge to identify a sexual encounter as either sexually pleasurable or dangerous; they labelled it a physical attack. By adolescence, girls and boys were increasingly sexually aware. For them, and for adults, sexual experiences were characterised by the possibility for sexual pleasure or danger, or a mix of the two. This potential for sexuality to be experienced as pleasure shaped observers' understandings of codes of sexual behaviour. Observers often conflated sexual maturity with consent: childhood was predominantly constructed as a time of sexual innocence and adulthood as times of sexual activity and agency. But codes of sexual behaviour were also mediated by gender. Gendered constructions of character shaped self-representations and observers' understandings of sexual mores. While the double standard of sexual morality set the backdrop for the understanding of sexual mores in the wider Wellington area during the early twentieth century, there were considerable variations in levels of acceptance of it. This thesis examines constructions of sexuality in relation to children, adolescents, and adults of both sexes.

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Introduction

In May 1901, a 33-year-old married civil servant named Edward Pierard stood trial on a charge of indecent assault upon a 15-year-old girl named Jessie F. After three trials, Wellington's Crown prosecutor dropped the charge, and Pierard disappears from the criminal record. The trial of Pierard, however, was neither the beginning nor the end of the story of his sexual encounter with Jessie F. As Edward Muir and Guido Ruggiero wrote in their introduction to *History from Crime*, a crime need only constitute a 'point of departure' from which the social and cultural worlds of the past can be investigated.¹ This thesis uses court files of men like Edward Pierard, committed to the Wellington Supreme Court on charges of sex crime, as a window through which to view the sexual cultures of Wellington between 1900 and 1920. Using the 'Pierard case', as it became known, as a viewfinder, this introduction sets out the themes, method and sources of this study.

Edward Pierard first saw Jessie F. in February 1900. He spoke to her as she walked down a road in the Wellington suburb of Newtown, but she ignored him. By coincidence, Pierard later met and became friendly with Jessie's family. In September Jessie began working as a clerk in a central Wellington office. Pierard started telephoning and visiting her at work, several times a week, usually before 9 o'clock in the morning when she was alone in the office.² Jessie also occasionally telephoned him.³ During these visits, Pierard started taking 'liberties'. Jessie said '[h]e used to kiss me and talk about love' and he asked her to 'have connection' with him.⁴ Jessie's brothers told their mother about Pierard's visits. She thought there was 'no harm' in them but suggested to Pierard that he stop.⁵ At work, Jessie tried to cool him off by telling him that her brothers were 'talking about him coming to the office'. He did stop, but only for a few days. Jessie told the Magistrate's Court that one morning 'he

¹ Edward Muir and Guido Ruggiero, 'Introduction: The Crime of History', in Edward Muir and Guido Ruggiero (eds), *History from Crime*, Baltimore: John Hopkins University Press, 1994, pp.vii-xviii, p. x.

² Deposition of Jessie F., AAOM W3265 1901 Edward Pierard, CTF.

³ Cross-examination of Jessie F., AAOM W3265 1901 Edward Pierard, CTF.

⁴ Deposition of Jessie F., AAOM W3265 1901 Edward Pierard, CTF.

⁵ Deposition of Matilda F., AAOM W3265 1901 Edward Pierard, CTF.

said he could not wait any longer — that he would get out of the way if I would not allow him. I asked him what good it would be. He had pretended to be very ill about it. He then got ready for it and had connection with me in the office'. They had 'connection' again a few days later. This time Pierard explicitly threatened to commit suicide if Jessie refused him.⁶

Jessie told no one about what happened until a month later. Mrs F. took Jessie aside and enquired how long had been since she 'had seen anything'. Jessie 'burst out crying and told her what was wrong', and that Pierard 'was the cause of the trouble'. Mrs F. confronted Pierard who admitted the affair and accepted full blame for it. Pierard knew he was liable to legal proceedings for having sex with an underage girl. He apologised to Mrs F. and pleaded with her to discuss whether she was taking proceedings against him.⁷ She did.⁸ On 27 February 1901, Pierard was arrested and charged with indecent assault.⁹

In early March, Pierard was committed to the Wellington Supreme Court to stand trial for indecent assault under section 188 of the Criminal Code Act 1893. This section prohibited any sexual activity with a girl under the age of consent (16 years).¹⁰ Pierard's defence counsel argued the only defence available to Pierard: that he had 'reasonable cause to believe' that Jessie was 'of or above' the age of consent.¹¹ As evidence, the counsel accused Jessie's parents of lying about her age, and also pointed to her appearance and statements she reputedly made to Pierard.¹² Three different juries failed to reach a verdict. The Crown prosecutor elected to apply for a stay of proceedings rather than apply for a fourth trial, prompting the Chief Justice to declare that 'the responsibility for the failure of justice in this case . . . rested with the Crown.' Pierard was discharged.¹³

A furore erupted. For several weeks, the *Evening Post* and *New Zealand Times* printed a steady stream of editorials and letters to the editor debating the reasons for a lack of verdict. The *Evening Post* attributed the failure of the case to interference by 'respectable' men on Pierard's behalf, first to prevent a conviction, and then to cause the

⁶ Deposition of Jessie F., AAOM W3265 1901 Edward Pierard, CTF.

⁷ Deposition of Matilda F., AAOM W3265 1901 Edward Pierard, CTF.

⁸ 'Information and Complaint', AAOM W3265 1901 Edward Pierard, CTF.

⁹ Deposition of Detective Broberg, AAOM W3265 1901 Edward Pierard, CTF.

¹⁰ s.3, *Criminal Code Act Amendment Act, 1896*.

¹¹ s.188, *Criminal Code Act, 1893*. The defence of consent was only allowed when a girl was 'older than or of the same age as the person charged.' Section 5(1), *Criminal Code Act Amendment Act, 1896*.

¹² 'Supreme Court. Serious Charges', *NZT*, 15 May 1901, p.7.

¹³ 'The Pierard Case', *NZT*, 23 May 1901, p.3; 'The Pierard Case. Proceedings Abandoned', *NZT*, 24 May 1901.

charges to be dropped. A correspondent by the pseudonym of “Wellington Justice” claimed that it was ‘notorious’ that the majority of jurors wanted to convict Pierard, but that ‘strong efforts were made to get Pierard off’ as his conviction would have been ‘a blow to the “class” and the circle in which he moved.’¹⁴ From another perspective, ‘An Anxious Mother’ felt that male jurors’ sympathy with accused men led to sex offenders frequently evading punishment for ‘outrages’ on women and children. In her opinion, this could lead to injustice because while ‘the criminal . . . is discharged, the girl is ruined for life, and bears the punishment of his crime.’¹⁵ The *New Zealand Times* agreed that jurors probably had obstructed a verdict, but suggested this was because they did not agree with the age of consent laws. The *Times* lauded the independence of the jury as providing a ‘common sense’ check to the severely punitive (as they saw it) attitude of the judiciary to sexual offenders. The *Times* argued that while ‘the people’ supported the repression of violent sexual assaults, they neither wanted men convicted for ‘artificial crimes’ contrary to the ‘moral sense’ of the community, nor wanted them liable to severe punishment, possibly including an ‘inhuman’ flogging.¹⁶

While the debate continued, Pierard left Wellington for Sydney.¹⁷ Nothing further is known of Jessie F.

Between 1900 and 1920, the boundaries of legal sexual behaviour of New Zealanders were officially delineated by the Criminal Code Act of 1893 and its subsequent amendments (consolidated in the Crimes Act of 1908). This legislation imagined a sexual order which confined sex to relationships between consenting heterosexual adults and between spouses. Forcible sex with women (except with wives), and any sexual contact with girls under 16 years of age was illegal.¹⁸ Sexual relationships between family members, with animals, and between males were completely prohibited.¹⁹ The criminal code even limited the type of sexual act that should take place. Sodomy was outlawed, including between consenting married people.²⁰ Breaches of the law were punishable by sentences of imprisonment with

¹⁴ ‘Miscarriage of Justice’, *EP*, 25 May 1901, p.2; ‘A Failure of Justice’, *EP*, 27 May 1901, p.2.

¹⁵ ‘The Pierard Case’, *EP*, 25 May 1901, p.2.

¹⁶ ‘Failure of Justice’, *NZT*, 31 May 1901, p.4.

¹⁷ ‘The Pierard Case’, *EP*, 27 May 1901, p.6.

¹⁸ ss.191—96, *Criminal Code Act 1893*. Re-enacted as ss.211—216 *Crimes Act, 1908*.

¹⁹ *Criminal Code Act 1893, Amendment Act, 1900*. Re-enacted as s.155 *Crimes Act, 1908*; s. 136 *Criminal Code Act, 1893*. Re-enacted as ss.153, 154 *Crimes Act, 1908*. Sexual relations between women were criminalised by the *Crimes Act, 1961*. See Julie Glamuzina and Alison J. Laurie, *Parker and Hulme. A Lesbian View*, Auckland: New Women’s Press, 1991, pp.150-51.

²⁰ s.136 *Criminal Code Act, 1893*. Re-enacted as s.153 *Crimes Act, 1908*.

hard labour ranging from two years to life. In addition, Judges had a discretionary power to order a maximum of three floggings with a cat-o-nine-tails of up to 25 lashes each for men convicted of rape, unlawful carnal knowledge of girls under 12 years of age, indecent assault upon females, or unnatural offences.²¹

As the sexual encounter between Edward Pierard and Jessie F. suggests, legislative prohibition did not prevent the occurrence of criminalised sexual activity. Indeed, between 1900 and 1920, 1,690 people were tried throughout New Zealand on charges of ‘sex crime’ (rape, unlawful carnal knowledge, incest, sodomy, bestiality, indecent assault on males and females and attempts at all these crimes), 232 of them in the Wellington district.²² Nor did the legislation foster a homogenous sexual order. The court records show that in practice, sexual relations took place between men; and between men and women, children, and animals. Attitudes towards sexual practices also varied, as evidenced in the conflicting responses of the legal system and of the public to the behaviour of Pierard and Jessie F. Just as Muir and Ruggiero suggested, the ‘Pierard case’ reveals cultural assumptions about sexuality. It introduces this thesis because the issues traversed in the encounter and subsequent reaction to it serve as a ‘point of departure’ illuminating the tension between sexual pleasure and sexual danger which framed the construction of sexuality in precept and in practice in the Wellington district between 1900 and 1920.

The sexual pleasure and sexual danger framework is a useful construct through which to view sexual cultures. Moments of tension illustrate points of conflict along which sexual boundary lines were built. Drawn from socialist and libertarian feminist theory, the framework was adopted by Karen Dubinsky as a construct through which to interpret descriptions of heterosexual sexual relations recorded in the crime records of Ontario between 1880 and 1929. Heterosexual sexual relations, Dubinsky argued, took place against a backdrop of unequal gender relations determined by the patriarchal culture. But within this context, women ‘resisted patriarchal norms of sexual behaviour and attempted to carve out sexual territory.’ Women experienced sexuality as a site of both ‘autonomy and victimisation’ — of pleasure and of danger.²³ The sexual encounter between Pierard and Jessie F., for instance, tracked a fine line between consent and coercion. While Jessie

²¹ ss.136, 188, 192—95, *Criminal Code Act, 1893*. Re-enacted as ss.153, 154, 208, 212, 213, 214(1), 215(1) *Crimes Act, 1908*.

²² The overwhelming majority of whom were men. A handful of women were charged with incest or as accomplices to an offence committed on a woman or girl. See law and crime statistics, *Statistics of New Zealand, 1900-20*.

²³ Karen Dubinsky, *Improper Advances. Rape and Heterosexual Conflict in Ontario, 1880 —1929*, Chicago and London: University of Chicago Press, 1993, p.3—4.

allowed Pierard to telephone and visit her, sexual intercourse ultimately took place against her wish. In heterosexual situations, Dubinsky argued, gender constituted the central axis of women's experience of sexuality, though she allows that race and class intersect with and sometimes supersede gender.²⁴ In the public discussion of the Pierard case, for example, Pierard's position and gender were central to understandings of the case.

The pleasure/danger analytical framework has since also been applied to same-sex sexual relations. Steven Maynard viewed boys' sexual relations with men in Ontario between 1890 and 1935 as creating the possibility of sexual pleasure and danger, or a mix of the two. Maynard expanded and refined the framework, suggesting that the axes of power which set the context for the occurrence and understanding of intergenerational same-sex sexual relations lay distinctly in age, in addition to gender, class and ethnicity.²⁵

This study incorporates both same-sex and heterosexual criminal relations in order to gain a broad view of the sexual culture of early twentieth-century Wellington. It also includes both consenting and forcible crimes (regulated as crimes against girls under the age of consent and same-sex offences) as a means of gauging the extent and range of sexual conflict during the period. The sexual injuries resulting from these crimes were wide-ranging including physical, mental, moral and social injuries. Because the crimes are mainly, but not exclusively, sexual assaults, the more general term 'sex crime', rather than 'sexual assault', has been adopted to collectively describe the offences.

In 1900, the Wellington Supreme Court area comprised the Wellington and Hawke's Bay provincial districts.²⁶ In 1913, a Wanganui district was created and the Wellington Supreme Court boundaries were reduced to an area to the south-east of the Rangitikei River. Prisoners were also tried or sentenced in Wellington if sent from other districts to expedite proceedings because the local criminal court was not due to sit for some time, or if there was concern that a case not be fairly tried in its original locality. Conversely, cases originating in the Wellington district might be heard in another place. The actual number tried in the Wellington Supreme Court then, was determined by administrative concerns as well the number prosecuted. The number of cases included in this study could also have been influenced by the accuracy with which cases tried and sentenced were recorded in the Wellington Supreme Court registers (called the 'Return of Prisoners Tried'). Newspaper reports of criminal sessions show that, occasionally, cases

²⁴ Dubinsky, pp.3, 32.

²⁵ Steven Maynard, 'Horrible Temptations': Sex, Men, and Working-Class Male Youth in Urban Ontario, 1890—1935', *Canadian Historical Review*, 78(2) June 1997, pp.191—23, pp.193—96.

²⁶ Order in Council, 3 Feb 1891, *Gazette*, 5 Feb 1891, p.194.

appeared that were not included in the registers. Consequently, the statistics quoted in the thesis are, at best, only a guide to patterns of offending.

Sex crime was considered inevitable by Wellington's criminal justice authorities during the early twentieth century. Mr Justice Chapman told the Supreme Court that a 'certain amount . . . must be expected.'²⁷ And the police categorised it as an 'unpreventable' crime, the amount of which was beyond their control.²⁸ An average of 11 men appeared each year for trial or sentence in the Wellington Supreme Court, the majority of 72.2 per cent for sex crimes committed upon females.²⁹ To what extent these rates represented 'actual' patterns of sexual offending is impossible to know. In early twentieth-century Wellington, as Tony Severinsen has thoroughly documented for the period 1860 to 1910, there were numerous obstacles to sexual assault charges being committed to the Supreme Court. The result, he concluded, was that only a 'tiny' number of charges were prosecuted.³⁰ The stories of sexual injury appearing in this thesis are regarded as a revealing, but socially constructed representation of sex crime in early twentieth century Wellington.

The early twentieth century was believed to be a sexually dangerous time for women and children. While the number of men committed to the Supreme Court for offences on women and children amounted to an average rate of only 3.4 per 100,000 population, the persistent presence of such crimes at the criminal sessions caused anxiety throughout the period. Judges lamented the frequent appearance of such, and celebrated when they were absent from the court calendar. In 1908, Justice Cooper concluded his charge to the Grand Jury by congratulating them on the absence of cases against women and children. It was the first time in the eight years in which he had presided at the Wellington sittings, he said, when there had been no such cases. He went on: 'I hope we may take that as evidence that a different feeling is coming over a certain section of the community, and that, in this district, at any rate, there will be a cessation of those charges which have been so frequent in the past, and are still so frequent in other parts of the Dominion.'³¹

Although judges usually referred to offences against women and children together, offences against children 'of tender years' and even more especially against girls, gained the

²⁷ 'His Honor's Charge', *Dom*, 19 May 1908, p.4.

²⁸ *AJHR*, 1900, H—16, p.1; 1901, p.1.

²⁹ Sources for Wellington statistics: AAOM W3265/2922—2927 Returns of Prisoners Tried, 1888—1929 (RPTs); AAOM W3265 Wellington High Court. Criminal Trial Files, 1900—20 (CTFs); *EP*, *Dom*, *NZT*, *Truth*.

³⁰ Tony Glen Severinsen, 'Easy to Charge, Hard to Disprove'. Responses to Sexual Assault on Women in New Zealand, 1860-1910', MA thesis in History, Victoria University of Wellington, 1995, p.168.

³¹ 'His Honor's Charge', *Dom*, 20 Nov 1908, p.7.

greatest condemnation. Justice Cooper deemed them ‘a blot on civilisation’.³² Such offences also most easily provoked public concern during the period. In Wellington, actual and perceived increases in the rate of prosecution of sex crime around 1907, 1911—12, and from 1915, in addition to particularly brutal cases committed on young children, prompted calls by the public and the press for the government and judiciary to deal more effectively with sexual offenders. (see graph 1)³³ By the last quarter of the period, sporadic outcries against the rate of such offending grew into a nationwide rally calling for action on the issue by individuals, women’s groups, municipal bodies and some members of parliament. The movement supported the comments of Grand Jurors from the Auckland and Christchurch, and to a lesser extent Wellington and Dunedin Supreme Courts, in which they repeatedly expressed their alarm at the prevalence of such offences and demanded stronger measures against offenders.³⁴ In 1915, for instance, the Wellington Grand Jury urged the compulsory flogging of men convicted of sexual offences against children.³⁵ Compulsory flogging, sterilisation and castration were suggested as solutions to the problem.³⁶ Wellingtonians supported the nationwide calls for more severe punishment of sexual offenders, but, by the late 1910s the problem of sexual offending was considered most serious in Auckland.³⁷ Fears and beliefs about sexual offending in Wellington are examined in Chapter One.

Sexual danger to adolescent girls raised concern in the early-twentieth century, but never aroused the widespread public concern as did that of children. Through the mechanism of age of consent legislation, social purity campaigners led by the Society for the Protection of Women and Children (SPWC) and the Women’s Christian Temperance Union (WCTU) attempted to extend the age of childhood to prevent the sexual exploitation of girls by men and boys. Moves to increase the ‘protection’ of female sexuality stemmed from the feminist critique of the sexual double standard. Within the sexual double standard, feminists argued, women’s sexuality was objectified and associated with the satisfaction of men’s sexual impulses through prostitution, adultery, seduction and marriage. Inherent was the notion that male sexuality was an ‘ungovernable’ natural impulse, while that of females

³² ‘Deplorable Immorality. Mr Justice Cooper on Sexual Offences. The Juvenile Element’, *NZT*, 5 Feb 1907, p.3.

³³ *Statistics of New Zealand, Law and Crime*, tables relating to numbers of prisoners tried and sentenced in the Supreme Courts, 1900—20. See footnote 29, regarding Wellington statistics.

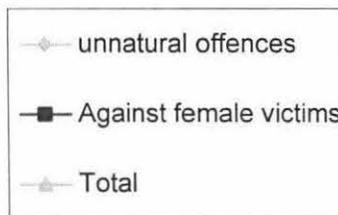
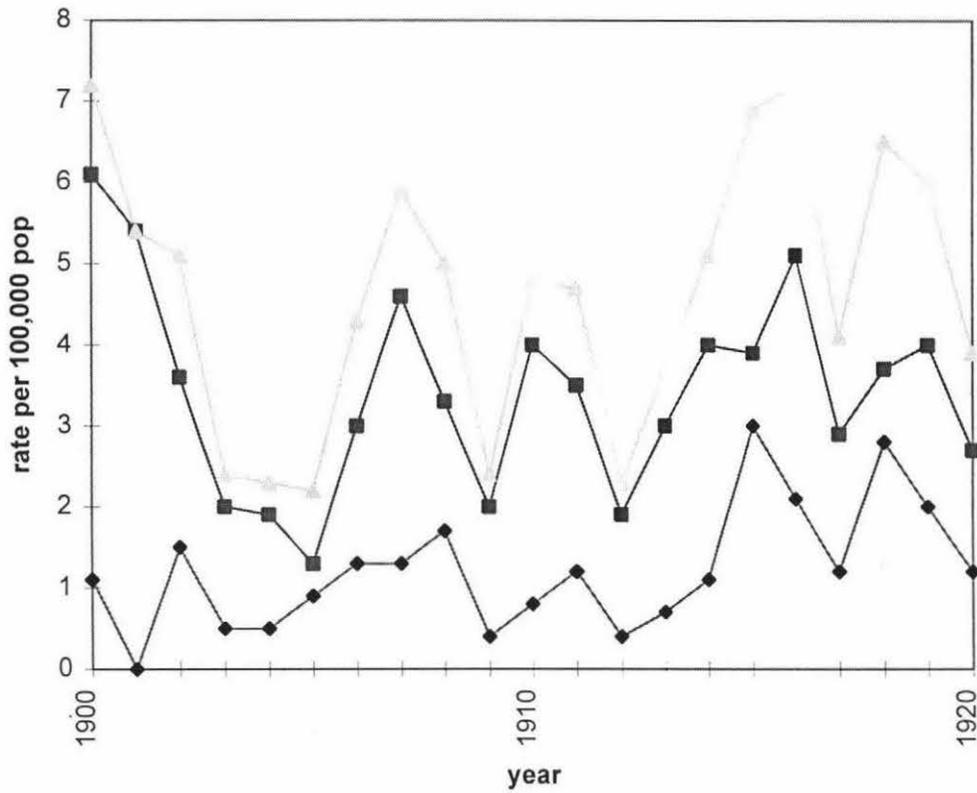
³⁴ J 1 1917/1221.

³⁵ Justice Chapman to Minister of Justice, 19 Aug 1915, J 1 1917/1221.

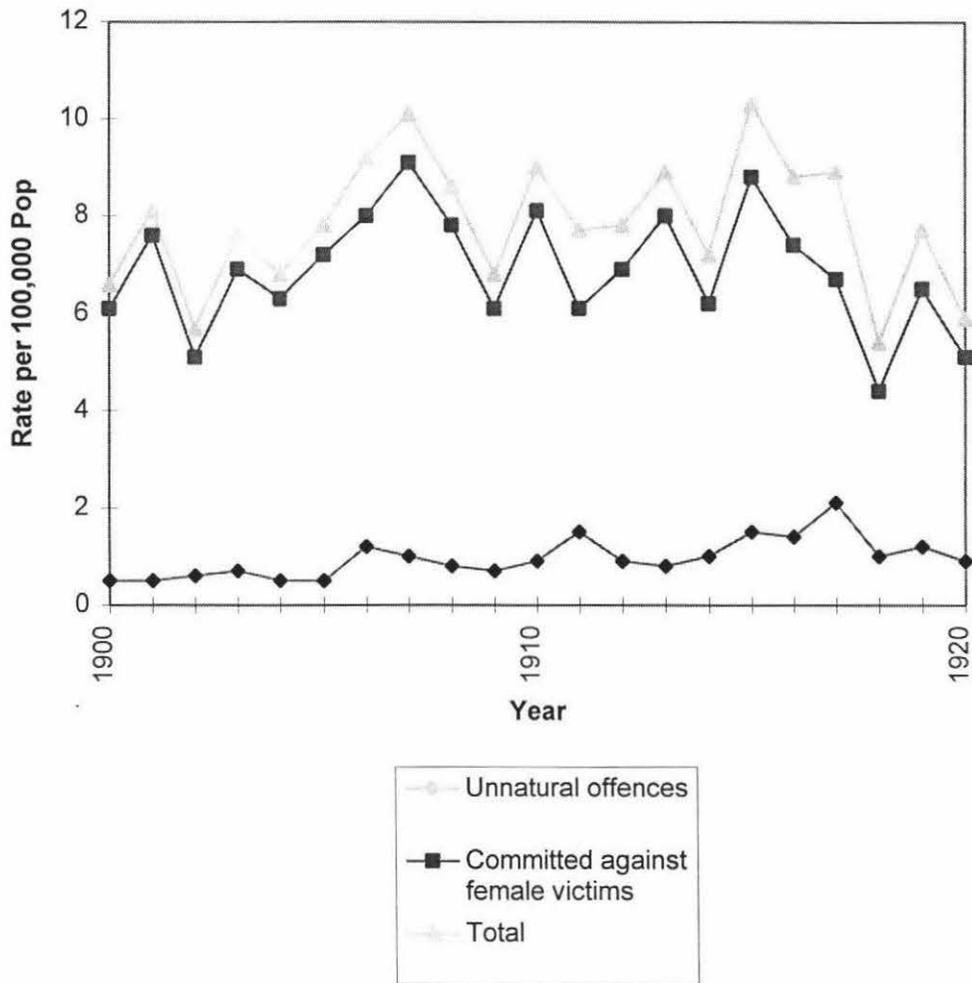
³⁶ J 1 1917/1221.

³⁷ Chief Justice to Minister of Justice, 14 Nov 1917, J 1 1917/1221.

Graph 1
Rates of Trial and Sentence of Offenders of Charges of
Sex Crime in the Wellington Supreme Court 1900-1920
 (Sources: RPTs, CTFs, Newspapers)



Graph 2
National Rates of Trial and Sentence on Charges of Sex
Crime 1900-1920
 (Source: Statistics of New Zealand 1900-1920)



was either 'ideal' or 'fallen', chaste or unchaste.³⁸ By extending the age of consent, women's groups hoped to preserve the childhood innocence of sexuality and prevent the ruin of girls. They argued that girls were held to be children 'in every other respect' until the age of majority, 21 years old, and that their sexuality should be included in this logic.³⁹

Between 1900 and 1920, women's groups lobbied for the age to be raised from 16 to 18 and even 21 years of age.⁴⁰ In 1913 and 1914, the Wellington branch of the SPWC (on behalf of over 50 women's groups) successfully lobbied Prime Minister Massey to introduce a Bill which would raise the age (among other matters) to 18. But while the government was prepared to raise the age of consent, this was only on the condition that the Attorney-General be granted the right to veto any allegation of any sexual offence involving a girl under the age of consent before a charge could be laid.⁴¹ In continuance of the bitter nineteenth-century contests between feminist and masculinist groups over the 'norms' of heterosexual sexual relations, masculinist politicians argued that the clause was intended to prevent the 'danger' of blackmail by 'vicious' girls.⁴² When defending the clause, Prime Minister Massey told the SPWC deputation that the government was also under a duty to protect boys.⁴³

Implicit in the government's stance was the defence of the gendered ideology of the sexual double standard. Massey expressed an assumption of masculine sexual activity and a desire to protect it. As the following chapters will show, the male sexual culture was predicated upon an assumption of sexual activity and embraced, to some extent, the aggressive expression of sexual desire. Amongst the offenders included in the study, possibilities for sexual adventure (or misadventure) were sought in prostitution, adultery and casual sex. Pierard's marriage, for instance, did not ban other sexual activity. As well, several used prostitutes, male and female. Indeed, some of the men charged were eclectic in their sexual taste. Daniel Phillips, for instance, was convicted for the sexual assault of a 13 year-old-girl and of bestiality with a mare within a space of a few days in 1902.⁴⁴ Some men lived and socialised within a social circle that condoned male sexual licentiousness. For

³⁸ Barbara Brookes, 'A Weakness for Strong Subjects. The Women's Movement and Sexuality', *New Zealand Journal of History*, 27(2), 1993, pp.140—156, p.143.

³⁹ Supt. Legal and Parliamentary section, WCTU (Kaiapoi branch) to Colonial Secretary, 6 Jul 1905, J 1 18/10/6.

⁴⁰ J 1 18/10/6.

⁴¹ Memo from the Office of the Attorney General to Minister of Justice, 29 Sep 1914, J 1 18/10/6.

⁴² Brookes, p.144. Solicitor General to Attorney General, 2 June 1914, J 1 18/10/6.

⁴³ Memo from the Office of the Attorney General to Minister of Justice, 29 Sep 1914, J 1 18/10/6.

⁴⁴ AAOM W3265 1902 (2 cases) Daniel Phillips, CTF.

instance, some men showed their solidarity by helping each other out if charged with offences. The players in cases were sometimes linked. Two young Pahiatua men, Andrew Quinlan and Sydney Bluett were both charged with sexual offences in 1900. Quinlan's father guaranteed the bail of his son's friend.⁴⁵ Other men might support a friend by raising money for his defence.⁴⁶ There was no age of consent for boys. While the 1914 Bill lapsed in parliament, the issue of the female age of consent did not. Social reformers continued to argue for the age of consent to be raised, but it remained at 16 years from 1896, indicating opposition to extending the age of girlhood into the late teens.⁴⁷

Resistance to raising the age of consent because of the fear of 'vicious' girls indicates the important influence of the notion of character upon understandings of sexuality during the early twentieth century. Through the concept of character, standards of appropriate behaviour were applied to men, women and children. The criteria drew on broad range of sexual and non-sexual characteristics derived from gender, class and age. In respect of the courts' treatment of sex crime, the definition of women and girls' character was dominated by sexuality. Their claims to victimhood were judged differently, depending upon whether they were 'fallen' or 'chaste', respectable or unrespectable. The label 'vicious' girls, for example, was used to describe 'fallen' girls. As Massey made clear, girls who were sexually active were considered by some to have a lower claim to sexual safety. Male character was defined on broader grounds. Because active male sexuality was embraced, respectability drew upon other aspects of masculinity including men's work ethic, honesty, and responsibility. Pierard's adultery, for instance, was never mentioned against his character by newspaper correspondents or editors. Children, too, were subject to the rigours of character. For most the criteria were non-sexual, including such things as obedience, honesty and manners.

Sexuality was constructed from legal and social concepts of sexual desire, derived from the characteristics of age and gender. Age was central in this construction. During the late-nineteenth and early twentieth centuries, the boundaries between the gendered sexual cultures of childhood and adulthood were examined and debated in New Zealand. A host of new laws were passed regulating children's sexuality, school attendance, labour, and

⁴⁵ Compare sureties in AAOM W3265 1900 Sydney Bluett, with deposition of Andrew Quinlan, AAOM W3265 1900 Andrew Quinlan, CTF (Andrew Quinlan senior). Also compare list of character referees in AAOM W3265 1908 Harold Burridge, CTF, with recognisances in AAOM W3265 1908 Arthur Nankivell, CTF (Mr R Nankivell (Arthur's father)).

⁴⁶ Cross-examination of Martin J., AAOM W3265 1908 Patrick Ryan, CTF.

⁴⁷ Margaret Tennant, *Children's Health, the Nation's Wealth. A History of Children's Health Camps*, Wellington: Bridget Williams Books and Historical Branch, Department of Internal Affairs, 1994, p.16.

welfare. These laws were linked to an emerging concept of childhood as a distinct phase of life, characterised by the dependency, brought about by excluding children from the labour market. The age demarcating childhood from adulthood was inconsistent, though, varying between 12 and 16 years old. The situation regarding sexuality was ambiguous. Girls could be married at twelve, but could not legally consent to sexual intercourse until the age of 16.⁴⁸ As age and gender were pivotal in this debate, this thesis considers separately attitudes to sexuality in relation to children, adolescents, and adults of both sexes.

‘Children’ are defined as boys and girls under 12 years of age. Feminist historians of sexual assault in the nineteenth and early twentieth centuries have generally regarded the age of twelve as a decisive demarcation between adulthood and childhood, and thereafter examined childhood experience of sexual assault as an undifferentiated phenomenon.⁴⁹ In New Zealand, early twentieth-century childhood has been represented as a time of sexual innocence.⁵⁰ In the international literature, however, the extent to which this construction of childhood sexuality is historically accurate for all children has been challenged. Dubinsky, for instance, has argued against the notion that working-class girls in Ontario experienced themselves and were treated as sexual innocents because some girls exchanged sex for money, rarely hurried to disclose assaults, or were sexually curious, and because some adults tolerated adult men’s sexual interest in children. Class and gender influenced the ‘extent to which children’s sexual innocence was believed and protected’.⁵¹ The Wellington case material suggests that the notion of childhood innocence did not apply without qualification to all children under the age of 12 years. There were significant differences between children aged seven years old and younger (‘little’ children) and those aged from eight to eleven years old (‘older’ children). Once boys and girls reached the age of six or seven, they were expected to become more autonomous, to increase their responsibilities within family units, which in turn brought about changes in parent/child relationships.⁵² The notion of sexual innocence appears to have been more closely associated with dependent ‘little’ children than ‘older’ children. Studying younger and older children separately can help refine historical understanding of children’s sexuality.

⁴⁸ Tennant, pp.14—16.

⁴⁹ For instance, Jill Bavin-Mizzi, *Ravished. Sexual Violence in Victorian Australia*, Sydney: University of New South Wales Press, 1995, p. 68; Dubinsky (Canada), p. 55.

⁵⁰ Joanne Workman, ‘Representing Rapists: Popular Perceptions of Rapists in New Zealand 1900—1920’, BA(Hons) Long Essay in History, Otago University, 1994, pp.17—18.

⁵¹ Dubinsky, pp.54—55.

⁵² Rosemary Goodyear, ‘Blackboots and Pinafores: Childhood in Otago, 1900—1930’, MA Thesis in History, University of Otago, 1993, p.105.

While older boys and girls were also referred to as ‘children’ by contemporaries and various legislative definitions of childhood varied between 12 and 14 years old,⁵³ physiological and social changes in children’s lives during their early teenage years set pubescent and adolescent children apart from younger children. The on-set of menstruation in girls, usually around the age of 13 or 14 years old, dramatically changed people’s perception of girls’ bodies. The absence of this biological ritual for boys means their physiological transition to adulthood was less obvious. Boys under the age of 14 years old, however, were legally deemed incapable of sexual intercourse. Thirteen-year-old Richard Kendall, for instance, was charged with indecent assault even though the offence amounted to rape.⁵⁴ The on-set of puberty also brought social changes. Youths between 12 and under 16 years of age (referred to as ‘adolescents’ throughout the thesis), began to experiment with sexuality. A couple of 12-year-old girls admitted to having sex with boys, and another to flirting and kissing.⁵⁵ A 14-year-old boy was sent to Burnham Industrial School for the attempted rape of a girl he tried to seduce.⁵⁶ For many children, the early adolescent years also included a transition from school to work, which altered their use of space and time, and expanded the range of people they came into contact with. Age-dependent changes also influenced how adolescents’ sexuality was perceived by others. In Wellington, as Jill Bavin-Mizzi found in respect of late nineteenth-century Australia, ‘sexual knowledge was construed as sexual maturity and, in turn, as the ability to consent to sexual intercourse.’⁵⁷

‘Adults’ are defined as males and females over the age of 16 years. This is five years lower than the age of majority, at which young people became responsible for their own property. Once past adolescence, however, the sexual maturation of children deemed them adults, at least in terms of their sexuality.

Through the negotiation of criminal sexual boundaries, victims, offenders, their families, friends, the criminal justice authorities and the public all expressed their beliefs and values about sexuality. Together, these understandings formed a system of ideas that comprised the sexual culture. Although the use of records of crime skews the situations towards the

⁵³ Jeanine Graham, ‘Child Employment in New Zealand’, *New Zealand Journal of History*, 21(1), April 1987, pp.62–78, p.63.

⁵⁴ ‘Prisoners Sentenced. A Variety of Offences. Question of a Boy’s Plea. An Unusual Position’, *NZT*, 3 Feb 1914, p.6.

⁵⁵ Deposition of Dr. Gilmour, AAOM W3265 1910 George Brown; cross-examination of Rubina G., AAOM W3265 1918 William Stirling; cross-examination of Lily S., AAOM W3265 1912 Leonard Muir; CTFs.

⁵⁶ ‘Supreme Court. A Shocking Case’, *EP*, 14 Aug 1911, p.8.

⁵⁷ Bavin-Mizzi, p.88.

forcible and often brutal enactment of sexual relations, the resulting points of conflict act as a guide through which it is possible to trace codes of sexual behaviour. This introduction now sets out the method employed to do this.

To build up a picture of Wellington's sexual culture between 1900 and 1920, the ethnohistorical method of close case analysis advocated by Bavin-Mizzi in her study has been adopted. This involves the detailed reconstruction of individual cases. It is predicated upon a theory of culture that '[a]ctions and words are conceived, expressed, recognised and understood within a system of shared expectations and meanings — in short, within a precise cultural context'. As Bavin-Mizzi argued, this method allows the complex interplay of ideas about sexuality contained in crime records to be reconstructed and deciphered within the context of their making.⁵⁸ Such flexibility is especially valuable in a study encompassing a wide range of case scenarios.

The fruitfulness of this method can be illustrated in the Pierard case. The extended treatment of the single case acts as an 'extraordinary moment' illuminating wider societal beliefs and values.⁵⁹ It also reveals something of the actual words and actions which comprised the codes of sexual behaviour operating during the period. For example, in isolation an action like Jessie's decision to ignore Pierard when she first met him on the street in Newtown appears trivial. Within contemporary social etiquette, however, the greeting of an unknown man on the street could compromise a woman or girl's claim to respectability. The inclusion of such an action in court testimony had considerable significance for the court's perception of Jessie's character and (as will be elaborated in later chapters) consequently upon the credibility of her story. Thus, reconstructing sequences of actions can recreate the logic of contemporaries' understandings of codes of sexual conduct and simultaneously shed light upon wider beliefs and values which shaped sexual interaction. One or more case reconstructions constitute the 'point of departure' in each chapter except the first. Although each is analysed within its own 'precise cultural context' so as to avoid the possibility of anachronism, each is also placed within the context of similar cases which occurred in Wellington between 1900 and 1920. The cases chosen for close analysis are representative of the social and spatial profiles of cases, and had a good range of primary documents to draw upon.

A helpful tool for unravelling the cultural assumptions revealed in moments of conflict is Stevi Jackson's concept of 'sexual scripts'. Shani D'Cruze, who studied

⁵⁸ Bavin-Mizzi, p.11.

⁵⁹ Bavin-Mizzi, p.12.

nineteenth-century working class sexual violence, adopted Jackson's idea of 'scripts' as a means of explaining justification for rape in an historical context. Scripts both define 'normal' behaviour and provide 'neutralisations', justifying behaviour that might otherwise be regarded as immoral. D'Cruze adopted this method because it allowed 'the occurrence of sexual violence' to be explained 'by the availability of scripts and the immediate and more general environment, including the interaction of rapist and victim.'⁶⁰ It allows a means of examining concurrent and contested understandings of the same set of actions which is helpful in explaining the multiplicity of meanings surrounding sex crimes.

The cases are reconstructed from court transcripts and newspaper reports. Of these, the court transcripts contained in the collection of criminal trial files of the Wellington Supreme Court are the main primary source for the thesis. Court transcripts were essential sources as the case study method requires detailed rendering of the actual assault, and these are the most detailed sources available for the period. The daily Wellington newspapers published only scant information concerning the details of cases for most of the period, and when they were published, editing practices moderated both the extent of descriptions and the language used by witnesses to describe their experiences. In the early 1900s, a movement towards limiting public exposure to the 'immoral' details of cases led to a new standard of respectability in court reporting based on the idea that such details were harmful to 'public morality'.⁶¹ In 1905, the criminal code was amended, giving judges discretion to prohibit the publication of evidence and the Wellington judges exercised their power in this respect.⁶² Even when not banned from publishing details, the Wellington-based daily newspapers appear to have adopted a conservative policy on sex crime reporting, reporting only the barest of details about cases like the offender's name, the charge, and the outcome of a hearing for most of the time period studied in this thesis. Even *Truth*, though regularly publishing detailed reports of evidence when possible, censored descriptions of the sexual aspects of assaults and the details of medical examinations.

The court transcripts are also the most colourful sources available. The compressing of events and toning down of language in newspapers tended to mask the sheer callousness and brutality of assaults conveyed in the vernacular of ordinary speech. As Gail Reekie has pointed out, court records document 'the terror of the experience' of sexual crime. They

⁶⁰ Shani D'Cruze, 'Approaching the History of Rape and Sexual Violence: Notes Towards Research', *Women's History Review*, 1(3), 1993, pp.377—396, pp.383—84.

⁶¹ NZPD (132) 4 Jul 1905, pp.238—39.

⁶² s.4, *Criminal Code Act Amendment Act, 1905*.

contain the subjective statements of people who have actually been sexually assaulted.⁶³ To preserve the vernacular of the witnesses, the quotes appearing in the thesis have not been edited except to shorten length or to clarify meaning. The language and punctuation are all verbatim from the files.

Further, court records are unique records of the lives of 'ordinary' people in the past. The parties appearing in the Wellington criminal trial files were largely from the working class (see table 2, appendix B) who left few written records of any aspect of their lives. As Dean Wilson and Robyn Anderson both commented in their masters theses based upon the depositions of the mid nineteenth-century Auckland Magistrate's Court, such sources tell the stories of 'anonymous people', the 'faces in the crowd'.⁶⁴ Conversely, the stories of middle and upper class victims of sexual assault are absent from the files.

The collection of criminal trial files is under a blanket restriction at National Archives, so the identities of many of the people appearing in this study have to remain obscure. A victim's christian name and surname initial only have been used unless his or her name appears in a published source or unless their involvement in the cases arose from an official position. The names of police constables, for instance, have not been changed. The late-twentieth-century convention of name suppression in publications did not exist during the period. Consequently, the names of virtually all of the men appearing in the cases are their real names.

To discover the names of the men appearing in the period, I compiled an index from lists of prisoners tried or sentenced for sex crime from volumes known as the 'Returns of Prisoners Tried'.⁶⁵ Between 1900 and 1920, 232 men were committed to the Wellington Supreme Court for trial or sentence on 266 charges. All the files were sought from National Archives. To be included in the study, the files first had to be found. Of the 266, 165 (62%) are extant. Eleven files were then excluded because they did not include a transcript of evidence, either depositions from the lower court or a transcript from the Supreme Court. In total, the sample consists of the files of 135 men (57.8% of all offenders), charged with 155 (58.3% of all) offences. In all but four years, files for over 50 per cent of the total number of offenders appearing in the Supreme Court each year were able to be included in the study. Availability varied between years. Less than 30 per cent were found for 1903, 1907,

⁶³ Gail Reekie, 'Writing About Rape in 1888', in *Australia 1888*, Bulletin 12, Nov 1983, pp.31—39, p.32 and n.9.

⁶⁴ Dean Wilson, 'Community Violence in Auckland, 1850-1875', MA Thesis in History, University of Auckland, 1993, p.4. Robyn Anderson, "'The Hardened Frail Ones': Women and Crime in Auckland, 1845—1870', MA Thesis in History, University of Auckland, 1981, p.4.

⁶⁵ AAOM W3265/2922—2927 Returns of Prisoners Tried, 1888—1929.

1914 and 1920. Prosecution followed a similar pattern to the Wellington trends, with the exception of the years in which a low proportion of files were found and included in the sample (see table 1, appendix A). Cases against females are less well represented than 'unnatural' offences. The sample produced files for 56.9 and 65.6 per cent of offences against females and males respectively. Female victims, however, still comprise two thirds of all victims included in the sample.

The main documents contained in criminal trial files were records of evidence, supported by standard forms recording details of the charges, witnesses, and outcome of the prosecution. A typical criminal trial file included all the documents generated by the lower court proceedings. The record of evidence, known as 'depositions', were handwritten or typed by the court clerk on A4 size paper. They vary in size from a few pages to 20, or occasionally even 50 (the number of pages tends to be less if they are typewritten). Forms generated at this stage included an 'Information and Complaint' (the official lodging of a complaint with a Justice of the Peace), the statement as to plea, committal form and recognisances. Some files also contain 'exhibits' including statements made by offenders to the police, and birth certificates were frequently included as proof of a victim's age in carnal knowledge cases.

The depositions files were forwarded to the Supreme Court if a man were committed for trial or sentence. Documents generated at the Supreme Court were then added to the depositions file. After about 1910, the likelihood of files containing all the lower court documents (where appropriate) increases, and a wider range of documents tends to be included. Transcripts of evidence given in the Supreme Court are rarely extant in the Wellington files before 1910 but became more common, especially towards the end of the period. Files also potentially include a Probation Officer's report and a police report. Both comment on the general character and criminal record of the offender. Less common but occasionally included throughout the period were character testimonials on behalf of convicted men, letters from offenders (for example, to the judge requesting counsel), and physical exhibits of evidence collected by the police. These are quite uncommon, but for example included a burnt match-stick, picked up by a constable at the scene of an alleged buggery of a boy which the offender was alleged to have thrown away after lighting a cigarette.⁶⁶ Another was a love-letter from a 12-year-old-girl to a sailor.⁶⁷ The files are

⁶⁶ AAOM W3265 1911 Cecil Meyrick, CTF.

⁶⁷ AAOM W3265 1909 David Johnston, CTF.

never appended by major items of evidence like torn or bloodied clothing which were vital material proof in court.

Sources other than the criminal trial files were consulted to help place the files in a wider context. Newspaper court reports for both the ‘found’ and ‘not found’ sources were followed up in the *New Zealand Times*, the *Dominion*, the *Evening Post* and *Truth*. Reports of judges’ sentencing speeches were particularly helpful in fleshing out judges’ attitudes towards sex crime. Judges also gave speeches at the opening of each criminal session, (known as ‘charges to the Grand Jury’), during which they gave their opinions on the state of law and order in Wellington and the colony. These speeches were also reported in newspapers. All national statistics have been compiled from the annual published Justice Department statistics.⁶⁸ Wellington statistics are compiled from a combination of the ‘Return of Prisoners Tried’, the criminal trial files, and newspaper reports.

The main sources, however, are the transcripts contained in the criminal trial files. While they are rich sources for a study of the sexual culture, they are heavily mediated by the process and method of their production, which limits the extent to which they illuminate cultural assumptions about it. The evidence is a representation of witnesses’ experience rather than a literal reflection of it. In depositions and in the Supreme Court, evidence was given in reply to questions put by prosecuting or defence counsel. Testimonies were therefore limited to what witnesses were asked about their knowledge of a case.⁶⁹ This could result in information being left out. For instance, when a Mrs N. was asked in the Supreme Court why she had not mentioned certain information in the Magistrate’s Court hearing of a case, she retorted ‘I was not really asked.’⁷⁰ The nature of these questions was framed around counsels’ strategy for winning cases. Counsel had to argue within legal conventions and to address relevant questions of law. They also had to be persuasive, and draw on wider social arguments to make a ‘point of view and actions seem commonsensical, natural, and rational’.⁷¹

Transcripts were also theoretically verbatim records of all that was said in court. But in practice, they were actually usually recorded as continuous narratives, omitting the questions put by lawyers or the court. According to Sir Hubert Ostler (appointed as a judge

⁶⁸ The tables consulted were those showing the number of people tried and the number of people sentenced in the Supreme Courts of New Zealand each year.

⁶⁹ Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth-Century France*, Stanford: Stanford University Press, 1987, p.5.

⁷⁰ Testimony of Violet N., Rex v. John Elliott, AAOM W3265 1918 John Elliott, CTF.

⁷¹ Tina Loo, ‘Dan Cranmer’s Potlatch: Law as Coercion, Symbol, and Rhetoric in British Columbia, 1884—1951’, *Canadian Historical Review*, 73(2), 1992, pp. 125—165, pp. 134—37.

to the Supreme Court in 1924)⁷² who began his legal career as an ‘associate’ to Sir Robert Stout between 1903 and 1907, this did not affect the accuracy of the record, provided the recorder was ‘intelligent’ and experienced.⁷³

The beliefs of the people recorded in transcripts of evidence were, therefore, not free narratives of their accounts of crime, but were shaped by the requirements of legal argument and legal process. Nevertheless, as Maynard contended, if we treat the records as ‘constructed and partial narratives rather than simply as the facts’, we can still reveal much about the history of sex crime.⁷⁴

In the Wellington district between 1900 and 1920, sexuality was fundamentally understood in terms of the age and gender of victims, intersected by the notion of respectability. To emphasise the force of these factors in shaping attitudes towards sexuality, the bulk of this thesis is arranged according to the age and gender of victims. This means that crimes with higher punishments and different standards of legal proof are examined together. As pointed out at the beginning of this introduction, the aim of the thesis is to examine the sexual culture of Wellington through the lense of sexual danger, rather than the legal history of sex crime. The legal categorisation of a case serves as the ‘point of departure’ for the study rather than the destination.

The contexts of sex crime are surveyed in chapter one. It maps out the range of relationships and locations which resulted in criminal prosecutions. As such, the chapter provides an overview of attitudes to sex crime during the period within which the subsequent case study-based chapters were historically situated. It also scopes out the patterns of policing of sex crime which provide the raw material for the thesis. Chapter One argues that victims’ different use of public space according to their age and gender affected the social construction of their experience of sex crime as either sexually pleasurable or sexually dangerous.

The following five chapters examine attitudes towards sex in relation to victims of different ages and genders. The themes of age, gender, and respectability run throughout the chapters as we chart the transition from child to adult sexuality. Because female victims

⁷² David Smith, ‘Bench and Bar 1928—1950’ in Robin Cooke (ed.), *Portrait of a Profession. The Centennial Book of the New Zealand Law Society*, Wellington: A.H. and A.W. Reed, 1969, pp.90—137, p.93.

⁷³ Hubert Ostler, ‘Bench and Bar, 1903—1928’, in Robin Cooke (ed.), *Portrait of a Profession. The Centennial Book of the New Zealand Law Society*, Wellington: A.H. and A.W. Reed, 1969, pp.57—89, p.57.

⁷⁴ Maynard, pp.201—04.

numerically dominated prosecutions for sex crime, four of these chapters are dedicated to examining their experiences and attitudes towards them. Chapters two to five examine, in order, 'little' girls (seven years of age and under), 'older' girls (eight to eleven years old), 'adolescent' girls (12 to 15 years of age), and 'women' (16 years of age and over). By breaking down the groups 'women' and 'children', the thesis charts girls' transition from childhood to adulthood. Each chapter is divided in two parts. First, the assaults are outlined and analysed to trace the sexual script that resulted in a prosecution. This reconstructs actual sexual boundary lines in heterosexual contexts. The chapters argue that the extent of girls' and women's sexual knowledge affected their understanding of consent, and informed their understanding of sexual pleasure and danger. The second part of each chapter outlines the prosecution of a case and examines the competing construction of codes of sexual behaviour that were debated in court. The two-tiered structure of each chapter helps reconstruct self-representations and observers' understandings of sex crime which made up the sexual culture operating in Wellington in the early twentieth century.

Only one chapter, the sixth, is dedicated to male victims. This reflects the proportion of rates of prosecution of cases committed against the sexes. Age groups are considered in succession. The first section examines boys under 12 years old, the second boys between 12 and 15 years old, and the last adult men. As in the preceding four chapters, each case study is divided in two parts, examining first, the assault situation, followed by the prosecution. The chapter traces boys' and men's acquisition of sexual knowledge. It argues that perceptions of same-sex relationships depended upon awareness of the homosexual subculture operating in early twentieth-century Wellington.

In addition, each chapter examines aspects of offenders' behaviour, some of which overlap between chapters. When relevant, material arising from cases committed on victims beyond the immediate boundaries of a chapter might be drawn on. Chapter two examines the defences of drunkenness and that 'no harm' had been done in an assault. It also outlines some of the strategies men accused of sex crime used to try to keep cases out of court. Chapters four and five both consider men's perception's of women's sexuality. Race and ethnicity as a component of male respectability are addressed in chapter Five. Chapter Six continues the discussion of male respectability by examining the relevance of men's occupational stauts, work history, family responsibilities, and war records.

Because chapters two to six are framed by the process of prosecution, and because the process shaped the sources used in this study, it is necessary to outline the procedure involved. Offences were disclosed to or interrupted by parents, friends, passers-by and the

police. If the injured parties decided to seek legal redress, then the victim or someone acting on his or her behalf then usually reported the complaint to the police.

Once entered in the criminal justice system, a complaint would be processed by an entirely male staff of police, counsel, jurors and judges. Following the disclosure of an offence, a formal written complaint (called an 'Information and Complaint') had to be laid with a Justice of the Peace or a Magistrate before prosecution proceedings could begin. The laying of 'information', as contemporaries called it, was usually done by the police, but private people also had the right to do so. Matilda F., for instance, laid the information herself against Pierard before Dr McArthur, Wellington's Stipendary Magistrate at the time.⁷⁵ If the accused man was not already in police custody, the police would apply to the Justice or Magistrate either for a warrant of apprehension or summons. Pierard, like most men in the study, was arrested on warrant. A date would then be set for the depositions hearing at the nearest Magistrate's court, anywhere from immediately to several days from arrest or summons.

The depositions hearing (also called the 'lower court' hearing) was the first stage of a criminal prosecution within New Zealand's two-tiered court system. Witnesses were brought before a 'Bench' comprised either of a Magistrate or two Justices of the Peace to give sworn testimony about the offence. The purpose of this preliminary hearing was for the Bench to decide whether there was a case to answer (*a prima facie* case), and consequently whether an accused man should stand trial. The Bench might clear the court and after 1905, also prohibit the publication of evidence. Cases opened with the police prosecutor's examination of his witnesses. After the examination of each witness, the defendant, either in person or through his counsel, had the right of cross-examination. The extent of cross-examination varied widely across and within cases, ranging from nothing, to one or two questions, to several pages of written report. In the Pierard case, for instance, Wilford subjected Jessie (but no one else) to a searching cross-examination running to three handwritten pages in the record.⁷⁶ The longest cross-examination totalled 10 handwritten pages. Witnesses could then be re-examined by their respective counsel after cross-examination, and were also liable to be asked to clarify points by the Bench. The evidence of each witness was read back to him or her to check that it was a true and accurate record, before it was signed.

⁷⁵ Information and Complaint, AAOM W3265 1901 Pierard, CTF.

⁷⁶ Cross-examination of Jessie F., AAOM W3265 1901 Pierard, CTF.

On the completion of the prosecution case, the defendant could call witnesses in his defence, give evidence himself, and be cross- and re-examined. Very few men gave evidence on their own behalf, beyond making a short statement denying the offence. Again, the defendant's evidence was taken in the form of answers to questions put by counsel. Defendants were always warned, though, that they were not obliged to say anything, and that anything they said could be used against them in a trial. Most men in fact 'reserved' their defence to the Supreme Court. The accused was then asked for his plea. Those who pleaded guilty were committed to the Supreme Court for sentence.⁷⁷ Thirty three of the 266 total charges (12.4%) were pleaded 'guilty' at this stage. The majority of men, however, pleaded not guilty, leaving the Bench to decide whether to commit the man to trial in the Supreme Court or to dismiss the charges. Obviously, offenders in the sample cases were all committed to the Supreme Court. If committed, the defendant might be allowed bail (usually £50, with either one or two sureties of a similar amount) or would be held in custody until the trial. As with rates of police prosecution, no study of rates of committal has been made because this was outside the focus of this thesis.

The criminal sessions of the Supreme Court were held four times a year, usually in February, May, August and November, though prisoners committed for sentence were dealt with throughout the year. At the opening of each session, the Supreme Court Judge presented the 'indictments' (formal charges laid by the Crown prosecutor) to the Grand Jury. This body of 12 to 23 men from the middle and upper classes of Wellington society (a 1906 Grand Jury, for example, included the Secretary of the Harbour Board, several jewellers and a chemist)⁷⁸ was charged with reviewing depositions, examining witnesses and checking whether the depositions established a prima facie case.⁷⁹ Grand Jurors either returned a 'True Bill', or 'No Bill' if they found there was no case to answer. Thirteen 'No Bills' (4.9%) were returned between 1900 and 1920. They might also make a 'presentment to the presiding Judge, airing an opinion about anything to do with their duties. As mentioned earlier, Grand Juror's presentments were frequently a vehicle for expressing concern about sexual offending.

True Bills were tried before one judge of the Supreme Court and a common jury of 12 men (drawn from a jury list including working class men). In Wellington and throughout the colony, trials were 'a spectacle and source of entertainment for many, attracting crowds

⁷⁷ s.14(1) *Indictable Offences Summary Jurisdiction Amendment Act, 1900*. Re-enacted as s.176(2a) *Justices of the Peace Act, 1908*.

⁷⁸ 'Supreme Court. The Grand Jury', *EP*, 5 Feb 1906, p.7.

⁷⁹ s.60, *Juries Act, 1980*.

and generating much gossip.⁸⁰ People in the public gallery sometimes laughed at details, shouted comments or applauded decisions.⁸¹ Unnatural offences had a particular reputation for drawing crowds of young men.⁸² According to a correspondent with the *New Zealand Times*, the misfortunes of Jessie F. and Edward Pierard were the subject of much conversation among ‘young men in the counting-house, the Government Buildings, and at the luncheon haunts.’⁸³

At the opening of proceedings, prisoners were asked to plead. Eleven of the men committed for sex crimes during the period pleaded guilty to a total of 11 charges (4.5%). Cases otherwise then proceeded along similar lines to the depositions hearing until the conclusion of the evidence. The defence counsel then addressed the jury, the prosecution counsel replied, and the Judge summed up the case and instructed the jury, who retired to consider their verdict. If the jury could not agree unanimously upon a verdict within four hours, the judge could declare the jury ‘hung’ and order a new trial. If the defendant were found ‘not guilty’, he was discharged from the court. Or, as in Pierard’s case, the Crown might drop the charges by entering a ‘nolle prosequi’ or a ‘warrant for a stay of proceedings’. A further 11 charges were disposed of in this way. If found ‘guilty’, a prisoner was usually remanded for sentence to allow the probation officer and police to report to the judge on his antecedents. He would then be sentenced and committed to gaol. The failure to convict a man accused of a sex crime did not always mean that he escaped punishment. Social sanctions could be serious. Pierard, for instance, left the colony, and in other cases, victims or their families enacted punishments for inappropriate sexual activity. The thesis next examines the relationships and locations deemed inappropriate, and which were reported to the police.

⁸⁰ Severinsen, p.97.

⁸¹ ‘Local and General’, *EP*, 30 Nov 1900, p.5. ‘The Stoke Cases. A Second Trial. Verdict of Not Guilty’, *EP*, 11 Dec 1900, p.5.

⁸² ‘Supreme Court. Criminal Sessions. A Light Calendar’, *NZT*, 25 Nov 1902, p.3.

⁸³ ‘Miscarriage of Justice’, *EP*, 25 May 1901, p.2; ‘A failure of Justice’, *EP*, 27 May 1901, p.2.

Chapter One

The Contexts of Sex Crime

In 1900, a domestic servant named Elizabeth W. charged 22-year-old Andrew Quinlan with indecent assault. He had caught up with her as she walked home from church one Sunday night and asked if he could accompany her. She agreed. They chatted as they walked, then sat down on a log by the side of the road and kissed and ‘tickled’ each other. Then Quinlan had ‘a try’: he threw Elizabeth on the ground and attempted to undo her drawers. They struggled, and he eventually left her alone. This was not the first time Elizabeth had been sexually assaulted. She left a previous position because her employer exposed himself to her, a local man had tried to pull her off a horse and made an ‘improper proposal’, and another local ‘knocked’ her down in the bush and tried to have ‘connection’. None of these other assaults were prosecuted.¹

As Elizabeth’s story suggests, possibilities for sexual pleasure and danger existed in many relationships and social situations. This chapter surveys the contexts of sex crime to map out the social and spatial boundaries of Wellington’s sexual culture. A spate of committals for sex crimes originating in the Wairarapa prompted Justice Edwards to comment in 1900 that ‘this sort of thing appeared to be growing to an alarming extent in country districts, and certainly must be discouraged.’² ‘Country’ locations in fact accounted for less than a third of all cases committed to the Wellington Supreme Court between 1900 and 1920. Approximately two thirds of the cases studied occurred in Wellington City or suburbs, and the remainder came from a mix of small towns (like Pahiatua and Masterton) and rural areas. The majority of victims in the sample (92, or nearly 60 per cent) were known to the men who approached them. They met in diverse ways. Social contacts including sexual and platonic acquaintances, community members, neighbours, family friends, boarders, and indeed, families, all provided possibilities for sexual encounters. Workplaces, too, created sexual opportunities for teachers, work mates, employees, employers, supervisors, and service workers. Strangers comprised the second largest pool of sexual partners in the sample (55, or 35.5 per cent). The remaining seven were animals, and the relationship in one case was unknown (see table 1, Appendix B).

¹ Cross-examination and re-examination of Elizabeth W., AAOM W3265 1900 Andrew Quinlan, CTF.

² ‘Supreme Court. Criminal Sessions. To-days’s Sitting. A Serious Offence’, *EP*, 16 Nov 1900, p.6.

The contexts of the sample cases, however, cannot be regarded as a literal reflection of those in which sexual conflict occurred. As Tony Severinsen has pointed out, and Elizabeth W.'s story suggests, the cases which reached the Supreme Court were probably only a fraction of those actually committed. Victims, offenders, families, communities, the police, magistrates and the Grand Jury, could all prevent a charge reaching trial.³ Being based on a sample, the accuracy of the trends might be further reduced. Nevertheless, some distinctive patterns emerge which provide an insight into the types of sexual behaviour deemed by both the criminal justice authorities and private citizens to have breached sexual mores. This chapter therefore serves a dual purpose. In surveying the contexts of the sample cases, it also maps out the contexts of cases considered 'prosecutable' during the early twentieth century.

An analysis of the correlation between the relationship of the victim and the accused man, and of the location of sites of sexual pleasure and sexual danger shows that certain locations were associated more, though not exclusively, with certain types of crime. Consequently, this chapter is divided into three sections based on the main relationship types found in the sample. Examined respectively are strangers, social networks, work contacts, and animals.

Strangers

Among the men whose sexual adventures resulted in prosecutions for sex crime, 35.5 per cent sought partners through surprise assaults, harrasment, or casual pick-ups. Although stranger-attacks comprised a smaller proportion of the sample cases than non-stranger assaults (57.6 per cent), they were more readily regarded as a source of sexual danger than those involving previous acquaintance. In the Wellington sample, there was an 80 per cent conviction rate of stranger-attacks, almost twice as much as the 41.7 per cent rate against non-strangers. In fact, fear of strangers as a source of sex crime was long-standing in New Zealand.⁴ Severinsen's study of sexual assault upon adult women revealed that between 1860 and 1910 stranger attacks comprised a mere 19 per cent of case scenarios, but provoked an 81 per cent conviction rate.⁵

³ See Severinsen, chapters one and two.

⁴ Severinsen, p.141.

⁵ Information was only available for half the cases included in his study. Severinsen, p.176.

The contexts of stranger-attacks were strongly associated with victims' use of public space according to their gender and age. Of the 55 cases stranger-attacks, 50 resulted from a meeting in an out-of-doors public place, and the remaining five from meetings at the victim's home. Women and adolescent girls tended to be attacked while moving through urban and rural streets in the course of their domestic duties. Men and adolescent boys were attacked on their way to and from work, but also when they were 'out' in the evenings. Children of both sexes were particularly vulnerable at play in the streets and in public parks and reserves, as well on their way to school or in running 'messages'.

Public places, isolation and night-time characterised the case contexts involving women. Four women were attacked by strangers. For example, Lucy D., 'a lady-help', was sprung upon as she walked from a tram stop to her employers' home around 10 pm one night in the semi-rural Wellington suburb of Karori.⁶ William Lovett hid behind a tree beside a rural Wairarapa road and 'stepped out' into the road when Lillia H. approached.⁷

The sexual danger posed to women in the streets was recognised by contemporaries. Working class women bicycled or walked alone to go to and from work and from visits. Their right to do so unmolested was upheld by the courts, as it had been in the nineteenth century.⁸ In 1910, for instance, the Chief Justice declared that he was 'not going to allow a young man in a half drunken state at 10 o'clock at night to put his arm around a girl and want to take her home.'⁹ And in 1911, the Outlying Districts Committee of the Wellington City council noted that Park Road (the main thoroughfare to the suburb of Wadestown), had acquired a reputation as a site of sexual attacks on women. The Committee recommended that further assaults could be avoided if branches were chopped off the trees to 'improve the road' and if the street lighting was improved by putting wire cages around the street lights to prevent breakages.¹⁰

Women's use of the streets was not, however, accepted without qualification. The limited range of case contexts suggests that stranger-danger was defined very narrowly in respect of adult women. While there were only four cases produced in the sample, the trend associating stranger-attacks with public places, isolation and night-time is supported by the findings of other studies of sexual assault in the nineteenth and twentieth centuries. Caroline

⁶ AAOM W3265 1901 Patrick Campbell, CTF.

⁷ Deposition of Lillia H., AAOM W3265 1906 William Lovatt, CTF.

⁸ Severinsen, p.139.

⁹ 'To-day's Court. Prisoners Sentenced. Protection of Women', *EP*, 16 Nov 1910, p.3.

¹⁰ Report of the Outlying Districts Committee, 21 Sep 1911, MB 22, Wellington City Council Archive.

Conley, for instance, concluded that in Victorian England, 'rape was defined as a brutal act of violence usually committed in a public place on an apparently respectable woman who was previously unknown to her assaultant and had done nothing even to acknowledge his presence.'¹¹ And Severinsen found in New Zealand between 1860 and 1910 that judges defended the right of 'respectable' women with 'legitimate reasons for being out' to go about unaccompanied.¹²

The criteria for protection dictated a narrow model of behaviour for women in public places, seemingly defined in opposition to that of prostitutes. Bronwyn Dalley's argument that the label 'prostitute' was used to explain and discipline the public activities of women in response to fears about venereal disease during the First World War is helpful in analysing responses to women's allegations of sexual assaults throughout the early twentieth century. Prostitutes, including 'street-walkers', were 'part of the fabric of life' in twentieth-century New Zealand towns and cities.¹³ All women's movement in the streets was open to interpretations of prostitution. For instance, in 1908, Detective Cassells was cross-examined about the public conduct of a woman who alleged she was sexually assaulted by a guest in the boarding house in which she worked. Cassells said he had noticed her walking alone in the streets, and later explicitly stated that he did not mean to infer she was a prostitute.¹⁴ Women who were concerned with 'respectability' followed a strict code of etiquette intended to prevent their conduct being misconstrued as suggestive. As Bavin-Mizzi has pointed out, such indicators could be very subtle, depending on 'the very gestures . . . [women] made – on a wave or a smile, on the crossing of a leg.'¹⁵ Women who observed the code would move between points without dallying or chatting to men they did not know. Conversation was to be kept to a minimum. Mary P., for example, denied having 'encouraged' Neil Harrington's assault upon her. He approached her as she walked along a street in Wellington city at about 10 pm one night. She stressed that she walked along 'quickly' and did not enter into conversation with him, replying under cross-examination

¹¹ Caroline Conley, 'Rape and Justice in Victorian England', *Victorian Studies*, 29(4), Summer 1986, pp.519–536, p.525.

¹² Severinsen, p.139.

¹³ Bronwyn Dalley, 'Lolly Shops 'of the red light kind' and 'soldiers of the King'. Suppressing One-Woman Brothels in New Zealand, 1908–1916', *New Zealand Journal of History*, 30:1, April 1996, pp.3–23, p.4.

¹⁴ Cross-examination and re-examination of Detective Cassells, AAOM W3265 1908 Patrick Ryan, CTF.

¹⁵ Bavin-Mizzi, p.67.

that: 'I wasn't talking to him. I only answered his questions.'¹⁶ In such situations, a lack of civility could be justified. George Simpson tried to strike up conversation with Emily F. as she walked along a street reading a letter. He inquired if the letter she was reading was a love letter. Emily responded indignantly, saying 'what has that got to do with you'.¹⁷ Not all women ascribed to this code of social interaction with men, but failure to do so could jeopardise their status as victims of sexual assault. Andrew Quinlan, for example, was acquitted of the charge of indecent assault upon Elizabeth W. In court, Quinlan's defence counsel argued that Elizabeth had allowed the 'impropriety' and that 'nothing more than some harmless familiarity' had occurred between the pair. Elizabeth's willingness to make Quinlan's acquaintance was reinterpreted to make her vulnerable to allegations of poor character and neutralise her claim to have been the victim of a sexual assault.¹⁸

The absence of built-up places as contexts of stranger-attacks emphasises the narrowness of the definition of stranger-attacks on women. Residential areas, for example, were designated by some as safe places. An Auckland detective, for instance, when assigned in 1915 to investigate a night-time assault upon a widow, decided that 'no attempt at rape could have been made, owing to the close proximity of the houses.'¹⁹ Underscoring this belief was an assumption often brought up by defence counsel (and explored further in later chapters) that assaults could be prevented if female victims 'sung out' for help. The reasoning was that help would always be available in built-up areas, so that if assaults did occur, the woman had most likely incited the offence. In practice, screaming did bring aid to some women. But this was not always the case. Lucy D. was attacked only 100 yards from her employers' home, but her screams were carried away by the wind. One of the first things she said when she got home was that she wondered why they had not heard her screaming.²⁰

A notably absent case context from the sample is that of women being attacked inside their own homes. One woman was attacked on her own property while collecting wood, but she was some distance from the house when attacked.²¹ In Ontario between 1880 and 1929, in contrast, breaking into women's homes comprised the second most common

¹⁶ Cross-examination of Mary P., AAOM W3265 1904 Neil Harrington, CTF.

¹⁷ Deposition of Emily F., AAOM W3265 1902 George Simpson, CTF.

¹⁸ 'Supreme Court. Alleged Assault With Intent', *NZT*, 15 Nov 1900, p.2.

¹⁹ Report of Det. Sgt J W Hollis, 13 Aug 1913, AADW 1110/4b. Police Reports. August 1913, National Archives, Auckland.

²⁰ Cross-examination and reply to question by the Court by Archibald H., AAOM W3265 1901 Patrick Campbell, CTF.

²¹ Deposition of Emily F., AAOM W3265 1902 George Simpson, CTF.

site of stranger attacks.²² This absence from the sample does not mean that no such assaults took place in Wellington during this period. Indeed, that would be odd, given that Severinsen found that 85 of the 277 cases involving adult women for which he could identify a location occurred in victims' homes (though Severinsen did not distinguish whether the assaults were committed by strangers or non-strangers).²³ One explanation is that sexual assaults committed in homes were not charged under the sexual offences provisions of the criminal law but as 'breaking and entering with intent to commit a crime'. John McDermott and Thomas Jones, for instance, were charged in 1902 with breaking and entering a house at Kimbolton with intent to commit a crime. Justice Edwards described the offence as one of two 'disgusting' charges against women and children to be tried at that session.²⁴ As this charge did not fall within the range of crimes included in the definition of 'sex crime' used in this thesis, it was excluded from the sample. An examination of 'breaking and entering' criminal trial files could be worthwhile. The fact that cases such as McDermott's and Jones' were charged as property crimes suggests that the act of breaking and entering was considered more reprehensible than attempted sexual offences. The Auckland District Convention of the WCTU, for one, abhorred the hierarchy of punishment in which property crimes were treated more seriously than offences against women and girls, and lobbied Prime Minister Massey to address this imbalance. The legislation maintained by the government was contradictory, its members argued, given that the double standard of sexual morality upheld the purity of women and girls as men's most prized possession.²⁵

The contexts of cases involving stranger-attacks on adolescent girls also reflected ideas about respectable female conduct. There were 10 cases, nine of which occurred in public places, and one in the victim's home. Only one case occurred at night, suggesting that girls' presence in public spaces after dark diminished the likelihood that allegations of assault would be believed. As with adult women, notions of respectability for public behaviour probably influenced this pattern of policing. In Wellington, some social purity reformers and the police associated the presence of adolescent girls on the streets at night with moral laxity, and with juvenile prostitution. Legislative measures introduced in the late nineteenth-century like the Juvenile Depravity Suppression Bill of 1896, the Young

²² Dubinsky, p.37.

²³ See Severinsen, p.176.

²⁴ 'Supreme Court. The Judge's Charge,' *NZT*, 5 Aug 1902, p.3.

²⁵ Secretary, WCTU (Auckland) to Prime Minister Massey, 28 Sep 1912, J 1 18/10/6.

Person's Protection Bill of 1899, and the Social Hygiene Act of 1917, were intended to curb the perceived moral dangers to the colony's youth by regulating girls' and boys' use of public space.²⁶ In his evidence to the select committee on the Young Person's Protection Bill in 1899, Inspector Pender of the Wellington police advocated the appointment of a woman inspector with the power to remove from the streets at night any girls she considered at risk of 'immorality' through prostitution and seduction.²⁷ As Brookes has noted, feminist groups' success in increasing the sexual protection of girls between 1889 and 1896 by raising the age of consent had the 'unintended outcome' of labelling girls who experimented with sexuality as 'young "feeble-minded" sex delinquents'.²⁸ The effect of these moral stereotypes was damaging to girls' credibility. In 1910, the jury hearing a case involving an assault on a 14-year-old girl in a Wellington city street blamed the girl for the offence. In an unusual move, the jury returned a 'not guilty' verdict, *and* added a jury rider suggesting that the girl should be kept under better control by her mother.²⁹

The contexts of the sample cases suggest that respectability for adolescent girls was defined in narrow opposition to this stereotype. These cases involved girls who were attacked while either attending school or carrying out necessary tasks incumbent on assisting their mothers with domestic chores.³⁰ When attacked by strangers, adolescent girls were mainly walking home from school, moving through the streets in connection with domestic-related chores (such as going to the butcher), or child-minding in a public place. For example, a 14-year-old girl was out wheeling a pram with two infants,³¹ and a 13-year-old was minding her siblings in a public reserve near her Park road home in Wadestown.³² In the one case that occurred at night, 14-year-old Ivy G. was attacked by a 19-year-old youth who started up conversation with her as she walked home from the local shop at about

²⁶ P.A. Gregory, 'Saving the Children of New Zealand: A Study of Social Attitudes Towards Larrikinism in the Later Nineteenth Century', BA(Hons) Research Exercise in History, Massey University, 1975, pp.14–16; Richard Hill, *The Iron Hand in the Velvet Glove. The Modernisation of Policing in New Zealand, 1886–1917*, Wellington: Dunmore Press in association with the New Zealand police and with the assistance of the Historical Branch, Department of Internal Affairs, 1995, pp.404–5.

²⁷ Evidence of Inspector Pender, Report of the Select Committee on the Young Persons Protection Bill, *JALC*, 1899, Appendix 6, p.5.

²⁸ Brookes, p.145.

²⁹ 'Local and General', *EP*, 22 Nov 1910, p.6.

³⁰ Caroline Daley, 'Gender in the Community: A Study of the Women and Men of the Taradale Area, 1886-1930', PhD Thesis in History, Victoria University of Wellington, 1992, p.148.

³¹ Deposition of Maud T., AAOM W3265 1913 James Miles, CTF.

³² Deposition of Ivy G., AAOM W3265 1901 Charles Cherry, CTF.

10 pm.³³ Although the prosecution gained a conviction in this case, it was not done without the defence counsel alleging poor character on Ivy's behalf.³⁴

As Ivy G.'s experience suggests, adolescent girls and adult women faced similar criteria for respectable behaviour in public. Such expectations in Wellington are reflected also in an Australian advice manual. The *Ladies' Handbook of Home Treatment* advised mothers that a girl, 'when old enough to go by herself, . . . should be instructed that it is neither proper nor safe for her to allow strangers to talk with her or to make presents of sweets, toys, or other things.' Failure to follow this etiquette could lead to a girl's 'downfall' and moral ruin.³⁵ As detailed in the introduction, Jessie F.'s ignoring of Pierard when she first met him in the street in Newtown was in keeping with respectable etiquette.

Men and adolescent boys were approached by strangers as they moved around the city and towns. There were five stranger-cases in the sample for these age groups and the contexts in the cases were similar. All occurred on the streets of Wellington city at night. A 16-year-old boy, for instance, was approached as he went about Wellington in his job as a telegraph boy for the Government Post Office; a married man was walking to the train station;³⁶ and 12-year-old Julian S. was sleeping rough in a tram shed.³⁷

Unlike women and adolescent girls, milling about town by men and adolescent boys does not appear to have been considered an incitement to sexual approach. This appears to be related to men's greater access to and occupation of public areas, which brought with it less narrow standards of respectable behaviour. In many ways, public space was male space. Most men went out to work, usually with other men, and often socialised in public places like pubs and sports grounds.³⁸ The sample cases suggest that urban working class men also enjoyed a casual, social street culture which operated similarly to the 'crew culture' identified by James Belich in the nineteenth-century. Belich's 'crews' were communities of men with shared mores manifested, for example, in their manners, slang, and leisure habits. Although men might not know each other personally, their shared culture enabled newcomers to easily slot in to the community.³⁹ Thomas S., for example, a witness in a case of

³³ Deposition of Ivy G., AAOM W3265 1919 Gilbert Satherly, CTF.

³⁴ 'The Criminal Court. Sentences and Sermons', *Truth*, 8 Nov 1919, p.6.

³⁵ Cited in Bavin-Mizzi, pp.83-84

³⁶ Deposition of Ernest H., AAOM W3265 1916 Isidore Mount, CTF.

³⁷ Deposition of Julian S., AAOM W3265 1905 Allan Gibson, CTF.

³⁸ Daley, pp.281, 284, 201.

³⁹ James Belich, *Making Peoples. A History of the New Zealanders. From Polynesian Settlement to the End of the Nineteenth Century*, Auckland: Allen Land The Penguin Press, 1996, p.428.

indecent assault upon a male, happened to see the offence take place after he had joined up with a group of 'young fellows' wandering down Taranaki Street to the waterfront.⁴⁰ Men often bumped into and conversed with acquaintances in the street and a couple of offences resulted from this interaction.⁴¹ The ordinariness of such interaction between men is reflected in the stranger-attack cases. Whereas social interaction with assailants damaged women's and adolescent girls' claims to respectability, all but one of the assaults involving adult and adolescent males involved a degree of social interaction before the attack took place. A married man named Ernest H., for instance, met Isidore Mount in the street late one night in 1916. Mount struck up conversation. In response, Ernest explained that he had missed his train home. He accepted a bed at Mount's place for the night. This turned out to be a shared bed. Ernest left after Mount made sexual overtures.⁴² Men could engage socially with other men without impugning their characters. Of the five cases of stranger-assault, four gained convictions and one man pleaded guilty.

The sexual street culture of men and adolescent boys never engendered the sustained public outrage and calls for reform afforded to heterosexual offending. Indeed, same-sex offending was not explicitly referred to in public sources very often.⁴³ After 1910, however, the same-sex culture and its potential danger seems to have gained concerted attention from the criminal justice authorities. From then, the prison department's gradual adoption of the ideas of 'penal science' provided the impetus for a new conception of sexual offenders. This held that prisons should reform as well as punish and deter criminals for the good of society and of the prisoners themselves. Criminal types were to be observed and treatment provided to 'cure' individuals. To do this, John Findlay, the Minister of Justice between 1909 and 1911, and the leading advocate of the scheme, secured an Amendment to the Crimes Act in 1910 which provided for a new range of penal institutions to be established to deal with particular criminal types. Sexual offenders were identified as a group to be separated, though the chances of their reforming were considered 'slight'.⁴⁴ A

⁴⁰ Deposition of Thomas S., AAOM W3265 1902 Dennis Riley, CTF.

⁴¹ AAOM W3265 1918 John Carrig; 1919 James Whiting; CTFs.

⁴² Deposition of Ernest H., AAOM W3265 1916 Isidore Mount, CTF.

⁴³ 'Supreme Court. Charge to the Grand Jury', *NZT*, 31 July 1906, p.7. 'Supreme Court. Criminal Sessions Open', *NZT*, 14 May 1918, p.6.

⁴⁴ Bronwyn Dalley, 'Women's Imprisonment in New Zealand', PhD Thesis in History, University of Otago, 1992, pp.36-8.

separate prison was set up to receive same-sex offenders at New Plymouth in 1917. Labelled ‘sexual perverts’, these men were considered ‘dangerous’ to the other prisoners.⁴⁵

Such changes in attitude towards same-sex offenders impacted upon judges’ views of same-sex offending. Before 1910, judges’ comments focused upon the ‘disgusting’ nature of such crimes. Allan Gibson, for instance, was sentenced to seven years’ imprisonment with hard labour for attempting to commit an ‘abominable crime’.⁴⁶ But in the early 1910s, judges began to comment upon the danger posed by same-sex offenders to society. In sentencing a man in 1914, Justice Hosking commented that ‘a man of the prisoner’s proclivity should not be at large.’⁴⁷ Of the Supreme Court judges, the Chief Justice seemed most aware of the extent of same-sex offending. In 1916, he declared that there were ‘too many’ of this type of case occurring and told a jury that they did not realise the ‘gravity’ of them.⁴⁸ Such comments hint at a growing awareness among judges of same-sex culture, though this knowledge was guarded from the public through the use of euphemistic language and the exercise of the right to prohibit the publication of evidence given in court.

This growing awareness may have also filtered down the criminal justice system to the police. As graphs 1 and 2 show, there was a steady increase in the rates of prosecution of men for unnatural offences (bestiality was not separated) in both Wellington and nationally over the last quarter of the period. In fact, the rate of prosecution in Wellington was higher per 100,000 population than the national rate for most years after 1914. Possibly, the police began to include on their beats likely sites of same-sex encounters, though there is no surviving police documentation on this except for patterns of policing in the sample cases. Police patrols along the reclaimed land of the Wellington waterfront intruded on several men’s encounters, especially in 1918 and 1919. Constable Peter Munro, for example, discovered one man sodomising another when he ‘flashed’ his electric light into a waterfront shed.⁴⁹ Also from around this time, there is evidence that the police became proactive in policing men seeking-sex partners. Several were set up by the police. In 1917, for instance, the police were informed by 16-year-old Clement H. that John Lavigne had attempted to solicit him for sex. Clement made an appointment with Lavigne to meet in a tram shed. Two constables hid in the shed and listened while Clement pretended to negotiate

⁴⁵ Inspector of Prisons to Gaoler (Wellington), 4 Jul 1917. Gen. Order No.145 7 Jun 1917; both in J 40 PD box 199 1917/15/32.

⁴⁶ ‘A Well-Merited Sentence’, *NZT*, 2 Aug 1905, p.2.

⁴⁷ ‘New of the Day’, *NZT*, 17 Aug 1914, p.4.

⁴⁸ ‘Supreme Court. Penalty for Crime. A Young Man’s Lapse’, *NZT*, 15 Aug 1916, p.7.

⁴⁹ Deposition of Constable Munro, AAOM W3265 1919 James Whiting, CTF.

a price for sex. Once they had heard enough, they emerged from their hiding spot and arrested Lavigne.⁵⁰ When the father of a 10-year-old boy reported to Constable David Wallace that his son had been molested by a man on Lyall Bay beach along the southern Wellington coast and that the man had made a time to see the boy again, Wallace dressed in 'plain clothes' and observed the meeting from a nearby hiding spot.⁵¹

The public silence, however, appears to have masked what appears to have been a reasonable level of awareness of same-sex cultures, especially amongst men. In 1913 *Truth*, for instance, seemed to believe it was common knowledge that men struck up same-sex relationships in the defence forces.⁵² The frequency with which some sites of same-sex offending appeared in the sample suggests that urban Wellington supported a same-sex subculture. Certain places in Wellington city seem to have been cruising strips for men seeking same-sex encounters. Unlike the cafeterias and late-night diners that served as major meeting places in Ontario and New York for this period, the Wellington venues arising in the sample cases were all either outdoors or in public facilities.⁵³ A couple of men tried to pick up youths on the reclaimed land along the water front, particularly between Clyde Quay and Taranaki Street.⁵⁴ Two adolescent boys were looking in shop windows along Willis Street when approached. Without more research, it must remain unclear whether the act of looking in the windows was a code which indicated that the boys were available for same-sex encounters, or whether the actual shops were important. Colin B., for instance, was admiring bicycles in Fear's bicycle shop and Kenneth R. was looking in the window of the 'Yankee Hustle', a 'gay [sic] clothing emporium'.⁵⁵ A code of sorts seems to have existed though: both the instigators in these cases approached the boys by asking them to the pictures or theatre. Public toilets and tram sheds appeared as places where sex took place.⁵⁶ Alleyways were also sites for attempted sexual encounters, but seem to be associated with situations involving the exchange of money, rather than a mutually sought

⁵⁰ Deposition of Constable Anderson, AAOM W3265 1917 John Lavigne, CTF.

⁵¹ Deposition of David Wallace, AAOM W3265 1920 Arthur Hart, CTF.

⁵² 'Lieutenant Smith Scandal', *Truth*, 16 Aug 1913, p.4.

⁵³ Maynard, p.206, n.30 cites George Chauncey, pp.163-77.

⁵⁴ See AAOM W3265 1902 Dennis Riley; 1918 William Callaghan; both CTFs.

⁵⁵ Depositions of Colin B., AAOM W3265 1915 Andrew Finlay; Deposition of Kenneth R., 1919 Julian Huggens, both CTFs. Pat Lawlor, *Pat Lawlor's Wellington*, Wellington: Millwood Press, 1976, p.154.

⁵⁶ See AAOM W3265 1905 Allan Gibson; 1913 Joseph Smith; 1914 Charles Chadwick; 1917 John Lavigne; all CTFs.

casual encounter between strangers.⁵⁷ Public places, including shared rooms in hotels, were fraught with risks. The police and the public interrupted several cases which appear to have been either attempted pick-ups, consenting casual meetings, or prostitution. A hotel porter, for instance, discovered a man and a 12-year-old boy (who accepted money and treats in exchange for sex) when he showed a new guest to the shared hotel room where the sex was taking place.⁵⁸ A private room in a hotel afforded more safety from discovery. John Lavigne attempted to pick up 16-year-old Clement H. to 'pull him off'. Clement (who was baiting Lavigne on behalf of the police) hesitated in response to Lavigne's overtures so Lavigne increased the amount he would pay Clement from 10 shillings to two pounds. Clement worried about being caught. Lavigne replied "“Oh I will see to that. I have got a private key to my door You need not be afraid. It will be quite alright.”"⁵⁹

Strangers were not only associated with sexual danger. Casual meetings were regarded as opportunities for sexual adventure by both sexes, and in both hetero- and homosexual situations. As noted earlier in this chapter, Elizabeth W. and Ivy G. were receptive (up to a point) to the suggestions of the young men who ultimately assaulted them. William G., Colin B. and Kenneth R. all accepted invitations from men and subsequently cooperated in sexual encounters.

In the 36 cases of stranger-attacks on children, the streets and public parks and reserves dominated locations. Working class children enjoyed a largely unsupervised leisure time.⁶⁰ The streets were particularly easy places to meet children of both sexes, especially in urban areas. Before the rise of motorised transport in the 1920s, urban children used the streets as their playgrounds.⁶¹ Men approached urban and rural children as they played in the streets, walked home from school or a friend's place (sometimes over long distances), or went on a message. Some children were even approached when playing at their own front gates.⁶² In 1911, for instance, a five-year-old girl Theodore [sic] O. was molested at the gate of her

⁵⁷ Deposition of Arthur B., AAOM W3265 1916 Thomas McNamara; deposition of Antoion M., AAOM W3265 1909 Charles Taylor; CTFs.

⁵⁸ Deposition of John S., AAOM W3265 1919 Julian Huggens, CTF.

⁵⁹ Deposition of Constable Anderson., AAOM W3265 1917 John Lavigne, CTF.

⁶⁰ Karen Duder, 'Hegemony or Resistance? The Women of the Skilled Working Class and the Ideologies of Domesticity and Respectability', MA Thesis in History, University of Otago, 1992, pp.60-61.

⁶¹ Erik Olssen, 'Towards a New Society', in Geoffrey Rice (ed.), *The Oxford History of New Zealand* (2ed.), Auckland: Oxford University Press, 1992, pp. 254—284, p.259.

⁶² Deposition of Theodore O., AAOM W3265 1911 William Haining; deposition of Isabella M. AAOM W3265 1911 William Denning; CTF.

Brooklyn home while her mother sat inside sewing.⁶³ The gall of such men emphasised the extent of their threat to children. In 1907, *Truth* lamented that it was 'POSITIVELY DANGEROUS for female children to wander away from home, for they are always liable to the risk of being grossly insulted or molested by human brutes'. In the newspaper's opinion, such men gave 'more trouble to the police than any other criminal because they cunningly contrive and generally succeed in their disgusting practices where there are no male or even female adults about'.⁶⁴ The reality of the ease with which children were approached by strangers was struck home occasionally when children were abducted and brutally sexually assaulted. There were particularly shocking cases in 1912 and 1919, both of which resulted in the offenders being flogged.⁶⁵ In the 1912 case, a nine-year-old Petone girl was playing with her sister near the gate of her parents' front yard. The family had just finished tea and many neighbourhood children were playing in the front of the houses. Albert Hughes asked her for directions, then led her away, and raped and sodomised her.⁶⁶ The trial judge, Justice Chapman, said it was the worst case he had ever heard because the offender took the little girl 'away from her home and violated her in a lonely spot'.⁶⁷

The right of working class children to be in the streets without adult supervision was defended by the Judges of the Supreme Court. In the first half of the period, the safety of girls provoked most comment. Justice Chapman was especially vocal. In sentencing Albert Hughes to 20 years hard labour for raping the nine-year-old Petone girl, Chapman commented that it 'had been his endeavour to stamp out such outrages on young girls'.⁶⁸ Chapman believed it to be the duty of the Supreme Court, police, and 'well-disposed members of the community' to protect working-class girls because their parents could not afford to do so.⁶⁹ He frequently informed men when sentencing them that their exploitation of working men's inability to 'guard' their girls would result in severe punishment to those who took advantage.⁷⁰ From the mid 1910s, judicial concern extended to all children. Again,

⁶³ Deposition of Ada O., 1911 William Haining, CTF.

⁶⁴ 'Petone Pornic Practices', *Truth*, 19 Jan 1907, p.5.

⁶⁵ AAOM W3265 1912 Albert Hughes, CTF. 'The Petone Outrage', *NZT*, 7 Aug 1919, p.7; 'Petone Outrage. Flogging Ordered. Also Fifteen Years' Imprisonment', *NZT*, 8 Aug 1919, p.4.

⁶⁶ AAOM W3265 1912 Albert Hughes, CTF.

⁶⁷ 'Twenty Years. Condign Punishment. Judge's Strong Comment', *NZT*, 3 Feb 1912, p.5.

⁶⁸ 'Twenty Years. Condign Punishment. Judge's Strong Comment', *NZT*, 3 Feb 1912, p.5.

⁶⁹ 'Criminal Assault. Strong Comments by the Court. Sentence of Seven Years.', *Dom*, 23 May 1908, p.13.

⁷⁰ See 'A Salutory Sentence, His Honor's Remarks', *Dom*, 13 May 1909, p.11. 'Supreme Court. Quarterly Sessions. Seven Years', *NZT*, 5 Feb 1913, p.10.

Chapman led the invective. Such ‘suburban prowlers’,⁷¹ he said, were a ‘menace to children’ and should not be allowed ‘to prowl about’.⁷² Similar sentiments were expressed in the same language by Justice Edwards,⁷³ the Chief Justice,⁷⁴ and Justice Stringer.⁷⁵

Urban and rural settings also provided different sites for men to approach unknown children. In Wellington city, the geography sometimes provided the isolation required for a sexual assault. Children were taken into the gullies surrounding the city and suburbs.⁷⁶ But the city also had a developed infrastructure of public recreation venues which were particular sites in urban men’s patterns of assault on children. Popular promenading spots like the beaches at Lyall Bay and Oriental Parade attracted men looking for children.⁷⁷ The Basin Reserve, Newtown Park and the Botanical Gardens were most often at the centre of anxieties over the sexual dangers posed to children.

For Pat Lawlor, who grew up in Wellington during the period, the Botanical Gardens were his ‘greatest play ground’.⁷⁸ To urban children, public parks and reserves seem to have been an extension of their homes. Assaulted children were likely to live locally and to go to the park frequently without adult supervision. Nine-year-old Lillian L., for instance, lived in Angus Ave near Newtown Park. On Wellington Anniversary Day in 1913 she spent the whole day playing in the park and watching the sports activities, going home for ‘dinner’ and ‘tea’ and finally returning at 9 pm. At some stage in the day, a strange man took her into the trees and attempted rape.⁷⁹

In 1901, the Chief Justice recognised the centrality of such recreation sites in working class children’s leisure by declaring that public parks must be kept as safe places for unsupervised children. He told a prisoner convicted of an offence against a child that ‘a great many people in Wellington had no place to send their children to play except to the public parks, and it would be a lamentable thing if they could not do so without running the

⁷¹ ‘A Suburban Prowler. Parents, Warn Your Children. A Judge’s Severe Sentence’, *Truth*, 16 Aug 1913, p.3. Also, ‘Youthful Offenders. Admitted to Probation. A Serious Offence’, *EP*, 16 Nov 1915, p.8.

⁷² ‘Supreme Court. Four Years Hard Labour’, *NZT*, 7 Feb 1917, p.9.

⁷³ ‘Sentence for Assault’, *NZT*, 3 May 1902, p.2. ‘Supreme Court. Criminal Sessions. Indecent Assault’, *NZT*, 16 May 1917, p.8.

⁷⁴ ‘Supreme Court. Indecent Assaults on Children’, *NZT*, 4 Feb 1904, p.3. ‘Supreme Court. His Honor’s Charge’, *NZT*, 8 Aug 1916, p.8.

⁷⁵ ‘Petone Outrage.’, *NZT*, 8 Aug 1919, p.4.

⁷⁶ Deposition of Ivy L., AAOM W3265 1915 George Penman; 1913 Ernest Madigan; CTFs.

⁷⁷ AAOM W3265 1908 Edward Winter; 1920 Harry Hart; CTFs.

⁷⁸ Lawlor, *Pat Lawlor’s Wellington*, p.80.

⁷⁹ Deposition of Mrs Lillian L., AAOM W3265 1913 John Norris, CTF.

risk of . . . assaults'.⁸⁰ The sexual danger was nevertheless notorious. In 1906, *Truth* commented on some men's use of the Basin Reserve for sexual encounters with children. 'The critic' decried the 'antics' of one man:

Armed with a pair of field-glasses, attired in a cycling suit and, of course, possessed of a bicycle, this skunk seems to derive great pleasure from lying in the grass a little distance from frolicing female children and particularly when the children are toppled over to scan what is seen through his glasses.⁸¹

Much concern over the safety of girls was based on objections to the comparatively low-grade sex offences of voyeurism and exhibitionism. The amount of anxiety generated by such behaviour provides an insight into how the notion of sexual danger was generated and spread. It could result from the actions of only a few men, underscoring the power of the unpredictability of male sexual violence to cause concern at levels out of proportion to actual offending.

Wellington's Botanical Gardens provide good examples. 'Exhibitionists' were reported at various times to inhabit the Botanical Gardens. In 1908 *Truth* reported that it was unsafe for either adult women or girls to walk through the gardens without 'being molested or insulted by some sexual maniac, who finds pleasure in exhibiting himself'.⁸² In the House of Representatives, the member for Wellington North demanded that immediate steps be taken to arrest the men causing the problem. The Minister of Justice acknowledged the concern and claimed the situation was under control. While admitting that 'several' cases of indecent exposure had taken place in Gardens over the last year, he noted that four offenders had been arrested and that there had been no complaints for three months. The Gardens, said the Minister, had 'for a long time past received special attention, and this supervision is being continued.'⁸³ The issue arose again in 1915. The *Evening Post* reported that the father of a schoolgirl demanded that the police should take 'more stringent measures' to stop an apparent increase in cases of 'indecent by men'. The police had responded to such calls before, but the father called for the appointment of a permanent constable.⁸⁴ There are insufficient police records to establish whether a regular police beat

⁸⁰ 'Supreme Court. Criminal Sessions. Sentences', *NZT*, 7 Feb 1901, p.3.

⁸¹ 'The Critic', *Truth*, 15 Dec 1906, p.1.

⁸² 'Sexual Sinners', *Truth*, 30 May 1908, p.1.

⁸³ Izard, *NZPD* (143), 15 Jul 1908, p.458.

⁸⁴ 'Local and General', *EP*, 20 Oct 1915, p.6.

was established in response. But the sample cases show that a police presence in the Botanical Gardens could prevent assaults. In 1920, while patrolling there, a constable from the Wellington station interrupted a man attempting to have sex with a 15-year-old girl.⁸⁵

Newtown Park, and especially the zoo area, attracted many children. Men hung around the grounds, apparently on the look-out for children. The Newtown police thought they had caught the man responsible for several indecent assaults on girls when they arrested Frederick Arnold in 1909.⁸⁶ John Maloney, charged with indecent assault in 1911, was in the Newtown Park so often that it was cause for comment by locals and the zoo-keeper.⁸⁷ One part of the zoo grounds was particularly dangerous for children, for the sea lion pond recurred as site of offending in the sample cases. It was at the very back of the zoo and took about 10 to 15 minutes to reach from the main gates.⁸⁸ John Maloney assaulted a girl in this vicinity in 1911.⁸⁹ And in 1910, Cecil Meyrick dragged nine-year-old Tom M. into the Park and 'beyond the sea-lion's pond' where he sodomised him.⁹⁰

On the same day that Maloney was tried, the member of the House of Representatives for Wellington South called for the strengthening of the Wellington South police so that more 'continuous' police surveillance of the park would be possible. The need was justified by the large number of people visiting the park, and 'with a view to promoting the well-being of the children visiting that popular reserve'. The government recognised the problem, and an additional constable was appointed in 1912. Again, the shortage of police records mean it is unclear how the police presence operated in the park. An interesting development was the appointment of John Langridge, the zoo 'curator', as a 'special constable' within the zoo grounds, some time before 1917. This gave him the power to question and arrest alleged offenders.⁹¹ But the police presence does not appear to have decreased anxiety among Newtown residents about the park as a source of sexual danger to children. When a shopkeeper thought she heard a stranger asking her neighbour's five-year-old daughter to go up to the park with him, she quickly concluded that the man was 'misbehaving himself'.⁹² This was not the first time a little girl had been approached in the

⁸⁵ Deposition of Constable Cattanach, AAOM W3265 1920 Fergus Adams, CTF.

⁸⁶ P—W 20/1 Crime Book, 1900—10 (Wellington South), p.202.

⁸⁷ Depositions of Ernest M. and John L., AAOM 1911 John Maloney, CTF.

⁸⁸ Deposition of John Langridge, AAOM W3265 1911 John Maloney, CTF.

⁸⁹ Deposition of Doris B., AAOM W3265 1911 John Maloney, CTF.

⁹⁰ Deposition of Thomas M., AAOM W3265 1910 Cecil Meyrick, CTF.

⁹¹ Deposition of John Langridge, AAOM W3265 1917 Robert Ashley, CTF.

⁹² Testimony of Violet N., Rex v. John Elliott, AAOM W3265 1918 John Elliott, CTF.

neighbourhood. About 12 months before this case, another neighbour's daughter had been taken to the park and raped.⁹³

The rural equivalents of the urban park were informal recreation areas where children played, and where men went to fish or swim.⁹⁴ An example was the willow trees and bush lining the banks of the Hutt River. In 1916, John Dorne asked three sisters who were making daisy chains by the riverside to point out a good place to swim. After his dip, he dragged eight-year-old Doris into the bush along the river and viciously attacked her.⁹⁵ A youth, Clifford Parrant, went to the river to fish. He assaulted an eight-year-old boy who was sent there with his friend to collect wood.⁹⁶

Men, women and children were attacked by strangers in the early twentieth century as they moved through public spaces. But the narrow definition of such attacks, especially those involving adult women and adolescent girls, suggests that codes of respectable behaviour limited the case contexts considered to be sexually dangerous. Such stereotyping of sexual danger obscured the real extent of stranger-attacks in Wellington between 1900 and 1920. The chapter now examines assaults by non-strangers

Social networks

The men, women and children of the Wellington district were more often sexually assaulted by men and youths known to them than by strangers. Nearly two thirds of offences (57.61%) resulted from sexual encounters between people who met through social networks and work places. The threat posed by non-strangers was not, however, as widely condemned as that involving strangers. As already noted above, convictions were gained in only 41.7 per cent of non-stranger cases. An analysis of the contexts of these cases suggests that the relationship of the parties was influential in jurors' perception of cases. In keeping with the patterns underlying the definition of stranger-danger, relationships containing the possibility for sexual pleasure, as well as sexual danger, were the least likely to be punished. Cases in which the parties could have been romantically linked (for example, the unlawful carnal knowledge of girls between 12 and 15 years of age by sexual acquaintances), resulted in the lowest conviction rate in the sample, a mere 17.6 per cent. In comparison, sexual assaults by

⁹³ Testimony of Charles T., *Rex v. John Elliott*, AAOM W3265 1918 John Elliott, CTF.

⁹⁴ Statement of Clifford Parrant, AAOM W3265 1914 C.W.F. Parrant; deposition of Doris W., AAOM W3265 1916 John Dorne; CTFs.

⁹⁵ Deposition of Doris W., AAOM W3265 1916 John Dorne, CTF.

⁹⁶ AAOM W3265 1914 C.W.F. Parrant, CTF.

men in a position of trust, such as a family member, boarder, neighbour, or family friend, had a conviction rate of 59 per cent. Also in common with stranger-attacks, gendered and aged cultures of leisure and work shaped the social and spatial contexts of sexual danger. This section of the chapter looks first at social, then work contacts.

Of the two, social networks provided the largest pool of potential sexual assailants. Sexual and platonic acquaintances, local community members, neighbours, family friends, household members and family comprised 67 or 43.2 per cent of all case scenarios (see table 1, Appendix B).

For the young working-class men and women whose stories are told in the criminal trial files, courting and flirting provided opportunities for sexual adventures. Young people growing up in the early twentieth century expected to marry.⁹⁷ A degree of sexual interest between the sexes was assumed as part of social life. Brian Sutton-Smith, for instance, noted that games with 'a slightly romantic flavour' ('Kiss in the Ring', for instance), were often played by adolescents at community picnics with adult approval.⁹⁸ Some parents in the sample cases knew that their daughters were 'keeping company' and had no objection.⁹⁹ The appropriate degree of such interest, however, was highly contested during the period, both at the community and the legislative level. Fourteen-year-old Sarah K., for instance, reported that her older sister had told 20-year-old Alfred K. that he 'was no fit person to be seen with Catherine [her twin] and I, because we were only fourteen years of age'.¹⁰⁰ Alfred said he knew that his 'misbehaving' with Catherine had aroused disapproval, and he 'had to be very careful'.¹⁰¹ As already noted, social purity organisations like the WCTU and the SPWC also disapproved of adolescent sexual activity. Through the age of consent campaign these groups worked to eliminate the sexual ideology which supported freedom of sexual expression by boys and men at the cost of girls and women.

Courting opened up a range of types of sexual encounter for adolescents and adults of both sexes which sometimes resulted in sex crime. Sexual assaults arose in 16 cases (including three same-sex situations) as a result of attempts to establish relationships and between couples who were 'keeping company'. Typically, courting involved a procedure of set rituals. Couples met through social networks including family, friends, social events, and

⁹⁷ Duder, p.77.

⁹⁸ Brian Sutton-Smith, *A History of Children's Play New Zealand 1840—1950*, Wellington: New Zealand Council for Educational Research, 1982, pp.166–67.

⁹⁹ Deposition of Mary Ann S., AAOM W3265 1915 Arthur Hainsworth, CTF.

¹⁰⁰ Deposition of Sarah K., AAOM W3265 1911 Alfred Keeble, CTF.

¹⁰¹ Deposition of Constable Esson, AAOM W3265 1911 Alfred Keeble, CTF.

casual meetings. Twelve-year-old Lily S. met Leonard Muir through his sister who 'minded' the S.'s baby.¹⁰² William Raymond met 14-year-old Olive B. when she attended a dance at the Druid's Hall in 1907 with her parents.¹⁰³ Girls on the look-out for boy friends might walk together around town. Fourteen-year-old Annie T. and her 19-year-old friend Marion M., for instance, had a 'beat' through central Wellington.¹⁰⁴ It was on one of these circuits that Annie met a friend of Marion's, a jockey named Charles Buchanan, against whom she later alleged a charge of indecent assault.¹⁰⁵ As already noted earlier in the chapter, male couples like 15-year-old Colin B. and Andrew Finlay met at what appear to be same-sex cruising strips. The cases in the sample involving adults suggest that the courting culture of older working class men and women was similar to that of adolescents, with the addition of work places as sites through which to meet potential sweethearts.

The streets, so full of sexual danger, also served as the site of many sexual adventures. Initial wooing was often conducted in a public place, for example, by way of walking together. Neil Harrington, for instance, asked an unmarried woman, Mary P., 'for the pleasure of walking [her] home'.¹⁰⁶ Seventeen-year-old Waka Hepere caught up with 15-year-old Sarah S. as she walked home from the butcher's and asked if he could carry her kit.¹⁰⁷ To sit down together, however, signalled a more serious display of interest. Mary P., for instance, had definite ideas about when and with whom she would sit. When Neil Harrington asked whether 'there was a garden seat about' she told him she 'wouldn't sit down with anybody at this hour of the night' (about 10 pm).¹⁰⁸ 'Sitting down' led to physically intimate behaviour. Criminal charges were, of course, predicated upon the occurrence of some form of intimate sexual behaviour. There is evidence in the cases, however, that physical intimacy was expected in these situations. Annie T. and Charles Buchanan, for instance, sat on her coat in a park for about half an hour 'before anything happened'. Buchanan then 'put his hand up' Annie's clothes and 'started fooling about' with

¹⁰² Cross-examination of Lily S., AAOM W3265 1912 Leonard Muir, CTF.

¹⁰³ Deposition of Olive B., AAOM W3265 1907 William Raymond, CTF.

¹⁰⁴ From their homes in Mt Victoria, they went along Courtney Place, Manners Street, Willis Street to Stewart Dawson's (a jeweller's on the corner of Willis Street and Lambton Quay), then turned back. Deposition of Annie T., AAOM W3265 1909 Charles Buchanan, CTF.

¹⁰⁵ Deposition of Annie T., AAOM W3265 1909 Charles Buchanan, CTF.

¹⁰⁶ Deposition of Mary P., AAOM W3265 1904 Neil Harrington, CTF.

¹⁰⁷ Statement of Waka Hepere, AAOM W3265 1907 Waka Hepere, CTF.

¹⁰⁸ Deposition of Mary P., AAOM W3265 1904 Neil Harrington, CTF.

her. Charges arose when Buchanan pressed his intentions too far.¹⁰⁹ The physical aspect of youths' and men's wooing, in comparison, was less likely to occur directly in the public eye, undoubtedly because of the criminal repercussions.

The progression to 'keeping company' or courting, involved frequent outings or 'appointments' by couples and sometimes exchanges of love tokens like letters or photographs.¹¹⁰ Couples would walk, talk and sit some place, or go out to a public place of amusement. Eighteen-year-old Arthur Hainsworth and 15-year-old 'sweetheart,' Alice Steere, for instance, kept company for about six months in 1914. They went out together for walks and to the pictures, dallying on the roadside on the way home.¹¹¹ Colin B. and Andrew Finlay went out together for some months in 1914. They visited the public baths, Wellington's parks, the theatre, and had meals together.¹¹²

As well as being places to approach children, Wellington's public parks and reserves like Newtown Park, the Basin Reserve, Mt Victoria, and the Botanical Gardens were places to meet and to take potential sexual acquaintances and sweethearts. Such places were considered to be out-of-the-way by one observer who feared their use for 'evil'.¹¹³ A humorous postcard dated 1910 depicted a 'lovers' walk' in Newtown Park.¹¹⁴ The Basin Reserve was known throughout the period as a place where prostitutes solicited clientele.¹¹⁵ In 1900, a 14-year-old prostitute told the court that she worked from the Basin Reserve.¹¹⁶ And in 1917, one offender explained to the court that he had simply engaged in conversation with a 16-year-old girl out of curiosity because he thought she was in the Basin Reserve for the purpose of luring men to prostitutes. He said 'she seemed to me to be one of a class of girls of whom I have heard but never seen.'¹¹⁷

¹⁰⁹ Deposition of Annie T., AAOM W3265 1909 Charles Buchanan, CTF.

¹¹⁰ Deposition of Colin B., AAOM W3265 1915 Andrew Finlay; depositions of Alice S., AAOM W3265 1915 Arthur Hainsworth, CTF.

¹¹¹ Deposition of Alice S., AAOM W3265 1915 Arthur Hainsworth, CTF.

¹¹² Deposition of Colin B., AAOM W3265 1915 Andrew Finlay, CTF.

¹¹³ Cited in Gregory, p.21.

¹¹⁴ 'Lovers' walk, Newtown Park', ["Cynicus". Postcard, ca 1910], Wellington: Alexander Turnbull Library, n.d.

¹¹⁵ Deposition of Alice B., AAOM W3265 1900 George Hobbs; deposition of Donald Polson, AAOM W3265 1916 Donald Polson; CTFs.

¹¹⁶ Deposition of Alice B., AAOM W3265 1900 George Hobbs, CTF.

¹¹⁷ Testimony of Donald Polson, Rex v. Polson, AAOM W3265 1916 Donald Polson, CTF.

From the 1910s, movie theatres provided a new venue for urban couples to meet and to take sexual partners.¹¹⁸ Travelling to and from the theatre gave couples more time alone and thereby presented opportunities for sexual activity. Arthur Hainsworth and Alice S., for instance, had ‘connection’ on the side of the road on their way home from a trip to the pictures in 1914. The social gathering of strangers together in picture theatres also provided opportunities for casual encounters. Fergus Adams related this story:

I was attending the pictures at the Britannia Theatre. I saw a young girl, she smiled at me. She was sitting two rows of seats ahead of me. She kept turning round and smiling at me so I beckoned her to come over to me. She did not do so. When the lights were turned down I moved to a seat behind her, and entered into a conversation with her. . . . I tried to make arrangements to meet her last night, but she told me that she . . . could not see me until this afternoon.

He took her to the Botanical Gardens where he started ‘fooling about’ with her before being interrupted by the police.¹¹⁹ In his study of working class boys’ sexual relations with men in Ontario between 1890 and 1935, Steven Maynard pointed out the ‘craze’ of working class children for the show.¹²⁰ In New Zealand, as in Ontario, the rise in popularity of commercial entertainment like the movies assumed an importance in men’s solicitation of same-sex partners. Several New Zealand men secured sex with a boy by offering to take him to a show.¹²¹

Plays toured rural towns and were opportunities for outings.¹²² But generally, the absence of picture theatres and places of public entertainment in small rural townships like Mangatainoka, Pahiatua and Manakau, meant that heterosexual couples had little choice but to go for walks and sit, talk, and have sex by the side of a road, river, or in an out-building like a hayshed.¹²³ The continued centrality of walks and sitting and talking in courting rituals suggests that the modernisation of leisure made little impact upon the sexual

¹¹⁸ AAOM W3265 1920 Fergus Adams; 1915 Andrew Finlay; 1919 Julian Huggens; CTFs.

¹¹⁹ Statement of Fergus Adams (exhibit B), AAOM W3265 1920 Fergus Adams, CTF.

¹²⁰ Maynard, pp.207—08.

¹²¹ AAOM W3265 1915 Andrew Finlay; 1918 Julian Huggens; CTFs.

¹²² Deposition of Bessie B., AAOM W3265 1901 William B.; deposition of Bridget C., AAOM W3265 1908 Frank Halligan; CTFs.

¹²³ AAOM W3265 1900 Andrew Quinlan; 1900 Sydney Bluett; 1911 Alfred Keeble; 1918 William Stirling; CTF. Daley, p.161.

adventures of rural Wellingtonians, but did effect some change in the courting practices of urban dwellers.¹²⁴ The sample produced no evidence of same-sex courting in rural areas.

Courting provided opportunities for sexual encounters, both willing and unwilling. In Wellington, as Caroline Daley found in relation to sexual practices in Taradale between 1880 and 1930, sex appears to have been an integral part of ‘keeping company’ for some heterosexual couples.¹²⁵ She found that sexual activity was probably permissible between ‘betrothed’ couples or alternatively forced ‘shot gun’ weddings. The case files, in addition, provide instances of pre-nuptial heterosexual relations that neither occurred under a promise of marriage nor were ‘rectified’ by marriage. Arthur Hainsworth, for instance, did not intend to marry Alice S., until after she became pregnant in 1914.¹²⁶ The undertone of prostitution in the same-sex relationships makes it difficult to judge the extent to which sex was integral in on-going relationships. However, although Colin B. and Andrew Finlay’s relationship started from a pick-up situation, it appears to have developed into a relationship. Finlay left New Zealand for some months but kept in contact with Colin through correspondence and the relationship resumed on his return. Sex took place regularly both before and after Finlay’s absence.¹²⁷ The actual negotiation of sex between partners is examined in later chapters.

Social networks also provided access to sexual partners who were not approached with a view to romantic relations. Just being seen around a community provided an avenue for acquaintance and the opportunity to commit a sex crime. Adults, for instance, formed acquaintances with children independent of the children’s parents. They might be neighbours, their friends or boarding at a neighbour’s house.¹²⁸ Charles Nelson got to know eight-year-old Alice Little when she and some other children played around him while he did some fencing.¹²⁹ Alice’s mother had never spoken to him until she confronted him about a report that he had been ‘doing something’ to her daughter.¹³⁰ Men approached people they knew vaguely through a mutual friend or experience (such as school, work or living in the same neighbourhood), or who they knew ‘by sight.’ William G., for instance, knew his

¹²⁴ Daley, p.161.

¹²⁵ Daley, p.168.

¹²⁶ Testimony of Arthur Hainsworth, *Rex v. Hainsworth*, AAOM W3265 1915 Arthur Hainsworth, CTF.

¹²⁷ Deposition of Colin B., AAOM W3265 1915 Andrew Finlay, CTF.

¹²⁸ AAOM W3265 1900 George Sigglekow; 1902 Michael Rock; 1905 William James; CTFs.

¹²⁹ Deposition of Alice L., AAOM W3265 1900 Charles Nelson, CTF.

¹³⁰ Deposition and cross-examination of Emily L., AAOM W3265 1900 Charles Nelson, CTF.

assailant 'well enough to speak to but did not know his name.'¹³¹ Except in the context of stranger-attacks on children, community members did not attract much public attention. They could, however, become notorious among locals. In 1899, rumours that a young Masterton man named Robert Douglas, for instance, had sexually assaulted and murdered a local woman prompted the Commissioner of Police to re-open the enquiry into the woman's death.¹³²

Sexual pleasures and dangers also existed closer to home. Neighbours, family friends, boarders, live-in workers, house guests and family comprised 33 or 21.15 per cent of assailants in the sample cases. These cases all involved children under the age of 16 years. Most were girls. Given the low numbers of cases involving adult women and men prosecuted in the sample, conclusions about their absence from this context of sex crime have to be tenuous. As the next section discusses, it seems that men were more likely to be assaulted in situations related to work. Women spent more time in homes. The absence of cases arising from other social networks, combined with the apparent low priority given to stranger-attacks in homes, suggests that it was difficult for women to press allegations of assault in any but stranger attack situations committed within the context of a stereotypical stranger assault: one that occurred at night, in an isolated public area. Of the contexts involving children, non-family members provoked the highest conviction rate amongst the sample cases. Nearly three quarters of these men took advantage of positions of trust and their social or residential proximity to secure sex.

Neighbours invited children into their homes to play and for meals, to have a photograph taken, to run a message, or to give them presents (like a toy boat). One simply ordered a child to 'come here'. Boarders had easy access to the children of their landlords. In this context, girls were particularly vulnerable because they spent more time at home. For instance, a 7-year-old girl named Eileen McG. appeared in the sample twice as a victim of assault by boarders. In 1907, Eileen was molested in her family home by a man who was seeking board from her mother.¹³³ The following year, she was raped by a boarder one afternoon when her mother kept her home from school to look after the baby.¹³⁴ On this occasion, Eileen contracted venereal disease.¹³⁵ And John Hutcheson raped the 15-year-old

¹³¹ AAOM W3265 1918 John Carrig, CTF.

¹³² P 1 1901/1109.

¹³³ Deposition of Aileen McG., AAOM W3265 1907 Robert Humphries, CTF.

¹³⁴ Deposition of Eileen McG., AAOM W3265 1908 John Griffen, CTF.

¹³⁵ Deposition of Dr. Dawson, AAOM W3265 1908 John Griffen, CTF.

daughter of the woman on whose farm he lived and worked.¹³⁶ Men also struck up romances with the daughters of their landlords and friends. Edward Ferris, for instance, was asked to leave Constance Hs' boarding house when Constance discovered that her 14-year-old daughter was pregnant.¹³⁷ The affair had lasted nearly two years.¹³⁸ Family friends used their familiarity to gain access to potential partners. According to Mrs F., Edward Pierard, 'made himself quite at home' and knew her family 'pretty well'. Perhaps not surprisingly, when Mrs F. heard from her sons that Pierard was visiting Jessie at work, Mrs F. 'really did not think there was any harm'.¹³⁹ Another family had known a neighbour's son for about three years and were 'always friendly with him and his mother and all of them.' The son often took five-year-old Ruby for walks.¹⁴⁰ On one of these he took her to his house and raped her.¹⁴¹

The sexual danger of the home was most discussed in terms of incest. As contemporary feminists realised, some men's sexuality was not controlled in the home, leaving women and children vulnerable to sexual exploitation and abuse from their 'natural protectors'.¹⁴² Incest was criminalised in 1900 after several years' of campaigning by women's groups. The Criminal Code Act Amendment Act 1900 prohibited sexual relations between fathers and daughters, brothers and sisters, sons and mothers, grandfathers and granddaughters. Men and women over 16 years old who were convicted of incest were liable to a maximum of 10 years' imprisonment with hard labour. Making incest a distinct offence (previously, incestuous relationships were prosecuted under the general sexual assault provisions of the criminal code) signalled that men's abuses of power in the home would not be tolerated by the state. Prosecutions, though, were not numerous. Only 60 cases nationwide were committed to trial between 1900 and 1920, four of them in Wellington.¹⁴³ In this study, however, the definition of incest includes all sexual offences between family members. This wider definition more fully reflects the range of intra-familial relationships involved in incestuous offending, and also includes the cases tried in 1900 as rape and indecent assault before the inauguration of incest as a distinct offence. In all, nine incest

¹³⁶ Deposition of Catherine S., AAOM W3265 1903 John Hutcheson, CTF.

¹³⁷ Deposition of Constance H., AAOM W3265 1902 Edward Ferris, CTF.

¹³⁸ Deposition of Amy H., AAOM W3265 1902 Edward Ferris, CTF.

¹³⁹ Deposition of Matilda F., AAOM W3265 1901 Edward Pierard, CTF.

¹⁴⁰ Cross-examination of Mary P., AAOM W3265 1900 Joseph Callie, CTF.

¹⁴¹ Deposition of Ruby P., AAOM W3265 1900 Joseph Callie, CTF.

¹⁴² Brookes, pp.141, 149–50.

¹⁴³ Compiled from Law and Crime statistics, *Statistics of New Zealand*.

cases were tried in Wellington between 1900 and 1920, involving seven men. The sample includes criminal trial files for three of the men (five charges).

In the sample cases, two fathers, an uncle and a husband forcibly assaulted family members. All of these cases involved prolonged assaults or sexual harassment. Ada P. thought her brother read to her three daughters when he took them out on Sunday afternoons.¹⁴⁴ Eight-year-old Delcie said he actually took them into the bush, 'tickled' them on their persons, 'got on top' of them and 'put his thing' into theirs.¹⁴⁵ Henry C. raped his daughter repeatedly for about a year.¹⁴⁶ William B. raped one of his twin daughters once, but had harassed them both for a considerable period.¹⁴⁷ And Joseph B. faced charges of having forcibly sodomised his wife over a period of 18 months. Though Mrs B. is clear in her evidence that her husband also had vaginal sex with her against her will, the legislative definition of rape as 'the act of a male person . . . having carnal knowledge of a woman or girl who is not his wife' prevented her from bringing a charge of rape against him.¹⁴⁸ Rape of wives only became criminalised in New Zealand in 1985.¹⁴⁹ These men appear not to have seen any contradiction between their roles as father, uncle or husband with forcible sex of their dependents or relatives. Henry C., for example, wrote to the sentencing judge pleading for leniency on account of his responsibilities to his wife and family and promising to lead a better life.¹⁵⁰ Presumably he included his now pregnant daughter in his pledge. Their attitudes support Scott Gallacher's analysis that men's societally sanctioned 'right' to control their dependents flowed over into a further belief in the 'right' of sexual access to wives, daughters and other relatives.¹⁵¹ However, the prosecution of charges for incest shows that this 'right' was contested during the period. Judges, for instance, acknowledged incest as a sexual danger by passing severe sentences on men convicted of incest. Three men

¹⁴⁴ Deposition of Ada P., AAOM W3265 Edward S., CTF.

¹⁴⁵ Deposition of Delcie P., AAOM W3265 Edward S., CTF.

¹⁴⁶ Deposition of Mabel C., AAOM W3265 1913 Henry C., CTF.

¹⁴⁷ Depositions of Bessie and Jessie B., AAOM W3265 1901 William B., CTF.

¹⁴⁸ Deposition of Mrs B. AAOM W3265 1906 Joseph B., CTF. Section 191, *Criminal Code Act 1893*

¹⁴⁹ *Crimes Amendment (No 3) Act 1985*

¹⁵⁰ Henry C. to the Judge, n.d., AAOM W3265 1913 Henry C., CTF.

¹⁵¹ Scott Gallacher, 'Publishing our own dishonour': The Criminalisation of Incest in New Zealand and the Judicial Response', BA(Hons) Long Essay, Otago University, 1993, p.88.

were convicted under the incest legislation and two received the maximum sentences of 10 years' imprisonment with hard labour.¹⁵²

Work contacts

Workplaces created more possibilities for meeting potential sexual partners. The Pierard case, for instance, shows that Pierard seized the relative privacy provided by Jessie going to work to attempt to forge a sexual relationship with her. Of the 18 victims assaulted by work place contacts, however, 15 were men or boys. This is not surprising, as most males during the period spent a good deal of time at work. As we have already seen, women and children faced more danger in homes or in carrying out domestic tasks.

Men in a variety of occupations used their positions of power both to create the opportunity for sex and to wrest cooperation from their victims. These cases rarely resulted in convictions. A Marist brother teaching at an industrial school used the boys in his tailoring class as a pool of sexual partners. His access to the boys was guaranteed through his exclusive supervision of them and his access to lockable areas of the school, and was enforced by his position of authority over the boys. While the abuse was frequently discussed among the boys, it continued uninterrupted in the school for nearly 10 years.¹⁵³ Two army deserters tolerated the abuse of the military policeman who arrested them because, as one of them reasoned, 'I did not want to be charged with resisting as I was under arrest.'¹⁵⁴ Their failure to resist ultimately contributed to the dropping of the charges against their assailant.

The positions of authority which some men occupied at work also enabled them to persuade or coerce employees into sexual activity. Employers like Charles Philp and Victor Kallinikos both assaulted girls in their employment, respectively a domestic servant and a waitress.¹⁵⁵ Another domestic servant who alleged an attempted rape revealed that she had been sexually harassed by two previous employers.¹⁵⁶ Steven Eldred-Grigg framed such assaults as the legacy of 'old notions' of *droit du seigneur*, or a master's right of sexual

¹⁵² AAOM W3265/2923 Return of Prisoners Tried, 1902–12, p.83. AAOM W3265/2925 Return of Prisoners Tried, 1913–16, sentenced/No.722.

¹⁵³ AAOM W3265 1900 Edouard Forrier, CTF.

¹⁵⁴ Cross-examination of William B., Rex v. Williamson (first trial), AAOM W3265 1918 Henry Williamson, CTF.

¹⁵⁵ AAOM W3265 1906 Charles Philp; 1918 Victor Kallinikos; CTFs.

¹⁵⁶ Cross-examination of Elizabeth W., AAOM W3265 1900 Andrew Quinlan, CTF.

access to his servants. He argued that the diversification of New Zealand women's employment away from domestic service by the early twentieth century into larger and more 'impersonal' workplaces decreased the likelihood of the sexual abuse of servants by master.¹⁵⁷ From such a small number of cases, the conclusion that some employers believed they had a right of sexual access to their staff is tenuous, but these cases suggest that some men persisted with this assumption. The strength of their assumption is underwritten by the girls' apparent expectation of sexual harassment, and tolerance of it to a degree. Gladys M., for example, said that in the first week of working for Kallinikos, he tried several times to kiss her, but she did not 'resent' his actions until he attempted to take liberties with her by putting his hand on her thigh underneath her clothes.¹⁵⁸

Men's occupations sometimes overlapped with leisure activities of children and young people, giving them access to potential victims. For example, many working-class parents encouraged their children to play musical instruments,¹⁵⁹ and some were assaulted by music teachers, who took advantage of having children alone in their homes to assault them. Indeed, a spate of prosecutions against male music teachers for offences on boys and girls around the middle of the period singled these teachers out as of particular sexual danger to children. The issue came to a head in 1912, when Arthur Wicks, a piano teacher, was tried and convicted of indecent assault upon a 14-year-old girl. He asked Idela W. to sit on his knee as he explained his 'theory' to her, meanwhile 'rubbing' and 'tickling' her private parts.¹⁶⁰ The case prompted Justice Chapman to comment that the rising tide of cases (three or four in recent years) reflected poorly upon the profession. The profession, of course, leapt indignantly to its defence.¹⁶¹ The real issue underlying concern about such offending was not the type of profession, but the breach of trust committed by the teacher when parents entrusted children to them.¹⁶² The issue flared again in 1913. This time, a lieutenant in the Territorials was accused of indecently assaulting two Senior Cadets and indecently exposing himself to several others.¹⁶³ In New Zealand, the introduction of compulsory military training of boys over the age of 14 years old under the 1909 Defence

¹⁵⁷ Stevan Eldred-Grigg, *Pleasures of the Flesh. Sex and Drugs in Colonial New Zealand, 1840-1915*, Wellington: Reed, 1984, pp.174—75.

¹⁵⁸ Deposition and cross-examination of Gladys M., AAOM W3265 1918 Victor Kallinikos, CTF.

¹⁵⁹ Duder, pp.59-60.

¹⁶⁰ Deposition of Idela W., AAOM W3265 1912 Arthur Wicks, CTF.

¹⁶¹ 'Wick's Wrong-Doing', *Truth*, 11 May 1912, p.4.

¹⁶² 'Wick's Wrong-Doing', *Truth*, 11 May 1912, p.4.

¹⁶³ 'Lieutenant Smith Scandal', *Truth*, 16 Aug 1913, p.4.

Act created a place for men seeking boys for sexual relations, by bringing groups of boys and men together.¹⁶⁴ As *Truth* pointed out, ‘Many parents in New Zealand have crushed their natural abhorrence to conscription out of loyalty to their country, but conscription plus contamination and insidious corruption is much more than they bargained for’.¹⁶⁵

Steven Maynard has pointed out in respect of Ontario, the gathering of males together in homo-social situations provided opportunities for sexual relations between boys and men.¹⁶⁶ Several all-male workplaces created opportunities for sex between work mates. John Slines, a boilermaker at the large Union Co. workshop in Evans Bay approached several 16-year-old apprentice engineers during 1918.¹⁶⁷ The large male staff on a Wairarapa sheep station provided Thomas Cox with homoerotic opportunities.¹⁶⁸

In a further manifestation of the dangers of the workplace, women and children were sexually assaulted by their own employees. This was a sexual danger particular to rural areas. Farmhands could be left alone with women and children.¹⁶⁹ Albert Greenwood, for instance, a farmhand on a dairy farm near Napier, assaulted both the wife and the daughter of his employer while the man was away delivering milk.¹⁷⁰

Some service providers (such as a night porter and a green grocer) also regarded their customers as potential victims. Of all work-related assailants, the activities of men who worked as hawkers and bottle collectors were most commonly associated with sexual danger. In 1911, the Wellington Grand Jury complained to Mr Justice Chapman that such men ‘by their occupation were almost at liberty to go any place’ and so posed a threat to young children.¹⁷¹ Their remarks were prompted by the brutal sodomising of a young boy by a ‘bottle-o’.¹⁷² Another bottle collector used his job as means of approaching a 14-year-old girl for prostitution.¹⁷³

¹⁶⁴ Charlotte Macdonald, *The Vote, the Pill and the Demon Drink. A History of Feminist Writing in New Zealand 1869–1993*, Wellington: Bridget Williams Books, 1993, pp.68–9.

¹⁶⁵ ‘Lieutenant Smith Scandal’, *Truth*, 16 Aug 1913, p.4.

¹⁶⁶ Maynard, p.217.

¹⁶⁷ AAOM W3265 1918 John Slines, CTF.

¹⁶⁸ AAOM W3265 1904 Thomas Cox, CTF.

¹⁶⁹ AAOM W3265 1903 John Hutcheson; 1915 Albert Greenwood; 1919 Smoothey; CTFs.

¹⁷⁰ AAOM W3265 1915 Albert Greenwood (two cases), CTF.

¹⁷¹ ‘“The Cat” Suggested’, *NZT*, 15 Aug 1911, p.1.

¹⁷² ‘A Life Sentence. Severest Punishment Except Death’, *EP*, 17 Aug 1911, p.8.

¹⁷³ Deposition of Florence S., AAOM W3265 1910 Robert Anderson, CTF.

Men exploited assumptions of trust implicit in social and work contacts for their own sexual pleasure. At the same time, some of the people who became victims negotiated a degree of sexual pleasure with such men before an assault. However, as established in the section about stranger-attacks, the possibility for sexual pleasure in a case context (like courting) diminished its seriousness to contemporaries. Breaches of trust were policed, including within families. Contemporaries were generally reluctant, however, to make inroads on male authority in other core patriarchal relationships, especially in their role as bosses in workplaces. So far this chapter has demonstrated that sites of sexual pleasure and sexual danger were diverse and created a variety of heterosexual and same-sex relationships that resulted in sex crime. Some men in the sample, however, had more unusual tastes in sexual partners. The last section of this chapter briefly examines the context of bestiality cases.

Animals

Some men found sexual pleasure by having sex with animals. Seven men were alleged to have committed bestiality upon animals including horses, a sheep, a donkey and a camel. Four offences took place in an isolated spot on a farm. In the city, Newtown Park provided the isolation for one offender, another was alleged to have taken place outside a mill in Thorndon, and the camel was allegedly violated in its own stall by the 'keeper of the camels' at the 'Wonderland' fun park in Miramar.¹⁷⁴

There were a variety of responses to bestiality. Some young men found it titillating. A young labourer, for instance, followed and watched a man bugger a horse because he 'wished to see the fun'.¹⁷⁵ This attitude disgusted Justice Denniston. When a Bill was brought against a 16-year-old message boy for bestiality with a horse, a crowd of young men attended the court. Denniston considered it so 'disgusting' that he urged the Grand Jury to consider the likelihood of conviction before sending such cases to trial. He asserted that 'the public injury in discussing such cases was not commensurate with the benefit gained'.¹⁷⁶ Some members of the public shared Denniston's disgust. Robert N. shouted "Get out of it" and 'threatened' Harry Ballantyne when Robert discovered him having 'connection' with a neighbour's horse. Robert N. was furious when Ballantyne's work

¹⁷⁴ AAOM W3265 1902 Daniel Phillips; 1902 George Robertson; 1908 Arthur Roddie; 1908 Henry Ballantyne; 1915 William Jensen; 1915 Harold Snow; 1917 Robert Ashley; CTFs.

¹⁷⁵ Deposition of George H., AAOM W3265 1902 Daniel Phillips, CTF.

¹⁷⁶ 'Supreme Court. Criminal Sessions. A Light Calendar', *NZT*, 25 Nov 1902, p.3.

mates refused to intervene, eventually dragging Ballantyne from the horse paddock and back to his whare himself.¹⁷⁷ A farmer became angry when he discovered two boys ‘raping’ one of his ewes.¹⁷⁸ George Adams immediately reported to the Wonderland Company boss when he saw Arthur Roddy ‘very flurried and the perspiration running off him’ at the behind of a young female camel.¹⁷⁹ The only female witness to an offence said she was ‘frightened and ran across to a neighbour for assistance.’¹⁸⁰

The response of jurors to bestiality suggests that it was not regarded as a serious criminal offence for most of the early twentieth century. Bestiality and sodomy were equated in law. They were prohibited by the same section of the criminal legislation and carried the same punishment (hard labour for life and up to three floggings of 25 lashes each with the cat-o-nine-tails).¹⁸¹ But in Wellington between 1900 and 1920, only one man was actually convicted of bestiality and he had also been convicted the previous day of indecently assaulting a 13-year-old girl.¹⁸² Most of the cases, (including the conviction) occurred before 1910. From this point, criminal justice authorities appear to have concentrated policing of specific homosexual offenders, rather than simply ‘unnatural’ sex. This might suggest that while bestiality continued to be considered a moral crime, against the laws of nature, its ‘criminal’ significance diminished over time.

Sex crime occurred in a diverse range of social and spatial contexts which provided opportunities for sexual pleasure, but also for sexual danger. This survey has provided a glimpse of the range of sexual practices which made up the sexual culture of early twentieth-century Wellington, and has also outlined the contexts of cases policed during the period.

Victims’ use of space according to their age and gender influenced the formation of ideas about sexual pleasure and danger. Codes of respectability meant that the sexual dangers posed to adult women went largely unnoticed in the justice system, unless an assault conformed with the narrow definition of stranger-danger which linked sexual danger with public places, isolation and night time. The sample shows that the sexual dangers

¹⁷⁷ Deposition of Robert N., AAOM W3265 1908 Harry Ballantyne, CTF.

¹⁷⁸ Deposition of James C., AAOM W3265 1915 William Snow, CTF.

¹⁷⁹ Deposition of George A., AAOM W3265 1908 Arthur Roddie, CTF.

¹⁸⁰ Deposition of Rhoda C., AAOM W3265 1908 Harry Ballantyne, CTF.

¹⁸¹ s.136 *Criminal Code Act, 1893*. Re-enacted as s.153 *Crimes Act, 1908*.

¹⁸² AAOM W3265 1902 Daniel Phillips, CTF.

confronting adolescent girls were more widely acknowledged than those against adult women, because a wider range of case contexts were prosecuted in the criminal justice system. Adolescent girls were attacked by romantic acquaintances and also by strangers and non-romantic acquaintances as they moved about public places to despatch chores. Men and youths, in comparison, were mostly offended against at work or in public through contacts made in the male leisure culture. The sexual assault of children, however, was policed in the widest range of case contexts. The community and the criminal justice system condemned men's seeking of children for sexual adventures. The question of why assaults against children were so widely policed compared to those against older women, men, and youths is the subject of the following five chapters.

Chapter Two

'Little' Girls

In passing sentence upon a young man for attempting to have sexual intercourse with a five-year-old girl in 1900, Mr Justice Edwards told the court that the sentence had to be severe. 'Children of the age in question', he said, 'were incapable of protecting themselves and were ignorant of the nature of offences like that of which the prisoner had been convicted.'¹ Justice Edwards clearly posited men as a sexual danger to little girls. Yet the idea that 'little' girls might seek sexual adventure was held by some people, among them a number of the 27 men accused of sexually assaulting girls under the age of seven in Wellington between 1900 and 1920. This chapter examines the cultural construction of early childhood as a time of sexual innocence through the indecent assault of five-year-old Bella (Isabella) M. by one William Denning in 1911.² As shown in chapter one, child victims were most often attacked by strangers or by men living with or near them. This chapter examines a stranger-assault, and chapter three an assault by a neighbour.

The indecent assault of Bella M.

After school on the evening of 13 June 1911, Bella M. and her seven-year-old brother Jack left their mother in the kitchen of their home above their father's Newtown butcher shop and went out to the street to play.³ Mr M. saw the children in the street before he locked up the shop and went out to the stables to check his horses. On the street, the children were approached by a man they did not know who asked Jack 'to go and see the time'. When Jack got back, Bella and the man were both gone. Jack ran back inside and told his mother,⁴ who immediately went outside to see if she could see Bella. She could not, and informed her husband who went off in search of his daughter.⁵ He recounted his actions:

I . . . looked up and down the street and saw no sign of her. I then went across to St Thomas' Church ground which is right opposite the

¹ 'Supreme Court. Criminal Sessions. Assault on a Child', *NZT*, 19 Nov 1900, p.6.

² AAOM W3265 1911 William Denning, CTF.

³ Testimony of John M., *Rex v. Denning*, AAOM W3265 1911 William Denning, CTF.

⁴ Deposition of John M.(Junior), AAOM W3265 1911 William Denning, CTF.

⁵ Testimony of Anne M., *Rex v. Denning*, , AAOM W3265 1911 William Denning, CTF.

shop. When I got there I went round to the back of the school and looked in the urinal and saw nor heard nothing there. I came out and went round to the back of the urinal and was looking along some willow trees when I heard a little girl cry. The cry came from the W.C. next to the urinal. I went and forced the door open; I had some difficulty in doing it. The accused was down on the floor and I had to force him on one side. I got inside and saw the little girl standing by the seat and the accused was sitting on the floor. I picked the little girl up ~~the~~ and her little bloomers were hanging down over her boots. She was crying. She appeared frightened. I called out for someone and closed with the accused. Somebody came and I said "Go for the Police" and I held the accused there.

Mr M. got Denning 'by the throat' and 'held him down'.⁷ Mr M. later told the Magistrate that Denning 'mumbled about it being the effects of drink . . . He said something to the effect that he hadn't injured the child', but that he (M.) had not taken 'much notice of him'.⁸

Mrs M. came over to the closet and took Bella home.⁹ She noticed that Bella had 'been crying but had stopped. She appeared frightened.'¹⁰ She examined Bella's 'person' and 'did not find any mark whatever',¹¹ concluding there was 'nothing wrong with the child'.¹²

Two policemen responded to Mr M's message for help. They both saw Denning and Bella in the water closet and one pulled him out of it. Mr M. then accused Denning, saying that: 'he had my little girl in the closet and had her drawers down', and Denning replied: 'I did not hurt the little girl'. The Sergeant of Police pointed out that the girl's drawers were 'down' to which Denning answered: 'I could not say they were off, I did not take them off'. The Sergeant then asked him how the girl came to be in the closet and he replied: 'I saw her playing about and I told her I had a little dog around there, and I suppose she went round there to look for it.†.†.†. I was in the closet with [her], I am muddled with drink, I don't know what I am doing.' The police then took Denning to the police station and charged him with indecently assaulting Bella. In response to the charge, Denning said: 'I did not assault her I may have attempted you mean'.¹³

⁶ Testimony of John M., Rex v. Denning, AAOM W3265 1911 William Denning, CTF.

⁷ Cross examination of John M., Rex v. Denning, AAOM W3265 1911 William Denning, CTF.

⁸ Deposition of John M., AAOM W3265 1911 William Denning, CTF.

⁹ Testimony of John M., Rex v. Denning, AAOM W3265 1911 William Denning, CTF.

¹⁰ Testimony of Annie M., Rex v. Denning, AAOM W3265 1911 William Denning, CTF.

¹¹ Testimony of Annie M., Rex v Denning, AAOM W3265 1911 William Denning, CTF.

¹² Deposition of Annie M., AAOM W3265 1911 William Denning, CTF.

¹³ Testimony of Constable Taylor, Rex v. Denning, AAOM W3265 1911 William Denning, CTF.

Later, Bella explained to the court what had happened when she met 'the man':

The man said to me "I've got a little puppy dog over by St Thomas's Church." I don't remember if he said anything more. We went to St Thomas's dike.¹⁴ The man went with me. When we got to the dike the man took me in and then he undone my trousers.¹⁵ He tickled my belly, with his hand. He tickled me in this part (points to between the legs). I did not say or do anything.¹⁶

Analysis of the indecent assault

The striking feature of Bella's story is her compliance with Denning's actions and her passivity during the molestation. She allowed him to take her into the water closet, to undo her underwear and to 'tickle' her, during which time she 'did not say or do anything'. This compliance could be interpreted as indicating a frank attitude towards sex, even consent. But Bella's descriptive explanation of the offence and her failure to associate sexual danger with Denning suggest that her compliance was representative of a lack of sexual agency, rather than sexual pleasure. Like all but a very few of the 27 girls under seven years of age in this study, Bella's reaction and interpretation of the assault demonstrated adult expectations of little girls' sexual innocence.

Typically, Bella described the offence in matter-of-fact language. When the mother of four-year-old Madge N. heard that her daughter had been indecently assaulted by a man in the Basin Reserve, she asked Madge what had happened. She reported that Madge said 'he was putting his hand up her clothes and that he hurt her and that she was going to cry'.¹⁷ To describe rape, six-year-old Grace M. said 'Something touched me & hurt me between my legs and the back. It made me bleed.'¹⁸ Karen Dubinsky has queried whether such 'matter-of-factness' in children's testimony can really be interpreted as evidence 'of the triumph of childish sexual innocence', asking whether 'children were so removed from the sexual world that they could not recognize sex even when it was happening to them'.¹⁹ Few New Zealand historians have investigated the acquisition of sexual knowledge during this period, but those

¹⁴ 'Dike' was slang for a lavatory.

¹⁵ Testimony of Isabella M., Rex v Denning, AAOM W3265 1911 William Denning CTF.

¹⁶ Deposition of Isabella M., AAOM W3265 1911 William Denning CTF.

¹⁷ Deposition of Margaret N., AAOM W3265 1901 Charles Arney, CTF.

¹⁸ Deposition of Grace M., AAOM W3265 1904 Alfred Sims, CTF.

¹⁹ Dubinsky, p.55.

who have suggest that sex and sexuality were ‘taboo’ subjects.²⁰ Claire Toynbee, for example, commented that sexuality was ‘hardly ever, or *never*’ discussed within family circles of the early twentieth century.²¹ Caroline Daley noted that the sex education of the female subjects in her study was extremely limited. Girls’ knowledge of sex and sexuality was acquired surreptitiously, through discussions with peers once a girl began working, or by reading *Truth*.²² Nevertheless, some little girls were not totally ignorant of sex. Roy Porter and Lesley Hall’s finding that other children were a likely source of sexual knowledge in England during this period was evident in the Wellington area.²³ One seven-year-old Nora C., for example, insisted that she knew the meaning of the word ‘fuck’ because she had heard the boys using it at school.²⁴ Very occasionally, little girls used slang with sexual overtones like ‘cock’ to describe male genitals, but descriptive slang like ‘tap’, ‘great big thing’, ‘doodle’ and ‘P P finger’ were most typical.

Even though little girls might have been familiar with sexual anatomy, their sexual naivety is illustrated mostly by their failure to connect sexual *meaning* with sexual *acts*.²⁵ While an adult woman who had been raped might say she had been ‘ill used’, rarely did a girl under seven years of age associate a sexual advance with right or wrong. Interestingly, moral judgments were attached to sex by girls at the opposite ends of the social scale. A six-year-old private school girl, Edith Y., for example, told her mother that a man ‘done something rude’ to her.²⁶ Another six-year-old, Iris C., the only girl of this age in the sample to accept money in direct exchange for sex, told the court that the accused man did a ‘rude thing while [she] was on his knee’ and she had to be prompted to describe exactly what had occurred.²⁷ Edith, perhaps, had been warned by her mother about what was rude, while Iris knew it from experience. The majority of girls, however, focused on the physical pain of an assault, saying they were hurt, rather than ‘outraged’.

²⁰ See B.M.G. Lavelle, ‘Sexual Offences in the 1920s. Incidence and Attitudes’, BA(Hons) long essay in History, University of Otago, 1986. pp.17–19; Gregory, p.19.

²¹ Claire Toynbee, *Her Work and His. Family, Kin and Community in New Zealand 1900–1930*, Victoria University Press, Wellington, 1995, p. 162.

²² Daley, p. 154.

²³ Roy Porter and Lesley Hall, *The Facts of Life. The Creation of Sexual Knowledge in Britain, 1650–1950*, Yale University Press: New Haven and London, 1995, p.255.

²⁴ Cross-examination of Nora C., AAOM W3265 1902 Michael Rock, CTF.

²⁵ Bavin-Mizzi, p. 77.

²⁶ Deposition of Edith Y., AAOM W3265 1919 William Rogers, CTF.

²⁷ Deposition of Iris C., AAOM W3265 1908 Roderick McKenzie, CTF.

Bella's sexual innocence affected her ability to detect sexual danger, further explaining her compliance with Denning. None of the girls associated their assailants with sexual danger, whether the men were strangers to them or known. Bella, for instance, interpreted Denning's invitation to go and see the puppy literally; she expected to see one, and later commented to the court that 'she did not see any little dog about.'²⁸ Her interpretation was shared by many little girls. Five year old May T., for example, was playing in front of her 'place' in central Wellington when approached by a man who asked her to go and buy some lollies. She went with him, but became upset when he 'did not go into any shop for lollies', but took her to the powerhouse instead where he molested her.²⁹ Ralph Balcombe 'played chasing' and 'hiding' with three-year-old Beatrice T. in the back yard of the house their families shared, eventually winding up in the 'W' where he molested her.³⁰ Mrs T. told the court that her daughter 'did not appear to be frightened or nervou[s] or crying' as a response to it.³¹

Bella may have also been vulnerable to sexual assault because she had a different sense of boundaries for touching than did older and more sexually aware children. Bella expressed no particular fright or alarm in response to Denning taking down her underwear. Although Mr Marshall said that Bella could 'go to the W by herself and arrange her own clothes',³² it was common for adults to be involved in the dressing of little children. Mothers said that they helped their girls fasten and unfasten their drawers, for instance, when their daughters needed to go to the toilet.³³ Children were also accustomed to being taken by the hand and to sitting on adults' knees, and did not necessarily find such touching frightening. One girl's habit of having her mother 'arrange' her clothes helped avoid an assault. In 1919, Frank Robertson called his five-year-old neighbour, Annie R., into his house, sat her on his lap, and asked her to take down her pants and let him 'play' with her. Annie replied 'No my mother wont let me take down my pants.' After that, she got off his knee and went home for tea.³⁴

But sexual innocence alone does not fully explain Bella's experience. The ease of Denning's abduction also lay in the balance of power in child/adult relations. In her study of

²⁸ Testimony of Isabella M., *Rex v Denning*, AAOM W3265 1911 William Denning, CTF.

²⁹ Deposition of May T., AAOM W3265 1905 William James CTF.

³⁰ Deposition of Leslie T., AAOM W3265 1910 Ralph Balcombe, CTF.

³¹ Deposition of Ethel T., AAOM W3265 1910 Ralph Balcombe, CTF.

³² Testimony of John M., *Rex v. Denning*, AAOM W3265 1911 William Denning, CTF.

³³ Deposition of Ethel T., AAOM W3265 1910 Ralph Balcombe CTF.

³⁴ Deposition of Annie R., AAOM W3265 1919 Frank Robertson, CTF.

family labour between 1900 and 1930, Toynbee documented the 'remarkable' acceptance by children of parents' and others' degree of control over their 'use of time and physical and social space' in early twentieth-century New Zealand. She concluded that children were subordinated within traditional patriarchal power relations and that overt challenges to it were rare.³⁵ Writing about England at the turn of the century, Anna Davin suggested that such obedience was a by-product of the collective care and supervision of working class children by the local community. In Wellington, children responded to the authority of many adults other than their immediate family. Little girls invariably responded obediently to commands to 'come here', or to 'lie down' which commonly preceded a sexual assault, even from men they did not know. Bella's brother Jack, for instance, immediately ran inside 'to see the time' for Denning, even though he later admitted that he could not in fact tell the time.³⁶ Another five-year-old girl, Alma H., was being molested in the boys' lavatory of the local school when the school caretaker interrupted the offence. She said: 'I saw Mr Berridge come along He told me to go home. I ran home'.³⁷

Davin's analysis of working class child/adult relations reveals further clues about the connection between innocence and sexual danger. She noted that working class children were very friendly as a result of collective supervision.³⁸ The Wellington cases suggest that such ease of association with a variety of people may have made urban working class girls easy targets for sexual attacks because they were not always afraid of strangers. Six-year-old Thelma T., like Bella, engaged in conversation with her assailant and said that she was not frightened when he approached her in the street.³⁹

Informal community responsibility for child welfare could prevent offences. Adults sometimes suspected men of 'improper' intentions, and followed and watched them in case. For instance, a labourer was working near his boarding house when he saw a man take the boarding house keeper's two young children down the road and into a paddock. He sent a mate down to the parents to tell them what he had seen because he thought that the man 'was likely to do harm to the children'.⁴⁰ Andrew N. was visiting Newtown Park with his own

³⁵ Toynbee, p. 171.

³⁶ Testimony of John M. (Junior), *Rex v Denning*, AAOM W3265 1911 William Denning, CTF.

³⁷ Deposition of Alma H., AAOM W3265 1912 Lewis Witten, CTF.

³⁸ Anna Davin, *Growing Up Poor. Home, School and Street in London, 1870—1914*, London: Rivers Oram Press, 1996, p.57.

³⁹ Deposition of May T., AAOM W3265 John Elliott, CTF.

⁴⁰ Testimony of Francis C., *Reg v. O'Connor*, AAOM W3265 1906 Patrick O'Connor, alias Alexander King, alias Con O'Brien, CTF.

children when he saw a man 'lying on the ground on the rise on the right of the playing ground [with] a number of small girls round him. From something peculiar in the manner he was carrying on I went up the hill.' He called one of the girls over, and once she made a 'complaint', confronted the man.⁴¹ While intervention was the dominant response of adults, not all those who observed suspicious circumstances interfered. Women were less likely than men to take direct action unless they were the mother of the child. Possibly because of their physical inferiority to most men, or even fear of attack themselves, women tended to inform a nearby man of an offence rather than take action. Mrs M., for instance, attempted to locate Bella while her husband was closing up the shop, but once he finished she handed responsibility for it to him. Likewise, a Mrs H. noticed a man take a neighbour's little girl aside in the street and stoop down. She watched for 10 minutes before calling out to her brother-in-law who ran out and kept an eye on the man.⁴²

Most sexual assaults upon 'little' girls took place in Wellington city. Rural girls were assaulted as they travelled along country roads to school alone or with another child.⁴³ Another study found that girls were allowed by their parents to roam away from home to play.⁴⁴ It is impossible to know whether rural conditions meant girls faced greater danger from sexual predators than urban girls. There were fewer cases prosecuted, but this does not necessarily reflect the rate of offending. There may have been greater obstacles to prosecution in the country than in towns. The police, for instance, were not as accessible. While there were 126 police stationed in Wellington city, the Hutt Valley and the Wairarapa in 1920, only 18 were stationed beyond Wellington city and suburbs.⁴⁵

The influence of adult authority in wresting little girls' cooperation could make it seem as if girls consented to offences. But their compliance was probably gained by assailant's exploiting childhood standards of virtue which lay in obedience and deference to adults. The evidence of some little girls suggests they found themselves in a bind. Bella's evidence, for example, suggests that she was trying to be 'good' by explaining how she cooperated with Denning and by denying being frightened by him, in direct contradiction of her parents' comments that she appeared frightened when they first saw her after the

⁴¹ Deposition of Andrew N., AAOM W3265 1917 Edmund Gilligan, CTF.

⁴² Deposition of Susan H., AAOM W3265 1911 William Haining, CTF.

⁴³ AAOM W3265 1910 Kenneth McGregor, CTF.

⁴⁴ Duder, pp.60-61.

⁴⁵ Annual report of the Police Department, *AJHR*, 1920, H-16, p.20.

assault.⁴⁶ Further, few girls offered resistance by screaming or calling out for help. But this did not mean they were not upset. Little girls' verbal resistance was more likely to be quiet; a child would cry to herself during the assault until released.

This bind was most clearly evident in cases in which victims did not disclose offences because they were told not to by the assailant. The issue of disclosure was not pertinent to Bella's assault because the assault was interrupted by her father. Other children, however, experienced a dilemma about whether to disobey one adult (their assailant) by telling another (a parent, for instance) about an assault. The pressure of this bind was not, as might be expected, necessarily greatest when the girl was assaulted by someone she knew. Six-year-old Grace M., for example, was raped by a 'cow boy' who accosted her one afternoon as she walked home from school. Grace woke up during the night screaming. She was badly hurt, still bleeding from the rape hours earlier, but only gave up what had happened after a half hour of questioning. The reason: the boy 'told me not to tell mother'.⁴⁷ Warnings not to 'tell' were sometimes backed up by threats of harm to the child. Five year old Ruby P., for example, suffered severe trauma after being raped by a neighbour. Her mother reported that Ruby was 'jumping off the bed and shivering' all night but that Ruby would not tell her what had happened because the neighbour 'had told her not to tell or else she would be shot by her father and mother'. Ruby finally disclosed the offence to her mother once Mrs P. threatened to give her 'a hiding' if she did not reveal what had occurred.⁴⁸

The influence of adult authority in gaining little girls' compliance is further emphasised by the absence in these cases of physical force or bribes as means of gaining the girls' cooperation. None of the assailants of little girls in this study forcefully abducted their victims (though some did subsequently physically detain them). In fact the notion of bribery as an inducement to sexual activity rarely applies to children of this age. Rather, the promise of a gift of lollies or money (usually a penny) was employed to catch a child's attention, manoeuvring her into a place where she could be molested. Denning's puppy ruse, for example, lured Bella away from home and into a situation of sexual danger. Allan Talbert showed seven-year-old Esther W. a penny which he told her she could have if she went into his shop. She went in; he put her on his knee and molested her.⁴⁹

⁴⁶ Cross-examination of Isabella M. and testimonies of John and Anne M. *Rex v. Denning*, AAOM W3265 1911 William Denning, CTF.

⁴⁷ Deposition of Alice M., AAOM W3265 1904 Albert Sims, CTF.

⁴⁸ Deposition of Mary P., AAOM W3265 1900 Frederick Joseph, CTF.

⁴⁹ Statement of Esther W., AAOM W3265 1906 Allan Talbert, CTF.

Denning's motive for luring Bella away for sexual activity was not clear. By admitting that he 'might have assaulted her', though, Denning indicated that he believed her to be sexually available. Given the overwhelming sexual innocence of the little girl victims in the criminal trial files, it is difficult to see how he arrived at this point of view. In only one of the 27 cases were material goods offered in direct exchange for sexual activity.⁵⁰ In a 1908 case, Roderick McKenzie offered six-year-old Iris C. and her eight-year-old friend Ellen seven pence each if they would go 'down to the wharf and have some fun.'⁵¹ Iris said they would. She undid her drawers, sat on McKenzie's knee, and let him touch her 'with his hand at first and then with his thing.' She then collected her money and told Ellen to do the same thing.⁵² Child prostitution was common in Australia at the turn of the century.⁵³ There was a high level of anxiety about it in Wellington in the nineteenth and early twentieth centuries. Indeed, the campaigning to raise the age of consent originated in Wellington in 1888. Concerned residents petitioned parliament to rescue girls who they believed roamed the streets soliciting prostitution. However, such concerns invariably related to girls of around the age of 12 years and upwards.⁵⁴

When children were very young, their lack of sexual knowledge and general powerlessness in relation to adults often led to their compliance with assailants. The evidence from the criminal trial files strongly suggests that such compliance almost never indicated consent.

The case in court

Denning was committed to the Supreme Court for trial at the August criminal sittings charged with indecent assault upon a girl under the age of 16 years. Mr Justice Sim cleared the court. Denning's defence counsel, Mr Kelly, cross-examined Bella on where she played, her use of slang, her attendance at school, and her parents' reaction to finding her in the water closet with Denning.⁵⁵ Mr M. was cross-examined about whether any harm had come to Bella, where she played, how roughly he treated Denning, whether Denning's clothes

⁵⁰ AAOM W3265 1908 Roderick McKenzie,; AAOM W3265 1918 John Elliott, CTF.

⁵¹ Deposition of Norah C., AAOM W3265 1908 Roderick McKenzie, CTF.

⁵² Deposition of Ellen C., AAOM W3265 1908 Roderick McKenzie, CTF.

⁵³ Bavin-Mizzi, p.74.

⁵⁴ Brookes, p.143; Evidence of Inspector Pender, Report of the Select Committee on the Young Person's Protection Bill, *JALC*, 1899, Appendix No.6, p.6.

⁵⁵ Cross-examination of Isabella M., *Rex v. Denning*, AAOM W3265 1911 William Denning, CTF.

were 'disarranged', and whether Bella could 'go to the W' without help.⁵⁶ Constable Taylor gave evidence of Denning's identity.⁵⁷ For the prosecution, Mr Ostler (later the Chief Justice), concentrated his questions to the witnesses on their reactions to the assault. Bella said she cried. Her father said he got 'excited' when he heard her crying. Mrs M. testified that Bella's bloomers were 'right down' when she went over to the church to bring Bella home.⁵⁸

The jury retired for quarter of an hour before returning a verdict of guilty.⁵⁹ At the sentencing hearing, Kelly told Justice Sim that Denning's 'lapse' was due to 'his mind being in a muddled condition through a protracted drinking bout',⁶⁰ that Denning was a married man with a wife and four children living in Australia, that he had not been before the court before and was said to be a 'hard worker'.⁶¹ No comments by the Judge were reported in the newspapers. Denning was sentenced to three years' imprisonment with hard labour.⁶²

Analysis of the case in court

Denning was charged under section 208 of the Crimes Act 1908 which prohibited all sexual activity with girls under the age of consent, unless a defendant could show that he had reasonable cause to believe that Bella was of or above the age of consent, or that she was older than him. Obviously, with a five-year-old victim, neither defence was applicable. Kelly, then, defended Denning by attacking the credibility of the M's story.

To convict, the jury had to be convinced beyond reasonable doubt that Denning had committed the offence. Although Kelly questioned the prosecution witnesses about identity, the fact that four adults could testify to seeing Denning in the water closet with Bella was solid evidence that the right man had been arrested.

Also, they had to be convinced that an assault had occurred. As Bella was not physically injured, the only evidence that she had been assaulted was her word, and her parents and the police having seen her in the water closet with Denning with her bloomers

⁵⁶ Cross-examination of John M., *Rex v. Denning*, AAOM W3265 1911 William Denning, CTF.

⁵⁷ Cross-examination of Constable Taylor, *Rex v. Denning*, AAOM W3265 1911 William Denning, CTF.

⁵⁸ Cross-examination of Anne M., *Rex v. Denning*, AAOM W3265 1911 William Denning, CTF.

⁵⁹ 'Criminal Assault', *Dom*, 23 Aug 1911, p.5.

⁶⁰ 'Supreme Court. Indecent Assault. Three Years' Hard Labour', *NZT*, 23 Aug 1911, p.4.

⁶¹ 'Criminal Assault', *Dom*, 23 Aug 1911, p.5.

⁶² 'Supreme Court. Indecent Assault. Three Years' Hard Labour', *NZT*, 23 Aug 1911, p.4.

undone. Kelly's line of cross-examination suggested that Bella and Denning were in the toilet at the same time by mistake. Men accused of assaults against a variety of victims of all ages attempted to explain suspicious situations by arguing that witnesses had misinterpreted what they had seen. A couple of others claimed that children followed them when they went to a lavatory to urinate, thereby explaining why they had their genitals exposed when caught with the children.⁶³ Such excuses were just one variation on a theme. Patrick Connor, for instance, charged with indecently assaulting a four-year-old girl, claimed that he had taken the girl from her home, taken her off the road, and sat her on his knee, because they had gone to buy some lollies but could not find the shop, so they had sat down for a rest.⁶⁴ A defence counsel's adoption of an accused man's account suggests this was meant to be a commonsense explanation for the situation. Kelly, however, had to contend with the equally commonsense conclusions of the Ms and the police. Clearly, all four adults considered that the circumstances warranted suspicion of some sort of sexual offence.

As it was fairly clear that Denning was the man who committed the crime, if one had occurred, Kelly resorted to attacking the credibility of the prosecution story. Kelly's main strategy drew on contemporary anxieties over 'lax' parenting to insinuate that Bella ran wild and had fabricated the story. As chapter one showed, working class children's habit of playing in public places was defended by some as a reality of working class life. Kelly drew on a counter-view: that working class children's occupation of the streets was linked to poor parenting, lack of respectability, and led to juvenile delinquency and immorality.⁶⁵ Responsibility for parenting was not, however, shared evenly between mothers and fathers. The popularising of the middle-class ideologies of respectability and domesticity posited mothers as the moral guardians of society. Ideal mothers brought up 'strong and healthy' as well as morally 'fit' children. Among the criteria for respectability were obedience, chastity and honesty. A respectable mother would be concerned with things such as their children's manners and supervision of their play.⁶⁶ Such criteria reflected in court as close scrutiny of mothers and of their children's behaviour. For instance, Kelly insinuated that Bella's use of the term 'dike' to refer to a water closet was language she picked up from 'someone' in the street, which was conduct characteristic of 'wild' children of the streets.

⁶³ Deposition of Constable McKelvey, AAOM W3265 1912 Lewis Witten; deposition of Constable William Taylor, AAOM W3265 John Norris; CTFs.

⁶⁴ Deposition of Constable Carmody, AAOM W3265 1906 Patrick Connor, CTF.

⁶⁵ Gregory, p.33.

⁶⁶ Duder, pp.3-5, 43; Gregory, pp.7, 10, 14.

To build on this stereotype, Kelly suggested that Bella and Jack frequently played in the road and at the church, away from their parents' supervision. This defence seems to have been anticipated by the Crown prosecutor because throughout his examination of the prosecution witnesses, he drew attention to when the Ms last saw the children before the assault and stressed the speed of their reactions to the news of Bella's disappearance. Throughout the cases, parents like Mr M. defended the level of supervision of their children. When Ruby P. was taken for a walk by the neighbour who raped her, Mrs P. insisted that she 'would not allow her to go [walking] – not with anyone'.⁶⁷ A problem for some parents was that girls sometimes wandered away from home without a parent's knowledge. Madge N.'s mother, for instance, said that Madge 'was away from home, not more than twenty minutes at the outside. I was busy and did not notice her go.'⁶⁸ For working class women, constant surveillance of their children was very difficult. Domestic chores were time consuming and labour intensive. Eileen McGrath's mother was doing her 'household work', for instance, on one occasion when Eileen was assaulted. On the other, she was away working at 'Bell's' when the man who molested Eileen called at her home to ask for board.⁶⁹

Kelly insinuated that Mr M's reaction to the news of Bella's disappearance was slow, indicating that he did not care about Bella. To the contrary, both parents were upset by the idea that Bella may have been sexually assaulted. Mrs M. admitted to being 'a little bit excited' when Jack told her about Bella's disappearance'.⁷⁰ And Mr M. said that he 'felt anxious' when he heard of it. Other parents went further. The mother of six-year-old Wilhelmina D., for instance, went into Wellington looking for the man who assaulted her daughter. She took a belt with her in her bag and when she found him, 'struck him across the face with it'.⁷¹ Parents like the Ms clearly placed full responsibility on offenders. None suggested that their girls enticed the offences. The Ms, for example, accepted Jack's claim that 'a man came and *took* [my italics] her[Bella] away',⁷² and were not angry with her for going with Denning to see the puppy.⁷³ Indeed, only one mother asked her six-year-old daughter why she did not scream when assaulted, but this reaction was soon superceded by

⁶⁷ Deposition of Mary P., AAOM W3265 1900 Frederick Joseph, CTF.

⁶⁸ Deposition of Margaret N., AAOM W3265 1901 Charles Arney, CTF.

⁶⁹ Deposition of Annie McGrath, 1908 John Griffen; deposition of Eillen McGrath, AAOM W3265 1907 Robert Humphries; CTFs.

⁷⁰ Cross-examination of Annie M., Rex v. Denning, AAOM W3265 1911 William Denning, CTF.

⁷¹ Deposition of Jane F., AAOM W3265 1914 William Wilson, CTF.

⁷² Testimony of John M. (Junior), Rex v. Denning, AAOM W3265 1911 William Denning, CTF.

⁷³ Testimony of Isabella M., Rex v. Denning, AAOM W3265 1911 William Denning, CTF.

anger, and was followed by her reporting the case to the police.⁷⁴ Mr M., particularly, clearly viewed sexual interference with a five year old as a crime deserving of punishment. He physically detained Denning at the scene of the crime and called the police to report the offence. Nor was Mr M. prepared to overlook the assault because Denning was drunk, or to excuse Denning's behaviour because he had not injured Bella.⁷⁵ He completely ignored Denning's suggestion that he should be set free in return for an apology.⁷⁶

Men accused of offences upon a range of victims, not just little girls, attempted to mitigate their crimes by pleading that they were incompetent because of alcohol. For example, Patrick Murphy, accused of indecently assaulting a 15-year-old boy, commented: 'It just shows you when a man gets fooling about with drink he does not know when he is doing right or when he is doing wrong'.⁷⁷ Alcohol was frequently identified by contemporaries as a cause of crime. The Chief Justice, for example, often complained about the number of cases involving 'the drink evil'.⁷⁸ In 1918, he commented that at least a third of all cases were due to 'over-indulgence in alcoholic liquor'.⁷⁹ Drinking, especially in sprees as Denning was said to have done, was a long standing tradition in some sections of the New Zealand male culture. Men would work for long periods, sober, then come to town for a 'blow out'.⁸⁰ By introducing the excuse of losing control during a spree in amelioration of a crime, many men represented themselves as 'normal' within the male culture and a sexual offence as an isolated impulsive action. Kelly, for instance, represented Denning as a hard working family man who had simply had a 'lapse' during a drinking bout. Justice Cooper accepted this argument when sentencing William St. Clair for an indecent assault on a 13-year-old girl in 1905. Cooper explained that while the offence was 'disgraceful' and girls 'must be protected from offences by drunken men', he would pass a lenient sentence (two years hard labour compared to a maximum of seven and up to three floggings) because

⁷⁴ Deposition of Alice M., AAOM W3265 1904 Albert Sims, CTF.

⁷⁵ Deposition of John M., AAOM W3265 1911 William Denning, CTF.

⁷⁶ Testimony of John M., *Rex v. Denning*, AAOM W3265 1911 William Denning, CTF.

⁷⁷ Testimony of Constable Litt, *Rex v. Patrick Murphy*, AAOM W3265 1919 Patrick Murphy, CTF.

⁷⁸ 'The Judges Charge', *NZT*, 4 Feb 1902, p.3. 'Criminal Trials. Wellington Supreme Court. His Honor's Charge', *NZT*, 11 May 1915, p.7.

⁷⁹ 'Supreme Court. Criminal Sessions. A Light Calendar', *NZT*, 6 Aug 1918, p.7.

⁸⁰ Jock Phillips, *A Man's Country? The Image of the Pakeha Male – A History*, Auckland: Penguin Books, 1987, pp.58–59.

a man of St. Clair's 'previous character would not have committed the offence' unless he was drunk.⁸¹

Although the Ms considered Denning a sexual danger by rejecting his excuse of being drunk, they accepted that he had not harmed Bella. The critical factor in this definition appears to be the absence of physical injury or of penetration. This definition appears to have been widespread among the parties directly involved in cases, and applied to both heterosexual and homosexual assaults upon victims of all ages. Throughout the cases, men excused their conduct by claiming that touching another person, even intimately, did not constitute a sexual assault. Isaac Fonesca, accused of assaulting a five-year-old girl, said: 'I did not intend to do her any harm. I only pulled her drawers down, and put my hand on her private parts and rubbed my hand up and down . . .'⁸² Gilbert Satherly told the police that he did not do 14-year-old Ivy G. 'any harm',⁸³ even though he forced her to the ground and pinned her down. He could not get into her drawers, instead, in Ivy's words, '[h]e put stuff all over the leg of my bloomers . . . he put his cock up the leg of my bloomers.' A doctor who examined Ivy agreed that Satherly 'never interfered' with her.⁸⁴ An absence of physical sexual injury could result in the amelioration of sentences. A jury recommended William Gardiner to mercy because the offence for which he was convicted was not 'aggravated'.⁸⁵ The psychological effects of sexual assault, as were clearly evident in the cases of Ruby P. and Grace M., were infrequently noted by the people involved in cases. Someone who did notice was Justice Hosking. In 1917, he proposed a 'fast track' court system to process offences committed against little children because he considered it 'highly desirable that their minds should be freed from the recollection of the occurrence as quickly as possible.'⁸⁶ According to Dugald McDonald, the psychological well-being of children was only systematically addressed after the Second World War.⁸⁷

Nevertheless, the Ms did not accept Denning's apology and prosecuted the case. Many men, irrespective of the age of the victim, wanted to keep cases out of court. A couple

⁸¹ 'Supreme Court. The Criminal Sessions. To-day's Proceedings. Sentences', *EP*, 1 Aug 1905, p.3.

⁸² Deposition of Constable Liston, AAOM W3265 1916 Isaac Fonesca, CTF.

⁸³ Deposition of Constable Scott, AAOM W3265 1919 Gilbert Satherly, CTF.

⁸⁴ Deposition of Ivy G., AAOM W3265 1919 Gilbert Satherly, CTF.

⁸⁵ 'Supreme Court. Criminal Sessions. Assault on a Little Girl', *NZT*, 8 Feb 1918, p.4.

⁸⁶ Justice Hosking to Minister of Justice, 19 Nov 1917, J 1 1917/1221.

⁸⁷ Dugald McDonald, 'Children and Young Persons in New Zealand Society', in Peggy G. Koopman-Boyden (ed.), *Families in New Zealand Society*, Wellington: Methuen, 1978. pp.44-56, pp.45-49.

of young men offered money.⁸⁸ John Elliott, for example, offered five-year-old Thelma T.'s father five pounds to rectify any offence he caused in talking to the girl and offering her five shillings for lollies.⁸⁹ A young woman declined Angus Young's offer of money, telling him she would 'throw it in his face'.⁹⁰ Several attempted to see a victim's father or husband.⁹¹ John Norris offered to report himself every night to the men who interrupted him attempting to rape a nine-year-old girl in Newtown Park and said to them: '[t]ake me round the corner and give me a kicking and let me go.'⁹²

There were consequences for many men who were caught. Some feared shame. Men's names could be published in the newspapers, irrespective of whether they were found guilty or not. While some considered this a useful deterrent to sex crime, others argued in favour of name suppression to prevent men being 'damned for a lifetime' as a result of being charged with a sexual offence.⁹³ Albert Greenwood pleaded with the police not to 'write home to England and tell my people' of his arrest.⁹⁴ In response to a warrant for unlawful carnal knowledge, Harry Somes said 'This spoils my career in New Zealand'.⁹⁵ William Callaghan, a 50-year-old accountant, was convinced that he would be 'ruined' if arrested for indecent assault on a 17-year-old youth.⁹⁶ Accusations did, in fact, have dire personal consequences for several accused men. Edward Pierard, for instance, left New Zealand. The mother of one offender was reported to have dropped dead from the news of an allegation against her son.⁹⁷ And Don Hon, the Chinese interpreter for the Wellington courts, lost his job after being convicted of unlawful carnal knowledge.⁹⁸

Throughout the period, the jury clearly agreed with parents, like the Ms, that men who placed little girls in sexual danger should be punished. Of the 27 cases in the sample, 22 were tried (five men pleaded guilty) and 15, nearly 70 per cent, were convicted. The

⁸⁸ AAOM W3265 1904 Albert Sims, CTF.

⁸⁹ Deposition of Charles T., AAOM W3265 1918 John Elliott, CTF.

⁹⁰ 'Supreme Court. Criminal Sittings. Alleged Rape', *NZT*, 15 Nov 1900, p.2.

⁹¹ AAOM W3265 1904 Albert Sims; 1911 George Neish; 1913 Edward Madigan; 1919 Gilbert Satherly; 1918 William West; CTFs.

⁹² Deposition of George F., AAOM W3265 1913 John Norris, CTF.

⁹³ Lewis, *NZPD* (132), 4 Jul 1905, p.238.

⁹⁴ Deposition of Constable Brenchley, AAOM W3265 1915 Albert Greenwood, CTF.

⁹⁵ Deposition of Detective Sergeant McIlveney, AAOM W3265 1913 Harry Somes, CTF.

⁹⁶ Deposition of Constable Le Fevre, AAOM W3265 1918 William Callaghan, CTF.

⁹⁷ 'Lieutenant Smith Scandal', *Truth*, 14 August 1913, p.4.

⁹⁸ Telephone message from Sub Inspector, 5 Oct 1911, P—W 18/7 Circular and District Orders, 1885—1912, p.271.

Honorary Secretary of the Women's Political League, Mrs E. Gibson, summed up the dominant attitude towards little girls' sexuality when she wrote that in cases where victims of sex crime were 'very young . . . there is no possible excuse for the man.'⁹⁹

The attitudes towards little girls' sexuality expressed in Denning's case, so typical of the 27 others reviewed, reflected the cultural construct of childhood as a time of sexual innocence, but also as one dominated by subordination to adults. Little girls in Wellington were not sexually knowledgeable and the expectation of obedience which was central in child/adult relationships contributed to their compliance with sexual advances. This view was held by parents, many community members, the police, judges, and juries. However, it was not universal. Men who desired sexual activity with little girls could easily exploit their vulnerability for their own sexual pleasure. Yet by denying allegations, men indicated that they were aware of having breached sexual boundaries. Their notions of sexual desire and adventure were at odds with the majority of the community. The next chapter continues to discuss the construction of childhood sexuality. It considers whether, and how, the notion of childhood sexual innocence might change in relation to 'older' girls aged between 8 and 11 years old.

⁹⁹ Hon. Sec. Women's Political League, to the Attorney General, 22 Mar 1917, J 1 1917/1221.

Chapter Three

'Older' Girls

An examination of attitudes towards the sexuality of girls aged from 8 to 11 years old helps to define changes in attitudes towards childhood sexuality. This 'older girls' group straddles the years between early childhood and pubescence: between a presumption of sexual innocence and suspicion of sexual adventuring. This chapter examines the question of whether aging altered the view of girlhood sexuality as passive and unworldly, and if so, at what age the shift occurred. It draws on material from 26 cases, which are represented here by a case of attempted rape. In 1900, John Griggs was tried and convicted of sexually assaulting Beatrice A., the 10-year-old daughter of his neighbour and family friend.¹ Assaults committed by neighbours and family friends comprised the second most dominant case context in the sample cases against girls in this age group (22.2 %). The majority were assaulted by strangers (55.6%); the remainder by family and household members such as boarders and live-in employees (14.8%), and local community members (7.4%). Amongst these, two cases sit outside the dominant pattern of assaults by adult men; two girls were assaulted by youths who appear to have attempted to seduce the girls. The majority experience, however, was of sexual abuse by an adult. As well as examining the cultural construction of sexuality, this chapter investigates how such breaches of trust influenced the views of children, their parents, and the court regarding sexual assault upon children.

The 'defiling' of Beatrice A.

On the evening of Good Friday, 5 April 1901, Beatrice went to meet her father on his way home from work. She took a bucket so that he could milk their cow. Before she left home, she told her aunt Emma L. where she was going. Emma was looking after her brother's six children because their mother had died the previous month. On the way to meet her father, Beatrice passed the Griggs' house and was invited in by Mrs Griggs. By the time Beatrice went to leave it was getting dark. Mrs Griggs accompanied her to the gate where they met up with Mr Griggs. He suggested that he walk Beatrice home and she went with him because it was getting dark and she was 'afraid to go out' alone.² They walked towards the A.'s house, seeing and greeting

¹ AAOM W3265 1901 John Griggs, CTF.

² Cross examination of Beatrice A., AAOM W3265 1901 John Griggs, CTF.

Beatrice's uncle on the way. Beatrice's aunt Emma saw them in the road from where she stood at the As' gate (about 72 yards away). Emma saw Griggs take Beatrice off the road, out of her sight.³ Emma was suspicious. She went inside to get her brother's one-year-old baby. Beatrice said:

accused took hold of me and threw me down on the side of the road . . . I had drawers on white buttoned up. Accused then unbuttoned my drawers at the back then accused unbuttoned his own trousers and got on top of me my belly was open to him . . . accused when on top of me moved up and down I tried to keep my legs together accused parted them with his hands he put his knees between my legs I call a boys thing a "Tom Tit" I felt accused's Tom Tit here pointed to & touched her private parts . . . I cried out when accused got on top of me He told me not to cry and put his hand over my mouth, when he took his hand off I screamed out one loud scream we both got up and went on the road I buttoned up my drawers I was crying accused gave me a shilling and told me not to tell anybody. . . I told Mr Griggs accused to tell [Aunt Emma] I was coming directly I was going to meet my Father Mr Griggs did not go to our house he went back and round the corner toward Mr Bock's place towards town.⁴

When Emma came back to the gate, Beatrice and Griggs were standing in the road. She called out to Beatrice.⁵ Beatrice ran back down the street until she met up with her father. She gave him the shilling, and told him that she found it. They milked the cow, then went home.⁶ In the meantime, another aunt, Annie W., came over to the As'. Emma told her that Beatrice had been taken off the road by 'some man'.⁷ When Mr A. heard of this, he 'jumped up' and went to question her.⁸ He asked Beatrice 'if anyone had touched her'; she said, 'no'. He asked where the shilling was from and Beatrice maintained that she had found it. The adults went back to the 'other' room but then decided they should examine Beatrice's 'privates'. They were 'red'.⁹ Beatrice then admitted that Griggs had assaulted her. Mr A. said that Beatrice 'started crying . . . she said he took me off the road and laid me down she said I tried to scream but he had his hand across my mouth'.¹⁰ Mr A. immediately left to fetch the police and a doctor.¹¹ The next

³ Deposition of Emma L., AAOM W3265 1901 John Griggs, CTF.

⁴ Deposition of Beatrice A., AAOM W3265 1901 John Griggs, CTF.

⁵ Deposition of Emma L., AAOM W3265 1901 John Griggs, CTF.

⁶ Deposition of Beatrice A., AAOM W3265 1901 John Griggs, CTF.

⁷ Deposition of Annie W., AAOM W3265 1901 John Griggs, CTF.

⁸ Cross-examination of Beatrice A., AAOM W3265 1901 John Griggs, CTF.

⁹ Deposition of Annie W. AAOM W3265 1901 JohnGriggs, CTF.

¹⁰ Deposition of Josiah A., AAOM W3265 1901 John Griggs, CTF.

¹¹ Deposition of Josiah A., AAOM W3265 1901 John Griggs, CTF.

day, Mr A. laid an information against John Griggs alleging that he had attempted to carnally know Beatrice, a girl under 12 years of age.¹² Griggs was arrested the following morning. In reply to the charge, Griggs 'hesitated a bit and then said it was a mistake' and later began to cry.¹³

Analysis of the sexual assault

At first glance, Beatrice's denial of being 'touched' follows the pattern of 'little' girls. They tended to maintain silence about assaults on the request of assailants, because of threats, or because they were given hush money or goods. Beatrice tried to hide the assault and appeared to be afraid to tell her father about it. Compared to five-year-old Bella M., who attached no sexual meaning to Denning's 'tickling' of her, Beatrice appears to have understood the consequences of sexual assault. She felt shame.

Shame was a vital component of the sexual double standard. It controlled women's and girls' sexuality by forcing them to examine their own sexual boundaries, and it could punish those who sought sexual pleasure. As Dubinsky argued, sexual danger 'operated historically on several levels. As well as the very real pain of sexual assault, tightly drawn boundaries of permissible female sexuality determined that getting 'caught,' by parents, neighbours or police, could prove almost as threatening or humiliating as the sex itself, desired or coerced.'¹⁴ The realisation of these repercussions was typical of women's understanding of sexual danger,¹⁵ and is taken here as an indication of a change in girls' understanding of sexuality. Between the ages of 8 and 11 years, girls began to associate sexual meaning with sexual acts. While this might indicate the acquisition of sexual knowledge by older girls, it did not necessarily indicate sexual experience or maturity. For most of the girls in the 26 sample cases, these years were a time of transition from the innocence and sexual vulnerability of early childhood to pubescent sexual knowledge and independence. The transformation of girls' sexuality did not, however, follow an even path. Some of the girls in the case sample continued to have more in common with little girls than those of their peer group.

¹² Information and Complaint, AAOM W3265 1901 John Griggs, CTF.

¹³ Deposition of Constable Carlyon, AAOM W3265 1901 John Griggs, CTF.

¹⁴ Dubinsky, p.15.

¹⁵ Bavin-Mizzi, p.77.

The extent to which ‘older’ girls’ attached sexual meaning to sexual assaults varied across the age group, showing that the transformation of girls’ understanding of sexuality was uneven. Nine-year-old Alma B., for example, said she had been ‘assaulted’ when describing an attempted rape.¹⁶ Ten-year-old Delia H. knew her assailant was wrong to want to look at her ‘tittie’: she told him she would ‘tell the policeman of you’.¹⁷ And an 11-year-old girl, Virginia W., when describing the actions of a man who had indecently exposed himself to her and made indecent proposals before actually sexually assaulting her, said that he had done something ‘rude’ and had ‘interfered’ with her.¹⁸ Eight-year-old Frances S., in contrast, described a man exposing himself in strictly descriptive language. She said he ‘took something out of his trousers – the middle – He held it in his hand’.¹⁹ And nine-year-old Mary S, for example, used matter-of-fact language similar to that used by six-year-old Grace M. (see chapter two) when describing being raped and sodomised. She said the man ‘stuck something into me, in front. . . . He stuck something into me in a little hole at my back’.²⁰

Although older girls might know a little about sexual intercourse, they were not necessarily more astute than ‘little’ girls at detecting sexual danger. Older girls could still be very literal in their reading of situations. A good example is an understanding of stranger-danger which recurred in a several of the 26 cases. It seems that some parents warned their girls of the danger of strangers, and accordingly, some hesitated to comply with unknown men. Several mothers forbade their daughters to take money from strangers.²¹ Some girls refused to talk to strangers.²² But while girls might have been warned how to recognise a ‘stranger’ and they consequently regarded some men with suspicion, they tended to interpret boundaries for social interaction literally. So while Ivy L. refused to take money from an unknown man, she did accept lollies.²³ Eight-year-old Honora N. was assaulted twice in her aunt’s house by a boarder. On both occasions Honora complied with her assailant’s commands. She went onto his bed ‘because he told me to’, upon which he took out his ‘tommy’ and put it in her. She did

¹⁶ Cross-examination of Alma B., AAOM W3265 1902 John O’Grady, CTF.

¹⁷ Deposition of Delia H., AAOM W3265 1900 George Sigglekow, CTF.

¹⁸ Deposition of Virginia W., AAOM W3265 1902 Charles Thompson, CTF.

¹⁹ Deposition of Frances S., AAOM W3265 1904 Patrick McKegan, CTF.

²⁰ Deposition of Mary S., AAOM W3265 1912 Albert Hughes, CTF.

²¹ Deposition of Annie B., AAOM W3265 1908 Edward Winter; deposition of Doris J., AAOM W3265 1917 Edmund Gilligan; CTFs.

²² Deposition of Daisy J., AAOM W3265 1915 George Penman, CTF.

²³ Testimony of Ivy L., Rex v. Penman, AAOM W3265 1915 George Penman, CTF.

not tell her aunt because he told her not to. Yet when the same man approached her a third time in the street when she was walking home from school and asked her to 'come up to the park', Honora refused saying she 'was not allowed'.²⁴ Honora seemed to know that going 'up to the park' was wrong, but did not ascribe such meaning to the sexual acts performed on her at her aunt's house.

Older girls remained vulnerable to sexual assault because of their subordinate position in relation to adults. However, older girls were less compliant with men, especially with strangers, than with little girls. Eight-year-old Daisy J. was approached twice by George Penman who offered her 'a penny every Monday' if she would let him 'lift up' her clothes. She refused, and walked away, pretending to go into a house to get away from him.²⁵ Men often had to employ a ruse to gain older girls' cooperation because they would not respond to a mere instruction, such as 'come here'. More typically, older girls were assaulted after agreeing to do something or go somewhere with an assailant for a purportedly legitimate reason. Ten-year-old Delia H., for instance, went into the bush with her assailant after he had convinced her that one of her grandfather's horses was lying there dead, and that he should show it to her.²⁶ A little while later she emerged from the bush, crying. Her younger brother asked what the matter was and she replied 'there is no dead horse there' and told him that the man had actually wanted to see her 'private parts'.²⁷ It is perhaps a reflection of the greater independence of older children that some assailants procured victims, such as Delia, by exploiting their sense of responsibility. This strategy was used particularly against the 'biggest' child in a pair or group to whom the task of dealing with people on behalf of the younger children was delegated. Eight-year-old Doris B., for example, unwittingly put herself in sexual danger by forbidding her younger friends to go and see 'a pretty bird' with a man in Newtown Park. She went instead; the man molested Doris, and then masturbated in front of her.²⁸

Although these girls accompanied their assailants without force, it is doubtful that this indicates consent to sexual activity. Typically, girls aged aged between 8 and 11 years old did not have a sense of sexual danger which enabled them to avoid assaults. They only associated sexual danger with men during or after a sexual assault, rather than before it. Girls who had been frightened by a man might avoid him in future. Eleven-year-old Virginia W., for instance,

²⁴ Deposition of Honora N., AAOM W3265 1914 Lewis Hocking, CTF.

²⁵ Deposition of Daisy J., AAOM W3265 1915 George Penman, CTF.

²⁶ Deposition of Delia H., AAOM W3265 1900 George Siggleskow, CTF.

²⁷ Deposition of Murray H., AAOM W3265 1900 George Siggleskow, CTF.

²⁸ Depositions of Doris B. and Stanley C., AAOM W3265 1911 John Maloney, CTF.

was stalked by a man in Wellington. One day she saw him in the street. She said 'I was frightened because I knew the man and ran along'. He chased her, so she crossed the street to be on the police station side of the road.²⁹ Nine-year-old Thelma B. told her brother that she was frightened to go near a man because he had 'put his hand up her clothes'. But this was only after he had already assaulted her.³⁰ And eight-year-old Alice L. said that she did not like playing near her assailant's workplace because he 'tickled' her.³¹ Others actively withheld consent to sexual activity. Beatrice, for instance, attempted to protect her genitals by struggling to keep her legs together during the assault. Nine-year-old Alma B. agreed to take a note to a country store for a man whom she had met on the road because she was already going there. When the man gave her the note, she said: 'he caught hold of my hand I said "Let me go: he then pulled me down on to the grass he asked me to undo my drawers I said "No" . . . I cried out Mamma! Mamma!'.³² By resisting sexual assaults, older girls posited men's actions as sexually dangerous.

Alma B. and several other girls went straight to an adult and complained of having been sexually assaulted.³³ But many of the offences committed against girls of this age group were discovered accidentally. Dubinsky has suggested that the failure to complain about an assault could indicate a matter-of-fact attitude towards sex by working class girls.³⁴ In the Wellington cases, girls failed to complain for a variety of reasons which reflected their understandings of sexual assault. Some simply did not perceive themselves as assaulted, sexually or physically. Eight-year-old Majorie H., for instance, insisted that John Lister's touching her legs did not frighten her and that she was 'quite friendly' to him.³⁵ Others deliberately hid sexual assaults from their parents, but this appears to have been because the girls were ashamed to disclose offences, rather than because they had consented to them. Nine-year-old Thelma B., for instance, was frightened by a man who put his hand up her skirts while she minded her younger siblings on the beach at Oriental Bay.³⁶ But she refused to admit it to her mother (her brother told their mother what had happened). She had accepted money from

²⁹ Deposition of Virginia W., AAOM W3265 1902 Charles Thomspn, CTF.

³⁰ Deposition of Elgar B., AAOM W3265 1908 Edward Winter, CTF.

³¹ Deposition of Alice L., AAOM W3265 1900 Charles Nelson, CTF.

³² Deposition of Alma B., AAOM W3265 1902 John O'Grady, CTF.

³³ See also AAOM W3265 1902 Charles Thompson; 1917 Edmund Gilligan; 1920 Herbert Fletcher; CTFs.

³⁴ Dubinsky, p.55.

³⁵ Cross-examination of Majorie H., AAOM W3265 1919 John Lister, CTF.

³⁶ Deosition of Elgar B., AAOM W3265 1908 Edward Winter, CTF.

the man to buy lollies after the assault, in direct contravention of her mother's warning not to take money from strangers. It appears that it was this that she wanted to hide from her mother. Mrs T. said Thelma 'would not have told me anything' unless she had been forced to do so.³⁷ Shame could lead to delays in disclosing offences. An 11-year-old girl, Alice H., for example, admitted that she wanted to tell the woman with whom she was staying that she had been assaulted. She followed the woman around 'everywhere to tell her but could not bring herself to do it.' Alice told her mother a couple of weeks after the occurrence, in response to questioning.³⁸

The boundaries of appropriate sexual behaviour were blurred if a girl was assaulted by a man she knew. Girls were unlikely to hesitate if such a man touched them. Beatrice, for instance, allowed Griggs to take her by the hand and walk her home.³⁹ She raised no objection when he led her off the road, saying: 'I did not ask him why he went off the road'.⁴⁰ Neither did the girls in the sample perceive sexual danger from youths they knew. Ten-year-old Irene D., for instance, said she 'did not know' why her brother's 14-year-old friend, Sid, wanted her to go into the flax before he raped her, when the pair went to get the D.'s cows in.⁴¹

The flipside of informal community regulation of children was that adults could exploit such sanctioned access to children, in order to sexually abuse them. Griggs' sexual abuse of Beatrice only occurred once. More typically, abuse by neighbours and other household members was on-going. Men threatened and bribed children into keeping quiet. Eight-year-old Phyllis H., for example, continued to visit the house of her neighbour, John Nicolle, who did 'rude things' to her every time she went there for a couple of years.⁴² She continued to go there because she liked to;⁴³ he let her play the piano and gave her meals.⁴⁴ An older girl, 11-year-old Eileen L., by comparison, stayed away from her neighbour after he had assaulted her twice, but did not say anything because he told her not to.⁴⁵ Such cases came to light by accident. For instance, 10-year-old Stella L. was indecently assaulted by a house guest of the couple she

³⁷ Cross-examination of Thelma T., AAOM W3265 1908 Edward Winter, CTF.

³⁸ Cross-examination of Alice H., AAOM W3265 1907 Harold Burrige, CTF.

³⁹ Deposition of Beatrice A., AAOM W3265 1901 John Griggs, CTF.

⁴⁰ Cross-examination of Beatrice A., AAOM W3265 1901 John Griggs, CTF.

⁴¹ Cross-examination of Irene D., AAOM W3265 1917 Sidney McCarty, CTF.

⁴² Deposition of Phyllis H., AAOM W3265 1917 John Nicolle, CTF.

⁴³ Cross-examination of Phyllis H., Rex v. Nicolle, AAOM W3265 1917 John Nicolle, CTF.

⁴⁴ Testimony of Phyllis H., Rex v. Nicolle (2nd trial), AAOM W3265 1917 John Nicolle, CTF.

⁴⁵ Deposition of Eileen L., AAOM W3265 John Hogan, CTF.

lived with, while they were out milking one afternoon. She did not say anything because the man told her not to. Shortly afterwards, however, the couple suspected their house guest was stealing money. They questioned Stella, asking her what had happened while they were at the milking shed, hoping to get information regarding the theft. In reply, Stella told them 'Erney' put her on the bed and put his hand up her clothes. Men's position of power over these girls operated to keep the abuse secret. However, once offences were discovered, they could not rely on neighbourhood ties to protect them from prosecution.

Girls aged from 8 to 11 years old were not necessarily unknowledgable about sex but most were sexually innocent. They remained vulnerable to sexual assault because they cooperated with adults, especially with men they knew. 'Older' girls had a greater appreciation of the social meaning of sexuality than did 'little' girls. This happened at no particular age. It was demonstrated through resistance to assaults, and through the decision and motivation to make or withhold a complaint.

The case in court

Griggs was brought before the Featherston Magistrate's Court in April 1901. Depositions were taken from Beatrice and her father, her two aunts, and uncle, Doctor Palmer and Constable Carlyon.⁴⁶ Griggs was defended by a Mr F. W. Card and the case was prosecuted by the police.⁴⁷ The Justices committed Griggs to stand trial at the Wellington Supreme Court.⁴⁸

In May 1901, Griggs appeared before the Chief Justice, Sir Robert Stout, and charged with attempted rape. He was defended by Mr T. M. Wilford; Mr H. D. Bell appeared as crown prosecutor. The defence was denial: Wilford alleged that Beatrice was lying about the offence and so were her family.⁴⁹ The jury returned a verdict of 'guilty'.

When asked by the Chief Justice 'whether he had anything to say', Griggs handed Stout 'a long statement written upon sheets of foolscap'.⁵⁰ In this, Griggs explained his 'folt in life' was the result of 'a severe nock in the head'. Doctors had told him not to drink as it made him 'mad'.⁵¹ Griggs' sister, a neighbour, and the Featherston constable were called to give

⁴⁶ Depositions coversheet, AAOM W3265 1901 John Griggs, CTF.

⁴⁷ Depositions coversheet, AAOM W3265 1901 John Griggs, CTF.

⁴⁸ Committal form, AAOM W3265 1901 John Griggs, CTF..

⁴⁹ 'Supreme Court. Assault on a Child', *NZT*, 9 May 1901, p.3.

⁵⁰ 'Supreme Court. Assault on a Child', *NZT*, 9 May 1901, p.3.

⁵¹ John Griggs to Chief Justice, n.d., AAOM W3265 1901 John Griggs.

evidence of Griggs' good character. All three emphasised his respectability when not drinking and testified that he had been on a 'spree' during the Easter holidays. His sister added that he was not responsible for his actions when drunk because 'a fracture of the skull' many years previously aggravated the influence of alcohol.⁵²

Stout sentenced Griggs to 10 years' imprisonment with hard labour.⁵³ He thought it was his 'duty' to order the 'severest' term of imprisonment allowable, short of ordering a flogging. The reasons given by Stout for the severe sentence were that the victim was a young and 'motherless' child, and that Griggs assaulted her while he was 'pretending' to look after her. Stout disapproved of the defence, which amounted to an accusation of perjury by the girl and her family, and the fact that Griggs had 'forced the child to come into Court and submit to what was really severe punishment for her'. He noted that Griggs had been convicted of 'several' offences, including the attempted rape on a married woman in 1894 for which he was flogged. He rejected 'drink' as a mitigating excuse for the act on the grounds that 'society would not be safe' if it was, but he did take into account the evidence of Griggs' good character. He warned the court, though, that 'if a case of this kind came before him again, . . . he would certainly order a flogging'.⁵⁴

Court Analysis

Chapter one showed that moral type-casting of little girls by class and gender was a popular technique employed by lawyers defending men accused of sexual crimes. Attempts to discredit the testimony of working class girls aged 8 to 11 years old by casting them as juvenile delinquents were also common.

No Supreme Court transcript survives for this, but the defence of poor parenting and juvenile depravity was clearly employed by Mr Card at the lower court hearing. While very similar to the strategy of Mr Kelly in his defence of Denning, Card's cross-examination reveals other ways in which this stereotype was drawn. In doing so, the Griggs case helps refine the criteria of juvenile respectability employed at the time.

Beatrice's upbringing was closely examined, and particularly the level of supervision provided by Emma L. Emma was questioned, for example, about whether she knew where

⁵² 'Supreme Court. An Exemplary Sentence', *EP*, 8 May 1901, p.5.

⁵³ AAOM W3265/2922 Return of Prisoners Tried, 1888–1901, p.248.

⁵⁴ 'Supreme Court. Assault on a Child', *NZT*, 9 May 1901, p.3.

Beatrice had been before she saw her on the road. That Beatrice told Emma where she was going and actually took the bucket to milk the cow were important in establishing that she was out for a legitimate task. But Card's cross-examination also signalled a new criteria for respectability which appeared especially in cases involving 10- and 11-year-old girls. Several parents were questioned about how late their children were allowed out at night. The A children were not allowed to be out late. Emma expected Beatrice home before she actually arrived, at nearly eight o'clock, and was both disconcerted and exasperated when Beatrice did not behave as expected. Emma admitted to the court that she planned to 'box' Beatrice's ears 'for being out so late'.⁵⁵ Tom B. angrily told a defence counsel that he 'never allowed his children out at night' after his 11-year-old daughter was assaulted when she and her brothers went for an evening walk.⁵⁶ The children were home by 7.30 pm.⁵⁷

The occurrence of an assault in the street after dark has already been noted as a possible obstacle to prosecution because of contemporaries' association of girls who loitered in the streets with juvenile immorality. Witnesses to the Select Committee on the Young Persons Protection Bill in the year before Griggs was tried tended to regard 10 and 11 o'clock at night to be too late for respectable children to be out. One witness even thought that 8 pm was an appropriate curfew.⁵⁸ Adults who allowed children out late at night without supervision were criticised. A Mr and Mrs S. were castigated in 1907 by the Grand Jury for their lack of discretion in giving their 11-year-old niece permission to go out at 10 pm. The girl went out to bring in cows with the S.'s farm-hand, who assaulted her.⁵⁹

Yet Mr Card did not develop this argument into an insinuation of child prostitution. Some of the offenders seem to have tried to hire girls for sex. Roderick McKenzie, George Penman, and James Smith gave money to girls and tried to make appointments to meet them again.⁶⁰ Child prostitution was inextricably linked with moral reformers' anxieties over girls' street culture. Inspector Pender of the Wellington police, for instance, regarded girls' presence on the street after dark as the first step towards prostitution and their 'downfall'. He told the Select Committee on the Young Person's Protection Bill 1899 that the police 'had several cases brought before the Court of young girls who were allowed to leave their homes at night and

⁵⁵ Cross-examination of Annie W., AAOM W3265 John Griggs, CTF.

⁵⁶ 'Man and Child', *Truth*, 1 May 1909, p.5.

⁵⁷ Deposition of Tom B., AAOM W3265 1909 Bernard Smith, CTF.

⁵⁸ Mrs Annie Dudfiled, Dr John Ewart, *JALC*, 1899, Appendix No.6, p.10.

⁵⁹ 'Verdict of the jury', AAOM W3265 1907 Harold Burrige, CTF.

⁶⁰ See AAOM W3265 1908 Roderick McKenzie; 1915 George Penman; 1909 James Smith; CTFs.

wander about the streets ultimately ending in prostitution.⁶¹ In Griggs' case, nothing was made of his giving Beatrice a shilling, which was probably about the going rate for prostitution.⁶² But the suggestion of sexual pleasure in other cases could discredit girl victims' stories of sexual assault. In one case, several girls ranging in age from 7 to 14 years old were allegedly sexually assaulted by Edmund Gilligan. An 11- and a 14-year-old girl admitted that they had agreed to 'go into the bushes' for a pound. Their allegations did not even become the subject of charges. Charges were only pressed in the cases involving a seven- and a nine-year-old girl.⁶³ However, Beatrice's sexual status was relevant to the court proceedings. Most of the girls were molested rather than raped, so medical proof of sexual violence was infrequently sought as evidence. When required, doctors performed genital examinations for evidence of violence. In reporting their findings to the court, though, they were often asked to comment upon the general state of a girl's vagina. In Beatrice's case, the hymen was 'not perforated', suggesting that she was a virgin and sexually innocent.⁶⁴

The strategy of a defence of parental neglect was most pointedly focused upon Emma L.'s slow reaction to what she apparently considered suspicious circumstances. But very few adults and parents considered children to be in sexual danger from men entrusted to care for them. Beatrice's uncle, Bob L., for instance, did not act as though there was anything suspicious in Griggs walking Beatrice home. Further, he had heard Beatrice scream, but assumed it was because Emma was thrashing her for being out late, not because of anything Griggs had done to her.⁶⁵ As noted in previous chapters, neighbours had relatively free access to children and were often involved in children's supervision. Winifred Hobson, for instance, 'had no idea of anything wrong' with the conduct of her neighbour, John Nicolle, towards her children. She had regularly let her three children visit him and his wife and often allowed eight-year-old Phyllis to sleep over at their house.⁶⁶ It turned out that Nicolle had been assaulting her daughters for the two years he had lived next door, and her son occasionally, as well as another girl who lived in the same street.⁶⁷ Ada P. had 'no suspicion there was anything wrong' about her brother's conduct towards her daughters, even though her eight-year-old complained

⁶¹ Inspector Pender, *JALC*, 1899, Appendix No.6, p.5.

⁶² Bavin-Mizzi, p.48.

⁶³ AAOM W3265 1917 Edmund Gilligan, CTF.

⁶⁴ Cross-examination of Dr. Palmer, AAOM W3265 1901 John Griggs, CTF.

⁶⁵ Cross-examination of Robert L., AAOM W3265 1901 John Griggs, CTF.

⁶⁶ Testimony of Winifred H., *Rex v Nicolle*, AAOM W3265 1917 John Nicolle, CTF.

⁶⁷ Depositions of Phyllis and Arthur H., and Susie D., AAOM W3265 1917 John Nicolle, CTF.

several times that he took her off alone into the bushes. Ada had actually scolded the girl for leaving her sisters unattended.⁶⁸

Not all neighbours or friends were so entrusted, though. Emily L., for instance, became suspicious about her daughter's presence in her neighbour's house when she saw the girl leave from the back, as the man's wife arrived at the front door.⁶⁹ She demanded the neighbour to explain 'what right' Eileen had to be at his place.⁷⁰

Despite the slowness of Emma L.'s reaction, the family subsequently took the offence very seriously. This was repeated in other cases. One father, Hermann C., for instance, could not report an indecent assault on his eight-year-old daughter until the day after the offence because he broke his hand punching her assailant, and spent the evening at the doctor's instead.⁷¹ In fact, Mr A.'s going for the police and doctor was a much swifter decision to prosecute than in most cases involving neighbours. In the other cases, the parents of victims confronted the men whom their children had accused of sexual assault before the police were informed.⁷² Men less integrated into a community than a neighbour or family member were usually given short shrift. Boarders, for example, were thrown out of their accommodation once an offence was discovered.⁷³ Neighbours who assaulted children were consistently condemned in popular and legal sources throughout the period. In *Truth*, for instance, the cases against John Nicolle were headlined: 'Nasty Nicolle, a Child Corruptor', and 'Nefarious Nicolle, Five Years for a Scoundrel'.⁷⁴ But such disapproval does not appear to have translated into myths about 'nasty neighbours' or the like. Neighbourhood men were condemned after an assault, in what seems to have been regarded as a betrayal of trust. These men were regarded as aberrant scoundrels.

Disapproval of men's sexual designs upon older girls was expressed in a variety of ways. Community members could regulate sexual access to older girls. For example, two men were commended by the Grand Jury and judges of the Supreme Court in 1913 for interrupting a man's attempt to rape a little girl in Newtown Park.⁷⁵ The men were in the park with their own

⁶⁸ Deposition of Ada P., AAOM W3265 1917 Edward Schenkel, CTF.

⁶⁹ 'A Tailor's Trouble', *Truth*, 29 Feb 1908, p.6.

⁷⁰ Deposition of Emily L., AAOM W3265 1908, John Hogan, CTF.

⁷¹ Testimony of Hermann C., AAOM W3265 1920 Herbert Fletcher, CTF.

⁷² See AAOM W3265 1908 John Hogan; 1917 John Nicolle; and 1919 Frank Robertson; CTFs.

⁷³ AAOM W3265 1914 Lewis Hocking, CTF.

⁷⁴ *Truth*, 18 Aug 1918, p.8; 25 Aug 1917, p.2.

⁷⁵ 'Supreme Court. Seven Years', *NZT*, 5 Feb 1913, p.10.

families when they saw John Norris playing with the girl, then buy her lollies and take her into the bushes.⁷⁶ When Mary S. went missing one evening in Petone, the whole neighbourhood went out searching for her.⁷⁷

The sexual danger posed to older girls by both strangers and non-strangers was reflected in juries' disposal of cases. Griggs was convicted, as were another 14 of the 21 men in the sample who were indicted for offences against older girls (five pleaded guilty). Although they are sample figures, the general trend of juries' disposal of cases involving little girls and older girls was very similar; they convicted in 68 per cent of the cases in the study of girls aged seven years and under and 66.7 per cent of those concerning girls between 8 and 11 years old. Although older girls, like Beatrice, expressed an increasing awareness of the meaning of sexual acts, juries regarded 8 to 11-year-old girls as children, and upheld the protection afforded to them in law.

The Chief Justice, Sir Robert Stout, echoed the jury's condemnation of Griggs' sexual interest in Beatrice. As someone closely allied to the social purity movement of the late nineteenth and early twentieth centuries, it is not surprising that Stout disapproved of Griggs' conduct.⁷⁸ Stout explicitly linked age with vulnerability. He abhorred Griggs' breach of the trust implicit in a child/adult relationship. Given that Stout had recently been involved in lobbying to criminalise incest, it seems reasonable to assume that he drew a parallel between intra-family sexual abuse and the relationship between Griggs and Beatrice.⁷⁹ The necessity for incest legislation made it clear that girls were vulnerable to sexual abuse by the men who purported to care for them.⁸⁰ By taking into account Griggs' assumption of responsibility for Beatrice's welfare, Stout made it clear that all men who abused the trust of children could expect to be punished for it. Although Stout did not order a flogging (apparently because Griggs so dreaded the prospect that he had decided to commit suicide rather than face it a second time), his threat to do so indicated that he believed Griggs' crime to be one of the most serious of its type. As well, Stout believed that Griggs had behaved in an unmanly way by attempting to blacken the name of the A. family, and by subjecting Beatrice to the indignity of recounting the assault in public. Within social purity rhetoric, Beatrice's morality had been

⁷⁶ Depositions of George F. and Richard B., AAOM W3265 1913 John Norris, CTF.

⁷⁷ AAOM W3265 1912 Albert Hughes, CTF.

⁷⁸ R. Dalziel, 'Anna Patterson Stout, 1858–1931. Feminist, community worker', *DNZB* (v. 2), pp.482–4, p.483.

⁷⁹ Brookes, p.149.

⁸⁰ Brookes, p.150.

affronted twice — once by the actual rape, and again by a ‘second rape’ in the courtroom. Men who pleaded guilty and so avoided the necessity of bringing child witnesses to court could plead that their ‘consideration’ of the victim should be reflected in a lenient sentence. In 1919, for example, Stout sentenced Charles Cameron on a charge of indecent assault upon a 10-year-old girl. He noted that a ‘satisfactory feature of the case’ was that he had pleaded guilty and saved the girl from being ‘dragged through the ordeal of court proceedings’.⁸¹

This chapter shows that girls between 8 and 11 years of age began to experience sex within an adult framework, but that parents, jurors, and judges continued to regard these girls as sexual innocents. Parents believed their daughters’ stories of sexual injury and sought redress on their behalf. Jurors and judges readily dispensed such redress. They rejected defence counsels’ stereotyping of working class girls as morally depraved delinquents. The next chapter continues to examine the construction of female sexuality.

⁸¹ ‘Prisoners Sentenced. Indecent Assault’, *NZT*, 23 June 1919, p.6.

Chapter Four

Adolescent Girls

The early twentieth century saw the implementation of the age of consent legislation passed in the late nineteenth century. As the reaction of the *New Zealand Times* to the Pierard case in 1901 suggested, not all New Zealanders were convinced that girls between the ages of 12 and 15 years old were in need of sexual protection. In Wellington, and nationwide, the negotiation of the boundary between childhood and adult sexuality continued through the period. Adolescent girls' bodies were at the centre of the dispute. To women's groups, girls' sexual purity was their most important possession. They campaigned for increased regulation of sexual access to adolescent girls and young women, calling for the age of consent to be raised to 18 and even 21 years old, for all defences to be removed from the age of consent legislation, and for the time limit for bringing a case of unlawful carnal knowledge to be extended to prevent men escaping punishment.¹ Their success was minimal in the face of staunch opposition in parliament to further extending the age of childhood for girls. But parliament was not the only source of opposition. This moral code was also resisted by some adolescent girls and their 'boys'. This chapter examines the changes and multiplication in understandings of girls' sexuality.

This chapter is based on 35 cases, involving 34 girls between the ages of 12 and 15 years old. A majority of 14 cases resulted from assaults by sexual acquaintances, 10 were committed by strangers, and the remainder by a variety of social and work contacts. To reflect this mix of case contexts, this chapter examines the construction of adolescent girls' sexuality through the close reading of two of these cases. The sexual assaults were committed by different men against the same girl. In 1918, brothers-in-law William Stirling and William Love were charged separately with carnally knowing 14-year-old Rubina G.² According to Rubina, she consented to have sex with Stirling, but was raped by Love. As such, the two cases illustrate the construction of sexual pleasure and danger in relation to adolescent girls. While Rubina carved out sexual territory, resisting the view of female sexuality as passive and chaste, others interpreted her behaviour as that of a 'fallen' girl. This chapter examines the meanings attached to Rubina's codes of sexual behaviour, in the context of the 33 other cases in the sample.

¹ J 1 1917/1221.

² AAOM W3265 1918 William Stirling; 1918 William Love; CTFs.

The carnal knowledge of Rubina G.

Rubina G. lived with her parents in Reikiorangi, near Waikanae. On a Sunday in April 1918, Rubina visited her neighbours', the Loves, with whom William Stirling (Mrs Love's brother) lived. Rubina had known Stirling about 18 months. She had seen him around 'frequently', and had spoken to him 'several times'. On this occasion, she saw him in his bedroom where he was lying on his bed. She went in and started 'tickling him in the ribs', and then asked him for a handkerchief and a bottle of scent which he gave to her. Rubina told the Magistrate's Court that Stirling 'then asked me how it was for a bit. I said I didn't care or mind. . . I got on his bed alongside of him and he undid my . . . drawers and I assisted him. He then undid his own clothes and had connection with me.' Rubina then went home.³

They met again by chance a couple of days later. Stirling asked Rubina if she would meet him that night. Rubina was sent on a message and took the opportunity to meet Stirling. They sat on a log and talked. Stirling took off his overcoat which he laid out on the ground and told her that he wanted to have 'intercourse' with her again. Rubina said: 'I did not care about it. He lifted up my clothes and started to undo my drawers. I assisted him and then undid his own and had connection with me.'⁴ However, this time Stirling 'could not manage it'⁵ and 'gave up'.⁶

A few days later, Rubina was sent on an errand to Waikanae and picked up a parcel as a favour to Stirling's brother-in-law, William Love. She delivered it to Love at his house later the same evening. On leaving, Love said he would walk with Rubina. After a little while Love took her arm and asked her 'to be a sport & give him a bit'. She made no reply. He then tripped Rubina over and raped her. She said:

I was on my back and he was on his knees with his legs across mine. He lifted up my clothes and tried to undo them. He managed to undo them without any assistance from me. I was struggling with him trying to get up but I was not able as he was too strong for me. I said once if he did not let me get up I would tell my father but he took no notice. He undid my clothes and pulled them down and undid his own and had connection with me.'⁷

About six weeks later, Mrs G. noticed that Rubina had not 'become unwell', and asked her whether she 'had been doing anything with anyone'. Rubina revealed the incident

³ Deposition of Rubina G., AAOM W3265 1918 William Stirling, CTF.

⁴ Deposition of Rubina .G, AAOM W3265 1918 William Stirling, CTF.

⁵ Cross-examination of Rubina G., Rex v. Stirling, (2nd trial), AAOM W3265 1918 William Stirling, CTF.

⁶ Deposition of Rubina G., AAOM W3265 1918 William Stirling, CTF.

⁷ Deposition of Rubina G., AAOM W3265 1918 William Love, CTF.

with Love but said nothing about Stirling.⁸ She told the police ‘that she was in the family way and that . . . [Love] was the cause of it’. Love was interviewed by the Otaki police and completely denied the offence.⁹ Love told Stirling about the allegation and Stirling, unknown to Love, went to the police himself and admitted his sexual relations with Rubina¹⁰ because Stirling ‘thought it was his place to protect his brother-in-law’.¹¹ Rubina was examined by a doctor and found to be between three and four months pregnant.¹²

Analysis

It is unclear how adolescent girls acquired sexual knowledge in the early twentieth century. The cases suggest that a likely source was experience. The sexual encounters Rubina had with Stirling were not the first time she had sex: that happened when she was about 11 years old.¹³ However they found out about sex, the 34 girls studied realised the sexual possibilities of men and understood the meaning of their sexual advances. But this did not necessarily mean that they sought sexual pleasure. Codes of sexual behaviour differed amongst adolescent girls. The fear of acquiring a ‘reputation’ caused some young working class women who grew up in the early twentieth century to guard their behaviour against such an interpretation. The respondents in Karen Duder’s study of skilled working class women’s relationship to the notion of respectability, for example, said that they were wary of ‘risky’ behaviour, and were aware of the negative consequences of premarital pregnancy. They valued their virginity and expected to remain virgins until married.¹⁴ Nevertheless, as Caroline Daley pointed out, evidence of premarital pregnancy and illegitimate births in birth certificates show that young people did have sexual relations before marriage.¹⁵ Indeed, eight of the adolescent girls in this study were pregnant at the time of the prosecutions, and several more had had sexual intercourse without becoming pregnant. Through Rubina G.’s sexual encounters with Stirling and Love, it is possible to reconstruct the negotiation of sexual pleasure and sexual danger, and the meanings attached to it. This section of the chapter focuses upon the construction of sexual desire by examining the negotiation of consent in Rubina’s interaction with Stirling and then with Love. As the section also examines the meanings attached to sexuality by men, it draws on cases beyond the adolescent girl age group which illuminate men’s understandings of sexual relations.

⁸ Cross-examination of Rubina G., AAOM W3265 1918 William Love, CTF.

⁹ Deposition of Detective Andrews, AAOM W3265 1918 William Love, CTF.

¹⁰ Testimony of William Love, Rex v. Love, AAOM W3265 1918 William Love, CTF.

¹¹ Deposition of Constable Satherly, AAOM W3265 1918 William Stirling, CTF.

¹² Deposition of Dr. Huthwaite. AAOM W3265 1918 William Stirling, CTF.

¹³ Cross-examination of Rubina G., AAOM W3265 1918 William Love, CTF.

¹⁴ Duder, pp.75–6.

¹⁵ Daley, p.167.

Rubina's sexual interest in a young man was not unusual amongst the cases. Not all the girls wanted to have sex, but many did seek out the company of men and boys, and they did flirt. Twelve-year-old Mary S., for instance, was mad keen on warships and visited every one she could get on. She flirted with the sailors and walked out with them, but resisted when one man's sexual advances became serious.¹⁶ Romantic curiosity at a young age was not necessarily the domain of working class girls. Mary S.'s father was an accountant.¹⁷ And, according to a biographer of writer Katherine Mansfield (whose father was a prominent Wellington businessman), at the age of 12 she became infatuated with a young man and met a girl friend daily to 'reveal the latest developments'.¹⁸ Other studies suggest that girls began going out with young men from about the age of 15.¹⁹

The negotiation of sexual relations can be traced through Rubina and Stirling's attachment of certain words and actions with sexual meaning. Rubina initiated familiarity with Stirling by seeking him out alone. For some, the presence of an adolescent girl alone in a man's company raised the possibility of impropriety. Jessie F.'s brothers, for instance, thought it improper that Pierard visited their sister when she was alone at work.²⁰ Fourteen-year-old Florence H., who had a flirtatious friendship with one of the boarders in her parents' boarding house, liked to go into the man's room and read or talk while he lay on his bed.²¹ One of the servants noticed this and although she did not see 'anything improper . . . admonished Florrie about it'.²² Indeed, even seeking male company could be considered unseemly. A journalist, Edward J., for instance, did not mind the girl he employed as a nurse visiting the local fish shop during the day for supplies, but followed her and told her to go home when she sneaked out at night to see the shop owner's son.²³

Rubina knew that by tickling Stirling she had 'started the friendliness'.²⁴ Along with other physical contact like 'scuffling', 'tickling' appeared in several cases as a common sexual advance.²⁵ While little girls like five-year-old Bella M. used the term 'tickling' in a literal way to describe sexual assault, the term had another meaning in adult sexual slang. 'Tickling' meant groping.²⁶ Stirling certainly recognised this physical contact as sexual interest. When questioned in the Supreme Court about when he had asked Rubina for 'a bit',

¹⁶ Deposition and cross-examination of Mary S., AAOM W3265 1909 David Johnston, CTF.

¹⁷ Recognisance of William S., AAOM W3265 1909 David Johnston, CTF.

¹⁸ Pat Lawlor, 'Katherine Mansfield's Wellington', in N.L. McLeod and B.H. Farland (eds), *Wellington Prospect. Survey of a City, 1840—1970*, Wellington: Hicks Smith & Sons, 1970, p.83.

¹⁹ Duder, pp.65—67. Daley discussed courting in relation to 'adolescents', defined as 15 to 21 year-olds, pp.161—169.

²⁰ Deposition of Matilda F., AAOM W3265 1901 Edward Pierard, CTF.

²¹ Deposition of Florence H., AAOM W3265 1913 Harry Somes, CTF.

²² Deposition of Rose N., AAOM W3265 1913 Harry Somes, CTF.

²³ Deposition of Edward J., AAOM W3265 1908 Arthut Nankivell, CTF.

²⁴ Deposition of Rubina G., AAOM W3265 1918 William Stirling, CTF.

²⁵ See for example depositions of Violet G. and May B., AAOM W3265 1900 Sydney Bluett, CTF.

²⁶ John S. Farmer, *Slang and Its Analogues Past and Present; a dictionary*, London: T. Poulter, 1890—1904, p.120.

Stirling made it clear that this was not until after she had tickled him.²⁷ Twenty-two-year-old Andrew Quinlan made the connection explicit when he gave evidence regarding an accusation of indecent assault against him in 1900. He said that he and the young woman complainant ‘sat . . . for about 5 minutes we were tickling each other on the legs and waist. She tickled me on the legs and pinched me on the hips, and I said are you going to give me one.’²⁸ In another case, this time involving the mutual pursuit of sexual pleasure, 13-year-old Violet G. started some ‘scuffling’ with 22-year-old Sydney Bluett during which she said he ‘put his left hand under my clothes, and touched my leg as he put it up. He also put his hand on my private parts, and kept it there for a minute or so’.²⁹

In this case, and many others, consent was tied to a sexual bargain, struck in material and non-material terms. Rubina, for example, showed her interest in having sex with Stirling when she asked him if she could have the handkerchief and bottle of scent. In both her and Stirling’s narratives, this exchange was directly linked to the potential of a sexual encounter. After giving Rubina the things, Stirling asked her whether she wanted to have intercourse.³⁰ Rubina said: ‘He gave me these things. He *then* asked me how it was for a bit.’³¹

The notion of a sexual bargain runs throughout the cases involving adolescent girls. It was the linchpin of the sexual double standard. Female chastity, women’s ‘most important possession’ was objectified within the double standard of sexuality; it was treated as a ‘thing’ (a ‘bit’) which could be gained through prostitution, marriage, seduction and rape.³² At its most overt, prostitutes exchanged sex for money. One 14-year-old prostitute, Florence S., agreed to have sex for three shillings.³³ Two destitute girls who ran away from the Salvation Army home were given food, stockings, boots and shelter by a man with whom they both had sexual intercourse.³⁴ In one chilling example of the extent to which men could de-personalise sex, a father tried to strike a sexual bargain with his twin 13-year-old daughters, Jessie and Bessie. The sisters were eager to see a play which had come to their rural Wairarapa town. In the weeks leading up to the play, they approached their father for money to buy tickets. He was willing to buy the tickets — if they had sex with him. Jessie told Bessie that: “he wants a bit before he’ll let us go to La Mascutte”, I said “I wouldn’t Jes.” & she said “no more would I”.’ The girls went to the play. When they got

²⁷ Cross-examination of William Stirling, Rex v. Stirling, AAOM W3265 1918 William Stirling, CTF.

²⁸ Deposition of Andrew Quinlan, AAOM W3265 1900 Andrew Quinlan, CTF.

²⁹ Deposition of Violet G., AAOM W3265 1900 Sydney Bluett, CTF.

³⁰ Statement of William Stirling, AAOM W3265 1918 William Stirling, CTF.

³¹ My italics. Deposition of Rubina G., AAOM W3265 1918 William Stirling, CTF.

³² Anna Clark, *Women’s Silence, Men’s Violence. Sexual Assault in England 1770-1845*, Pandora, London and New York, 1987, p.7; Dubinsky, p.17.

³³ Deposition of Florence S., AAOM W3265 Robert Anderson, CTF.

³⁴ Depositions and cross-examinations of Kate G. and Alice B., AAOM W3265 1900 George Hobbs, CTF.

home that night, he went into Bessie's bedroom and said 'Now Bessie are you ready?'. She told him to 'clear out'. He raped Bessie that night, and attempted to rape Jessie the following morning.³⁵

Men believed that bargains were also struck under non-material terms. Instead of exchanging money or goods, a certain amount of sexual interest could be interpreted by men as an agreement to sexual relations. For example, 21-year-old Sydney Bluett had spoken to 14-year-old May B. on several occasions, and had kissed and tickled her. They had a loose arrangement to meet in a group one night, but May broke this arrangement by sending him a note asking him to meet her alone. Bluett agreed (also by note). When he handed it to her he said to her 'this is a bargain isn't it'; he asked her for sex that night.³⁶

Viewing sex as a bargain implied the existence of sexual rights and obligations. Caroline Daley has noted how the emergence of a consumer-driven dating culture, centred on commercial leisure activities in the 1920s altered the dynamics of courting. When young women were having their admission fees and other expenses met by their boy friends, it 'sometimes cost them a high price later on.'³⁷ But non-material bargains could also be coercive. Some adolescent girls consented to sex under duress, illustrating the sometimes fine line between sexual pleasure and danger. Jessie F.'s evidence, for instance, suggests she only agreed to have sex with Edward Pierard after he threatened to commit suicide if she would not 'allow it', and promised to leave her alone in future.³⁸ Other girls got out of their depth. Twelve-year-old Mary S., for example, kept an appointment with 36-year-old David Johnston. She allowed him to fondle her but when he exposed himself to her she got frightened.³⁹

Rubina's consent to engage in sexual intercourse with Stirling, however, was unequivocal. She told the court that she was 'quite willing to have connection' with him.⁴⁰ Yet the language she used to convey this to Stirling, and which he understood to indicate her consent, was very ambiguous: she 'didn't care or mind'.⁴¹ Such ambivalence, and even silence in response to a sexual proposition, was usually understood by men to indicate consent. Bluett and May B. negotiated sexual relations in a similarly ambiguous way. The girl said: 'Accused put his hand under my clothes, and said to me "can I have a bit." I said I don't know" Accused said say yes. I did not make any reply. He then laid me on my back, and done something to me there.'⁴²

³⁵ Depositions of Bessie and Jessie B., AAOM W3265 1901 William B., CTF.

³⁶ Depositions of May B. (first and second hearings), AAOM W3265 1900 Sydney Bluett, CTF.

³⁷ Daley, p.166.

³⁸ Deposition of Jessie F., AAOM W3265 1901 Edward Pierard, CTF.

³⁹ Cross-examination of Mary S., AAOM W3265 1909 David Johnston, CTF.

⁴⁰ Cross-examination of Rubina G., AAOM W3265 1918 William Stirling, CTF.

⁴¹ Deposition of Rubina G., AAOM W3265 1918 William Stirling, CTF.

⁴² Deposition of May B. (first hearing), AAOM W3265 1900, Sydney Bluett, CTF.

In negotiating sexual pleasure, adolescent girls represented their sexual desire as passive. Such passivity could be interpreted as indicating consent or refusal. The second time Stirling asked Rubina for sex, for example, she again replied ambiguously that she 'did not care about it'. In response, Stirling then took up her clothes and started to undo her drawers in preparation for intercourse. Rubina, however, said: 'I was unwilling at first but after he lifted my clothes I was willing. I assisted him to undo my drawers.'⁴³ Rubina's initial refusal was therefore made in the same language as her agreement. Stirling's actions, however, suggest that he did not perceive any difference in the sexual script operating in this second encounter. He thought that Rubina was 'quite willing'.⁴⁴ Of course, in written documents it is impossible to know the tone in which such phrases were delivered. Tone made a difference to contemporaries. In one case involving an adult woman who alleged to have been indecently assaulted, whether she said 'Let me alone' in an angry and loud voice or an 'ordinary tone' was a subject of cross-examination in the lower court.⁴⁵ Nevertheless, the language used to negotiate sexual relations by adolescent girls was highly ambiguous. In both these examples, the girls used the same non-committal language to explore sexuality and to refuse sexual advances. This suggests that the sexual double standard was more than an abstract regulatory device through which female sexuality was viewed. Rather, sexual passivity was part of some adolescent girls' representation of their own sexual desire.

Male sexuality, on the other hand, was constructed within the sexual double standard as natural, assertive and aggressive and this is reflected in the criminal trial files. Some offenders thought sexual attraction and pregnancy were inevitable. Edward Ferris, for example, told the mother of the 14-year-old girl he got pregnant: 'Such things have always been and always will be'.⁴⁶ The criminal trial files provide plenty of evidence of male sexual aggression. As crimes, however, the male sexual practices represented in the cases cannot be regarded as a reflection of all men's understandings of sexuality, or of all heterosexual relationships. As Rubina and Stirling's sexual encounter shows, men did not always initiate sexual relations. And historian of American masculinity, Anthony Rotundo, has documented how adolescent boys in the nineteenth century could find the negotiation of sexual interaction confusing. They had to learn the manners and meaning of sexual exchange.⁴⁷ Male sexual practices prosecuted as sex crime, therefore, can only be regarded as an extreme manifestation of 'normal' male sexuality.

The idea that assertiveness was integral to male sexuality manifested in the use of varying degrees of force by men in sexual situations. There appears to have been an

⁴³ Cross-examination of Rubina G., AAOM W3265 1918 William Stirling, CTF.

⁴⁴ Statement of William Stirling, AAOM W3265 1918 William Stirling, CTF.

⁴⁵ Deposition of Mary C., AAOM W3265 1908 Patrick Ryan, CTF.

⁴⁶ Deposition of Constance H., AAOM W3265 1902 Edward Ferris, CTF.

⁴⁷ E. Anthony Rotundo, *American Manhood. Transformation in Masculinity from the Revolution to the Modern Era*, New York: Basic Books, 1993, p.102.

expectation by many men involved in cases that girls and women would put up a degree of resistance before they would consent to sex. Oliver R. for instance, was driving his cart along a country road when he thought he heard screaming. He came over the brow of a hill and saw a couple lying in the road. Oliver said ‘the girl [was] on the ground and the boy on top of her. Her clothes were up – nearly to her waist. She was screaming. . . . The girl’s legs were wide apart. Accused was between them.’⁴⁸ But, Oliver was reluctant to intervene because he ‘did not know what they were really doing.’ He ‘thought it was going on by mutual consent.’⁴⁹ One young man seemed to believe that a successful seduction would include physical force. Seventeen-year-old Harold Burrige asked 11-year-old Vera H. if she was ‘ready for a tear’. She refused and struggled to get away. Harold ignored her refusals, chased her and held her down. But before he raped her (as Vera saw it), he took off both of their hats, and afterwards gave her his handkerchief to tidy herself up with. These could be regarded as acts of consideration, inconsistent with rape. As Jill Bavin-Mizzi pointed out, some men possibly considered violence an aspect of consent. In popular romance literature at the turn of the century, ‘women swooned before resolute men and took care to offer some resistance’.⁵⁰ For Harold, at least, there was no tension between resistance and lack of consent.

Other men, however, gave up sexual overtures in the face of resistance, suggesting that while some resistance was expected, if it was prolonged, it was a sign of refusal. Andrew Quinlan, for example, struggled with Elizabeth W. for about a quarter of an hour before giving up. Quinlan said “I will have to leave you go you are too strong for me.”⁵¹ William Lovett and Mate Honuku also gave up their attempts to ‘seduce’ women after a struggle.⁵²

The premeditated nature of some attacks against adolescent girls further reinforces the idea that men expected to use some physical force to gain sexual pleasure. Twenty-year-old Arthur Keeble schemed to have sex with 14-year-old Catherine K. whom he had been ‘visiting’ for a couple of months. He stole from his employer a packet of cantharides (Spanish Fly) which was used to sexually arouse stallions.⁵³ He conned Catherine into taking some, telling her it would do her no harm. She said that Keeble had sex with her despite her vomiting, and having a swollen and blistered tongue.⁵⁴ Keeble’s version was somewhat different. He later told the police that she became so aroused that she ‘started

⁴⁸ Deposition of Oliver R., AAOM W3265 1902 Sidney Harrison, CTF.

⁴⁹ Cross-examination of Oliver R., AAOM W3265 1902 Sidney Harrison, CTF.

⁵⁰ Bavin-Mizzi, p.47.

⁵¹ Deposition of Elizabeth W., AAOM W3265 Andrew Quinlan, CTF. See also AAOM W3265 1912 Leonard Muir; 1913 Harry Somes; CTFs.

⁵² Deposition of Lillia H., AAOM W3265 1906 William Lovett; statement of Mate Honuku, AAOM W3265 1916 Mate Honuku, CTF.

⁵³ Deposition of John A., AAOM W3265 1911 Alfred Keeble, CTF.

⁵⁴ Deposition of Catherine K., AAOM W3265 1911 Alfred Keeble, CTF.

groaning... she laid down on her back and pulled her clothes up. And I had to give her sex that night before I could get away.’⁵⁵ A few men decided that adolescent girls were potential sexual partners and waited for an opportunity to approach them. An 18-year-old commented to another man ‘that’s a fuck, isn’t it.’ . . . I bet I’ll be through her before long.’⁵⁶ Another was reputed to have often said he intended to have sex with a particular girl. According to Edward Panther, he understood William Gardiner ‘to mean he would have connection with’ Emily R. when he said ‘Wait until she is old enough & then I will put boots to her’.⁵⁷

The extent to which female sexuality was objectified within the heterosexual sexual culture is well illustrated in Love’s attack on Rubina. The script operating in this instance was based on and informed by Love’s understanding of her seeking sexual pleasure with Stirling. Love believed that Rubina and Stirling were ‘going to keep company’ and he assumed that sex would be part of this relationship (as it was for some). When he was walking home with Rubina he told her she should ask Stirling to get a ‘French letter’.⁵⁸ From Rubina and Stirling’s evidence, however, it seems that their encounters were casual rather than a part of a relationship. Although Love was mistaken about the nature of Stirling and Rubina’s relationship, it seems that on the basis of his assumption he regarded Rubina as sexually available. This was implicit in his asking her to be a ‘sport’ – meaning that it was only reasonable that she should ‘give’ him sex.⁵⁹ Other men charged with sexual offences also divided girls into ‘chaste’ and ‘unchaste’ categories and treated them differently. Sydney Bluett, for instance, made it clear that he thought little of May B.’s character. He told the police: ‘If I was engaged and had a great respect for a girl I would not have treated her in the same way I treated May B.’⁶⁰

The acquisition of a ‘reputation’ could lead directly to sexual danger. Even the rumour that a girl had sexual relations with another man could leave her vulnerable to assault. One man justified forcing himself on 15-year-old Catherine S. by telling her mother that ‘he was not the first; that Joe W. had spread a report about Kathleen’.⁶¹ The bragging by a youth that he had ‘tried’ 15-year-old Irene J. contributed to her acquiring a bad reputation. She met an appointment with another young man after he finished work at his father’s fish shop. When she arrived, he pulled her inside, locked the door, and attempted to

⁵⁵ Deposition of Constable Hewitt, AAOM W3265 1911 Alfred Keeble, CTF.

⁵⁶ Testimony of Carl R., Rex v. George Brown, AAOM W3265 1910, CTF.

⁵⁷ Testimony of Edward Panther, Rogers v. Gardiner (affiliation), 13 Dec 1900, BAFO A760/3 Mangonui Resident Magistrate’s Court. Magistrate’s Notebook Criminal Cases, 1882–1902, National Archives, Auckland.

⁵⁸ Testimony of Rubina G., Rex v. Love, AAOM W3265 1918 William Love, CTF.

⁵⁹ HarperCollins, *Collins English Dictionary*, Glasgow: HarperCollins Publishers, 1994, p.1495.

⁶⁰ Deposition of Sydney Bluett, AAOM W3265 1900 Sydney Bluett, CTF.

⁶¹ Deposition of Catherine S., AAOM W3265 1903 John Hutcheson, CTF.

rape her. Irene said he told her that he ‘wanted to try me because all tarts did it before they got married’.⁶²

Sexual adventures could also lead to shame and disgrace for adolescent girls, illustrating the extent to which they bore the weight of the sexual double standard. Parents and girls came into conflict over girls’ sexual behaviour. Rubina, for example, kept quiet about her encounters with Stirling because she thought she was ‘to blame’.⁶³ May B. did not tell her parents about her seeing Sydney Bluett. When her mother heard about it, May was severely whipped for ‘disgraceful conduct’.⁶⁴ Catherine S. became pregnant as a result of being raped by John Hutcheson, but even then was afraid to tell her mother because she was afraid she would be ‘turned out’ of home.⁶⁵ As others studies have shown, the consequences of a pre-nuptial pregnancy could be serious, possibly resulting in social ostracism and even to illegal practices like abortion and infanticide.⁶⁶ In fact, none of the girls who became pregnant told anyone about it until asked. Mothers acted as moral regulators of their daughter’s behaviour. Mrs F. and Mrs G., for instance, both kept an eye on the regularity of their daughters’ menstrual cycles, and were quick to suspect sexual activity when their daughters failed to become ‘unwell’. Girls’ silence about illicit sexual relations because of shame could lead to offences going unpunished as there was a time limit for the commencement of criminal proceedings. At the start of the period, proceedings had to be instigated within one month of the commission of the offence.⁶⁷ Feminist groups believed this led to many men escaping punishment. They campaigned throughout the period for the time limit to be extended so that there was more chance of offences being discovered. In 1905 the time limit was extended to six months, and in 1922 to nine months.⁶⁸

Mothers were central to many prosecutions under the age of consent law, seizing the opportunity created by the new laws to punish men for ‘ruining’ their girls. Some women were angry that men whom they had trusted had taken advantage of their girls. Mrs F., for instance, said to Edward Pierard, a family friend, ‘how could you serve me in this way’?⁶⁹ Another mother said to one of her boarders: “My God this is awful to think I could not trust her with you” . . . “I will put you up for this. I never expected anything like this.”⁷⁰ The

⁶² Deposition of Irene J., AAOM W3265 1908 Arthur Nankivell, CTF.

⁶³ Re-examination of Rubina G., Rex v. Stirling (2nd trial), AAOM W3265 1918 William Stirling, CTF.

⁶⁴ Deposition of Susannah B., AAAOM W3265 1900 Sydney Bluett, CTF.

⁶⁵ Deposition of Catherine S., AAOM W3265 1903 John Hutcheson, CTF.

⁶⁶ Daley, p.168; Duder, pp.75—6; Allen, p.19. Without research beyond the criminal records, it is impossible to know what happened to most of the pregnant girls in the study. One was ‘removed to Carterton’ from her Foxton home by her mother for the period of her pregnancy; deposition of Amy H., AAOM W3265 1902 Edward Ferris, CTF.

⁶⁷ s.196 *Criminal Code Act, 1893*.

⁶⁸ s.2 *Criminal Code Act Amendment Act, 1905*; s.2(b) *Crimes Act Amendment Act, 1922*.

⁶⁹ Deposition Matilda F., AAOM W3265 1900 Edward Pierard, CTF.

⁷⁰ Deposition of Christina B., AAOM W3265 1913 Harry Somes, CTF.

mother of 15-year-old Alice S., for instance, spotted the young man with whom her pregnant daughter had been keeping company in a Wellington street. She told the court: ‘He was trying to get away from me and I told him to come and speak to me . . . I said “You dirty dog, is that all you go out with girls for?”’⁷¹ and ““if anything happens to her I will put you up as high as I can.”’⁷² By punishing men, some women also hoped to protect their girls’ characters. The age of consent law posited girls as victims. A prosecution could negate the insinuation that the girls got into trouble through their own fault. Agnes W., for instance, a married sister of 13-year-old Fanny G., said ‘it was necessary for my sisters character that the Police should know’ of a young man’s attempt to have sex with Fanny.⁷³

The consequences of illicit sex were very uneven for adolescent girls and for men. Within the sexual double standard, men could indulge in sexual behaviour without impunity. Some men were sensitive to the consequences of illicit sexual relations and took some responsibility for avoiding pregnancy, albeit by dubious means. Stirling, for instance, was sure he was not responsible for Rubina’s pregnancy. He told the police: ‘I could not have got her into trouble then as I withdrew my person before discharging.’⁷⁴ Edward Pierard tried to convince Jessie F. to have an abortion.⁷⁵ Some men offered a girl’s parents financial reparation when pregnancies were discovered. Edward Ferris, for example, offered Constance H. ‘ten or twelve pounds’.⁷⁶ Offers of marriage were less common. Some men simply ‘cleared out’ when the girl became ‘unwell’. Edward Ferris went to the South Island and was eventually arrested at Oamaru.⁷⁷ In 1915, a West Coast miner gave the mother of 15-year-old Violet £4 to help with her expenses, then left the Coast to join the expeditionary force.⁷⁸ The injustice of this situation was recognised by some. As one contemporary put it, ‘[w]hy should the woman pay every time and become a social outcast while the man goes scott free and is still regarded as a respectable citizen?’⁷⁹ For adolescent girls living in the Wellington District in the early twentieth century, as Dubinsky argued in respect of Ontario, sexuality was ‘built around the twin poles of pleasure and danger, autonomy and victimization’.⁸⁰

⁷¹ Deposition of Mary Ann S., 1915 Arthur Hainsworth, CTF.

⁷² Testimony of Mary Ann S., 1915 Arthur Hainsworth, CTF.

⁷³ Deposition of Fanny G., AAOM W3265 1902 Sidney Harrison, CTF.

⁷⁴ Statement of William Stirling, AAOM W3265 William Stirling.

⁷⁵ Deposition of Detective Broberg, AAOM W3265 1901 Edward Pierard, CTF.

⁷⁶ Deposition of Constance H., AAOM W3265 1902 Edward Ferris, CTF

⁷⁷ Deposition of Detective Fitzgerald, 1902 Edward Ferris, CTF.

⁷⁸ Depositions of Sarah T. and Constable Smith, AAOM W3265 1915 Matthew Bell, CTF.

⁷⁹ C. D. Sole to Minister of Internal Affairs, 22 May 1919, J 1 18/10/6.

⁸⁰ Dubinsky, pp.3—4.

The cases in court

Stirling and Love were both charged with unlawful carnal knowledge of a girl under the age of 16 years. They appeared separately in the Otaki Magistrate's Court on 2 August 1918.⁸¹ In the respective trials, Rubina deposed that she consented to have sex with Stirling on both occasions, but that she was raped by Love. Rubina's father produced her birth certificate as proof of her age.⁸² At the close of the depositions hearings, Stirling reserved his defence but Love elected to give evidence. He denied the charge 'absolutely', saying '[t]here is no truth in the allegation that I assaulted her and had connection with her'. He claimed that he had walked the girl home on his way to see another neighbour and sometime employer, George C.⁸³ He called C. to corroborate the time of this visit.⁸⁴

The men were committed to trial at the Wellington Supreme Court. In the Magistrate's and Supreme Court, both men were represented by Mr Humphrey O'Leary. The cases were presided over by the Chief Justice, Sir Robert Stout. In his charge to the Grand Jury, Stout went over the limited defences available. It was impossible for any girl under 16 years of age to give consent to sexual intercourse. The only defence available where she did consent was for the man to show that he had reasonable cause to believe that the girl was over 16 years of age, or that she was older than the accused.⁸⁵ Stirling claimed he believed Rubina was over 16 years old while Love maintained his complete denial of the offence. Consequently, as *Truth* pointed out, the case against Love was 'a question of word against word'.⁸⁶ After a 50-minute retirement, the jury found Love not guilty.⁸⁷ The jury in Stirling's case, however, could not reach agreement.⁸⁸ The retrial, three days later, was based on the same evidence as the first. The jury deliberated for three hours before finding Stirling guilty, but with a strong recommendation to mercy.⁸⁹

O'Leary appeared for Stirling at the sentencing hearing. He pleaded for leniency, arguing that the case 'was not so serious as such cases generally were', and cited Stirling's youth, his frank corroboration of Rubina's story, and the jury's recommendation to mercy.⁹⁰ *Truth* reported that O'Leary had also argued that the offence was committed 'under

⁸¹ Information and Complaint, in AAOM W3265 1918 William Stirling; and AAOM W3265 1918 William Love; CTFs.

⁸² Deposition of William G., AAOM W3265 1918 William Stirling, CTF.

⁸³ Deposition of William Love, AAOM W3265 1918 William Love, CTF.

⁸⁴ Depositions of George C. and Rubina G., AAOM W3265 1918 William Love, CTF.

⁸⁵ 'Supreme Court. Criminal Sittings. His Honour's Charge', *EP*, 5 August 1918, p.8.

⁸⁶ 'Frail Flapper. Two Men and a Maid. A Question of Believing Her Age', *Truth*, 10 August 1918, p.6.

⁸⁷ 'Supreme Court. Criminal Session. Alleged Improper Conduct with a Young Girl', *Dom*, 7 August 1918, p.8.

⁸⁸ 'Supreme Court. Criminal Session. Alleged Improper Conduct with a Young Girl', *Dom*, 7 August 1918, p.8.

⁸⁹ Criminal Sittings. Improper Relations with a Young Girl', *Dom*, 10 August 1918, p.2.

⁹⁰ 'Supreme Court Prisoner's Sentenced', *Dom*, 12 August 1918, p.7.

circumstances of extreme temptation'. Stout decided that the circumstances warranted consideration. He sentenced Stirling to six months imprisonment with hard labour. As *Truth* exclaimed, this was 'THE MOST LENIENT SENTENCE he had ever passed in connection with such a case'.⁹¹

Case analysis

Codes of sexual conduct for adolescent girls were delineated in cases of unlawful carnal knowledge of girls over the age of 12 and under the age of 16 years. The main issue of contention was whether adolescent girls' sexual knowledge and physical sexual maturity should be construed as the ability to consent to sexual intercourse. If they could, then in the view of some contemporaries, men were indeed being punished for 'artificial' crimes.

The link between sexual knowledge, sexual maturity and consent was thrashed out in court over the issue of whether a defendant had 'reasonable cause to believe' that a girl was over 16 years old.⁹² To show this, an accused man could give evidence that he had been told by the girl or someone else that she was 16 years old or over. Stirling, for instance, claimed he had been told by Rubina's father over a year before that she would be 15 on her next birthday and had assumed that by April 1918 she had turned 16. William G., however, had no recollection of the conversation.⁹³ More effective means, employed by Stirling's defence counsel in the second trial and commonly also by other counsel (Edward Pierard's for example, see page two), was to argue that the defendant believed a girl to be 16 years of age because of 'what she knew & the size of her'.⁹⁴

Social criteria were the base for the legal assessment of a girl's age. O'Leary's cross-examination focused on showing that Rubina was not only sexually knowledgeable, but experienced, in order to show that she was her actions were more akin to those of women than of children. He asked her whether '[w]hatever was done was done with your consent?' and Rubina replied 'Yes. I knew what he meant when he asked me for something on the Sunday.' Then O'Leary put it to Rubina that '[t]his was not the first occasion this has been done to you?' and she admitted that it was not, but was 'the first occasion by Stirling'.⁹⁵ It was common for girls over the age of 12 years to admit that they understood what the men meant when they used sexual slang or euphemisms, irrespective of whether

⁹¹ 'Paid in Full. Getting their Gruel. Stirling's Sorry Sin', *Truth*, 17 August 1918, p.6.

⁹² 'Frail Flapper. Two Men and a Maid. A Question of Believing Her Age.', *Truth*, 10 August 1918, p.6.

⁹³ Testimony of William G., Rex v. Stirling, AAOM W3265 1918 William Stirling, CTF.

⁹⁴ Testimony of William Stirling, Rex v. Stirling (2nd trial), AAOM W3265 1918 William Stirling, CTF.

⁹⁵ Cross-examination of Rubina G., Rex v. Stirling (2nd trial), AAOM W3265 1918 William Stirling, CTF.

they were sexually experienced.⁹⁶ Their admissions were also used by defence counsel as evidence of sexual experience. For instance, a 15-year-old girl told the court that her mother's farmhand asked her for 'a bit'. When she refused he 'then started and had what he wanted.' The counsel suggested that she knew what 'a bit' was because she had 'had it before'. Although the girl denied it, saying 'This is the only occasion in my life that anybody had had a bit with me', the jury found the man not guilty.⁹⁷

The jury also had to decide if Stirling was justified in his assumption that Rubina was over 16 years of age on account of her 'size.' This was purely a question of opinion on the basis of the girl's appearance. As Justice Cooper told a jury in 1907, 'they had seen the girl, and if, in their opinion there was reasonable cause to suppose she was under the age named, they would be justified in thinking that other men would think the same.'⁹⁸ Certainly, girls' bodies did change as they aged. A turn of the century medical handbook, for instance, advised readers that with the on-set of menstruation girls bodies would change: 'Her frame becomes rounder and fuller, the hips broaden, . . . the breasts enlarge'.⁹⁹ Physical maturity was often held up by offenders as a sign of an adolescent girl's sexual maturity. One offender described the girl he had been having sexual relations with as 'a big lump of a girl'.¹⁰⁰ Alfred Keeble told his arresting constable that he 'should see Catherine K. She has great legs and chest and is as well developed as a woman.'¹⁰¹ This association of physical maturity with sexual maturity reflected wider social opinion. H. Mason, for example, protested against women's groups' 1917 campaign to raise the age of consent to 18 years old on the grounds that 'when a girl has passed her Puberty, she is no longer a girl, but a woman, & is able to fulfill the function for which she is made'.¹⁰² Some defence counsel attempted to give credence to their client's assumption about a girl's age by bringing an expert medical witness to testify that a girl looked older than she was. In the lower court, Dr. Huthwaite testified that Rubina G. was 'very well developed and stoutly built for her age', and that he had the 'impression that she was older than 15'. He believed that '[o]n appearances she could be taken by a layman to be 16 years of age.'¹⁰³

Other clues to adolescent girls' age was whether she had adopted the clothing and hairstyle of an adult woman. Girls' passage from girlhood to womanhood was 'symbolically

⁹⁶ See AAOM W3265 1900 Sydney Bluett; 1903 John Hutcheson; 1906 Charles Philp; 1911 Alfred Keeble; 1911 Roy Lawton; 1913 Harry Somes; 1915 Arthur Hainsworth; 1916 Henry Perfect; CTFs.

⁹⁷ AAOM W3265 1903 John Hutcheson, CTF.

⁹⁸ 'Supreme Court. Criminal Sessions. Immorality with Chinamen', *NZT*, 8 Feb 1907, p.6.

⁹⁹ Edwin Lankester (ed.), *Haydn's Dictionary of Popular Medicine and Hygiene. A companion for the traveller, emigrant, and clergyman, as well as for the heads of all families and institutions*, London: Ward, Lock and Co., n.d., p.631.

¹⁰⁰ AAOM W3265 1915 Matthew Bell, CTF.

¹⁰¹ AAOM W3265 1911 Alfred Keeble, CTF.

¹⁰² H. Mason to Minister of Justice, 9 April 1917, J 1 18/10/6.

¹⁰³ Deposition of Dr. Huthwaite, AAOM W3265 1918 William Love, CTF.

marked' by 'putting up the hair' and lengthening skirts,¹⁰⁴ and was used as a guide to age by contemporaries. In discussing a girl, one accused man described her as having 'her hair done up and was older'.¹⁰⁵ These changes signalled a deliberate change of status.¹⁰⁶ Because of this, defence counsel used it as evidence of sexual maturity. Jessie F., for instance, had been experimenting with putting her hair up at home, which was used as evidence of sexual precociousness.¹⁰⁷ Jessie, however, was already pregnant, even though she had not yet 'come out' as a woman. Clearly, mothers separated their daughter's biological maturity from their social maturity. Agnes W., for instance, said that her 13-year-old sister was 'a woman in some respects', but she still considered her a child because she 'wore short dresses and wore her hair down the back'.¹⁰⁸ While menstruation could begin from early pubescence,¹⁰⁹ most girls appear to have been older than 15 years when they 'came out' as women. Obviously, since prosecutions arose, some men ignored such cultural signs of youth. George Hobbs, for example, was arrested for having sex with a 14-year-old prostitute who wore short skirts.¹¹⁰ But a 'No Bill' was found against him all the same.

Women's groups believed that the defence of 'reasonable cause to believe that a girl was of or above the age of consent' was used by defence counsel and jurors to help men avoid responsibility for their crimes, and campaigned for its repeal.¹¹¹ The government supported this view and included a clause to repeal the defence in the Crimes Act Amendment Bill of 1913.¹¹² The Bill lapsed. But feminists were partly rewarded in 1922 when the defence was limited to defendants under 21 years of age.¹¹³ The case outcomes, however, suggest that jurors did not agree. Rather, they appear to have concurred with the *New Zealand Times*' view that consenting, though illegal, sexual relationships with young girls were 'artificial' crimes. Very few men who were romantically or sexually involved with an adolescent complainant were actually convicted. Stirling was one of three out of the 12 tried in the sample (two pleaded guilty).

Such reluctance to convict men of these crimes reflected a construction of sexually aware and experienced adolescent girls' as 'temptresses'.¹¹⁴ The spectre of 'vicious' girls who might tempt men into sexual relations in order to blackmail them was a myth central to masculinist politicians' obstruction of age of consent legislation since it was first introduced

¹⁰⁴ Sandra Coney (ed.), *Standing in the Sunshine. A History of New Zealand Women Since They Won the Vote*, Auckland: Viking, 1993, pp.151—2.

¹⁰⁵ Deposition of May B., AAOM W3265 1907 William Raymond, CTF.

¹⁰⁶ Coney, p.151.

¹⁰⁷ Cross-examination of Jessie F, AAOM W3265 1901 Edward Pierard, CTF.

¹⁰⁸ Deposition of Agnes W., AAOM W3265 1902 Sidney Harrison, CTF.

¹⁰⁹ Lankester, p.632.

¹¹⁰ See deposition of Alice B., AAOM W3265 1900 George Hobbs; 1902 Edward Ferris; CTFs.

¹¹¹ Memo from Prime Minister Massey to the Minister of Justice, 22 Aug 1913, J 18/10/6.

¹¹² Solicitor General to Attorney General, 2 June 1914, J 1 18/10/6.

¹¹³ s.2(a) *Crimes Amendment Act, 1922*.

¹¹⁴ Justice Hosking to Minister of Justice, J 1 1917/1221.

in the nineteenth century.¹¹⁵ Defence counsel seized on this construction of adolescent girls' sexuality to discredit girls' testimony. One counsel told a jury that 'a "more brazen little hussy never entered the witness-box" than this young [13-year-old] girl. . . her statements could not be relied on'.¹¹⁶ A girl's poor character could also ameliorate a sentence. In 1907, for example, Mr Justice Cooper sentenced two Chinese men to 12 months imprisonment each on convictions for the unlawful carnal knowledge of two adolescent prostitutes. Cooper explained that 'had not the girls been previously corrupted, the sentence would have been very much more severe.'¹¹⁷

Young men received particularly lenient treatment. As Carolyn Conley found in Victorian England, '[a]llowance for normal impulses and youthful exuberance' diminished the criminal element of sexual assaults.¹¹⁸ O'Leary, for instance, argued that Stirling's crime was not 'serious', and that because of his youth and honesty he should receive lenient treatment. Even Stout, who stated before the trial that he believed the age of consent law should be 'absolute', allowing no defences, conceded that Stirling deserved a lenient sentence.¹¹⁹

While the age of consent legislation was meant to protect all girls, 'altogether apart from the particular character they bore', it was applied unevenly by the courts.¹²⁰ They linked sexual knowledge with sexual maturity and the ability to consent to sexual intercourse. Consequently, in order to prove a charge of unlawful carnal knowledge, even though consent was not legally relevant, adolescent girls had to show they did not consent to sexual relations.

Methods of discrediting a complainant common in rape cases involving adult women were employed in cases involving adolescent girls. Severinsen has pointed out that in New Zealand between 1860 and 1910 the most common, and usually most successful defence was to attack a complainant's character and so cast suspicion on the reliability of the prosecution evidence.¹²¹ Drawing upon the image of the temptress, defence counsel argued that girls brought sexual charges out of vindictiveness. In Love's case, O'Leary supported Love's assertion that he had been falsely accused by trading on Rubina's sexual knowledge and experience to suggest that she had a bad reputation, and that she and her family had accused Love of getting her pregnant in order to save face. O'Leary based this strategy on Rubina's failure to make a complaint about either offence for two months. And further, that she only told her mother about Love after she questioned her about whether

¹¹⁵ Brookes, pp.144—45.

¹¹⁶ 'Supreme Court. Criminal Sessions. Under the Age of Consent', *NZT*, 9 Nov 1918, p.10.

¹¹⁷ 'Supreme Court. 'A Double Edged Tragedy'', *NZT*, 9 Feb 1907, p.5.

¹¹⁸ Conley, p.533.

¹¹⁹ 'Supreme Court. Criminal Sittings. His Honour's Charge', *EP*, 5 August 1918, p.8; 'Crime Punished. Supreme Court Sentences. A Light Sentence.', *EP*, 10 August 1918, p.8.

¹²⁰ 'Supreme Court. Criminal Sessions. Under the Age of Consent', *NZT*, 9 Nov 1918, p.10.

¹²¹ Severinsen, p.64.

'anyone had done anything' to her.¹²² In both rape and carnal knowledge cases, failure to make a complaint at the first opportunity was treated as evidence of consent to the act, followed by a change of heart after the act. In a 1919 carnal knowledge case, O'Leary argued this point explicitly. *Truth* reported that he 'pointed out [to the jury] that the alleged to have been assaulted made no complaint, and it was not until her brother had told his parents of what he had seen that the story came out. This, said counsel, showed that the girl was agreeable to whatever had occurred.'¹²³

Understandings about girls' sexuality multiplied during adolescence. Some girls embarked on sexual adventure and attempted to carve out sexual territory within the double standard of sexuality. Willingness to enter into sexual adventure, though, could lead to social consequences for adolescent girls ranging from forcible rape to shame and the fear of social ostracism. Sexual maturity and sexual knowledge altered parents', judges' and jurors' attitudes towards girls' sexuality once they had reached adolescence.

¹²² Cross-examination of Rubina G., *Rex v. Love*, AAOM W3265 1918 William Love, CTF.

¹²³ 'The Criminal Court. Sentences and Sermons. The Ways of the Wicked. Rogues Who Require "Reformative". Satherly Sentenced. Two Years Reformatory for Johnsonville Youth', *Truth*, 8 Novemeber 1919, p.6.

Chapter Five

Women

The most immediately striking characteristic of cases involving women victims (16 years and over) is the paucity of them. Between 1900 and 1920, a total of only 26 were tried in the Wellington Supreme Court. Of these, 13 survive. A brief look at police crime books (registers of reported crimes) shows that some women's complaints were dismissed by the police. For example, Eulalia H's claim to have been raped by a swagger who called at her isolated farm was investigated and disregarded by the local constable. He considered her story 'untruthful': she was known to want to move from the farm because she led a 'fast life before she married H. . . . [and] did not care to be shut up in a place . . . where she could see no one'. The constable believed she laid the claim to force her husband's hand.¹ But the discretion of the police to refuse to prosecute a case is only one reason why a case might not get to court.² It has been forcefully argued by Judith Allen that '[c]ultural factors' could compell women to maintain silence about sexual relations. The construction of female sexuality within the double standard of sexual morality, for example, could mean that 'women or girls had nothing to gain and everything to lose by their disclosure of sexual contact with particular men.'³ An important disincentive to women making complaints was the designation of illicit sex, both coerced and voluntary, as shameful.⁴ The associated disgrace was deployed in court to discredit women's claims to sexual injury, and fear of sexual shame could prevent women from prosecuting charges of sexual assault.⁵ The criteria assessing women's character as 'good' or 'bad' lay in a host of social behaviours, ranging from the social and spatial context of the crime, through to very subtle indicators like the length of a conversation or the locking of a door. The gendered construction of respectability could also shape self-definitions of sexual behaviour. As Karen Duder showed in her study of the attitudes of skilled working class women towards the ideology of respectability in the early twentieth century, the women were aware of

¹ 'Supposed assault & rape', AAUP W3501 Crime Book (Martinborough), 1899–1960.

² In fact, Tony Severinsen argued that the police were 'fairly assiduous' in following up cases. See Severinsen, p.43.

³ Allen, p.2.

⁴ Dubinsky, p.31.

⁵ Dubinsky, pp.15, 16.

prescriptions for sexual morality and adjusted their behaviour to avoid a 'reputation' for bad character.⁶

The sexuality of adolescent girls and adult women was constructed within the sexual double standard. Once girls reached biological maturity, they were deemed by some to be sexually mature and capable of consenting to sexual intercourse. Following pubescence, age diminished as a significant factor influencing understandings of female sexuality. Women's ages were infrequently recorded in court records or in newspapers once they were over the age of consent, unless they were very old (the oldest woman of all the cases committed between 1900 and 1920 was over 70 years old). Nevertheless, the circumstances of women's lives changed considerably as they aged. Most importantly, for the purposes of this study, marriage provided a legitimate outlet for women's sexuality. Four of the women in the sample were married, one was widowed and the remainder were unmarried. This age group, then, included a cohort (albeit small) of legitimately sexually experienced women. This chapter continues to examine how life cycle changes influenced the meaning attached to female sexuality. Eight cases involved men known to the victim as an acquaintance, or through his or her work, and one involved the complainant's husband. Four women were assaulted by strangers. This chapter examines the influence of gendered codes of sexual behaviour on the construction of female sexuality through a case of attempted rape by 29-year-old William West on a married woman called Ethel McN. They knew one another by sight. West was a night porter at the Masonic Hotel in Wellington and Mrs McN. was a guest.

The attempted rape of Mrs Ethel McN.

On the night of the attempted rape in April 1908, Mrs McN. was staying in the Masonic while her husband, a jeweller, was in Christchurch on a business trip. West noticed that Mrs McN. had not turned off the electric light in her room and knocked on the door to request her to turn it off, as this was hotel policy. Mrs McN. opened the door only a little way because she was wearing her nightgown, and poked her head around the door to talk to him. She explained that she had the light on because she was 'restless' and unable to sleep. West offered to bring her something to help her sleep and she ordered a glass of stout. He brought it to her room and poured her a glass. She thanked him for it, told him it was all she required and that he could have the rest of the bottle himself. West drank the stout in her room and it was then that Mrs McN. realised he was 'under the influence of drink'. She said:

⁶ Duder, p.75.

Accused had no sooner drunk the stout than he turned out the light and locked the door saying he would remain for an hour. I tried to get him out of the room quietly. He endeavoured to get into bed with me. He had taken off his trousers and boots. I asked him to leave the room saying I would die rather than he should touch me. I tried to reason with him. He struggled with me. He told me I had it in my power to rouse the house as he had a revolver in his pocket. I told him if he left the room I would be satisfied.

Mrs McN. also told West that if he touched her she would shoot him. He eventually left her room and she locked the door. The next morning she went to meet her husband at the wharf but he had been laid up sick in Christchurch and did not return. Instead, she made a complaint to her brother-in-law,⁷ and then joined her husband in Christchurch where she told him what happened.⁸ She left the 'matter' in his 'hands'.⁹

On his return to Wellington soon after, Mr McN. called on the hotel proprietor and made a complaint about West. West was called into the proprietor's office, questioned, made to write out a statement about the event, and then told to 'clear out of the country'. In the statement, West explained that he was drunk because of 'some troubles', and that 'the sight' of Mrs McN. 'provided a temporary state of insanity'. He accepted full responsibility, stating that Mrs McN. 'by no means' did 'anything that might be called encouraging'.¹⁰ The hotel proprietor, Frederick D., also confiscated West's revolver. Mrs McN. requested that the police not be informed.¹¹ She and her husband left Wellington for Sydney.¹²

Analysis of the attempted rape

Karen Duder argued that codes of sexual behaviour were shaped by class-consciousness.¹³ There is little doubt that during the early twentieth century, women of different classes expressed a variety of views about sexuality. For example, middle class feminist groups viewed

⁷ Deposition of Ethel McN., AAOM W3265 1908 William West, CTF.

⁸ Cross-examination of Ethel McN., AAOM W3265 1908 William West, CTF.

⁹ Re-examination of Ethel McN., AAOM W3265 1908 William West, CTF.

¹⁰ Statement by Willy West, AAOM W3265 1908 William West, CTF.

¹¹ Deposition of Frederick D., AAOM W3265 1908 William West, CTF.

¹² Re-examination of Frederick D., AAOM W3265 1908 William West, CTF.

¹³ Duder, p.78.

with incomprehension women's pursuit of sexual pleasure outside of marriage.¹⁴ The sample cases provide limited material to address this question. Two women were married to small businessmen; one was married to a skilled tradesman (Ethel McN.); and one to a labourer. The unmarried women worked in unskilled occupations as servants; one was a waitress. One unmarried woman and the widow appear to have been involved in full-time unpaid domestic labour. The stories these women told in court, however, suggest that notions of appropriate sexual behaviour intersected social strata and marital status. Sexual morality was as dear to most of the unmarried working class women in the sample as it was to the married women of slightly higher occupational status. Nevertheless, not all women drew sexual boundaries in the same place.

Some women's sexual boundaries mirrored the closely drawn 'norms' decreed by the sexual double standard. Within this, women were required to self-regulate their sexuality. Because men's sexuality was so easily aroused, the onus fell on women to regulate male sexuality through controlling their own.¹⁵ Some women adjusted their behaviour to limit the possibility of being labelled 'fast' or 'disreputable'.¹⁶ For example, chapter one showed that the rules of respectability reflected in some women complainants limiting their social interaction with men in the street for fear of being designated sexually approachable. A widow, Lillia H., for instance, refused to enter into conversation with William Lovett when he approached her as she walked her bicycle home along a rural Wairarapa road.¹⁷ The distance maintained by Ethel McN. between herself and West seems to have been designed to protect her sexual reputation. West at least, indicated in his confession that he interpreted her behaviour as intended to discourage sexual interest. While West's position as a night porter at the hotel meant Mrs McN. would have some interaction with him (for instance, he opened the door for guests like Mrs McN.¹⁸), the dictates of respectability meant that while she was civil towards him, she was not friendly, and especially not familiar. For example, Mrs McN. denied under cross-examination that she had told West her christian name. The use of christian names, even between acquaintances, could be construed in court as evidence of familiarity and could compromise women's claims to sexual injury. But breaking down of formalities was inherent in friendships, especially romantic ones. A 22-year-old 'nurse girl' Bridget C., said she 'liked . . . [Frank

¹⁴ Brookes, p.146.

¹⁵ Stephen Robertson, "Production not Reproduction": The Problem of Mental Defect in New Zealand 1900—1939', BA(Hons) Research Essay in History, University of Otago, 1989, p.25.

¹⁶ Duder, p.76.

¹⁷ Deposition of Lillia H., AAOM W3265 1906 William Lovett, CTF.

¹⁸ Cross-examination of Ethel McN., AAOM W3265 1908 William West, CTF.

Halligan] in a friendly way'.¹⁹ She sometimes called him Frank, and she allowed him to call her 'Bridie'.²⁰ For another example, Mrs McN. pointed out that she had answered the door in such a way so that he could only see her head.²¹ In another case, the first thing a single 'lady help' said to a passer-by when she managed to flee from a violent assault, was to apologise for the fact that her clothes were 'down'.²² Hiding of the female body was an important indicator of sexual respectability for the married and unmarried women in the sample. Legs, for example, were eroticised in the early twentieth century. While it was acceptable for little girls to display their legs, sexually mature women indicated their respectability by lengthening their skirts to cover them. In 1916, 16-year-old Ruth T. was well aware that lifting her skirt above the knee was sexually suggestive. She said she pulled her skirt up 'higher than it ought to be... it was naughty & I knew it was naughty, but I did it.'²³ This action led a man to assume she was a prostitute.²⁴

The context of sexual encounters made a difference to women's sexual boundaries. In courting situations, unmarried women allowed physical contact with men. A domestic servant, Elizabeth W., was picked up by Andrew Quinlan when walking home from church one night. She let him put his arm around her waist as they walked along. In court, Quinlan's defence alleged that she had 'permitted undue familiarity', but Elizabeth hotly denied this, saying 'I did not see when the rudeness came in him putting his arm around my waist.'²⁵ But women of the same occupational status differed in their views of such behaviour. Bridget C., a 'nurse girl', considered the same act extremely presumptuous. She went on a picnic with Frank Halligan. After they had been sitting together on a rug for a while he began 'smoodging' to her and then put his arms round her waist. Bridget told him to 'keep his hands off', that he 'had not got hold of a street girl'.²⁶

All of the women who prosecuted cases did so because men crossed those boundary lines. These altered according to the context of an encounter: stranger attacks for example provoked more immediate resistance than situations which would be termed 'date rape' in the late twentieth century. Because there were so few cases involving married women, it must

¹⁹ Re-examination of Frank Halligan, AAOM W3265 1908 Frank Halligan, CTF.

²⁰ Cross-examination of Bridget C., AAOM W3265 1908 Frank Halligan, CTF.

²¹ Cross-examination of Ethel McN., AAOM W3265 1908 William West, CTF.

²² Deposition of William W., AAOM W3265 1901 Patrick Campbell, CTF.

²³ Testimony of Ruth M., Rex v. Donald Polson, AAOM W3265 1916 Donald Polson, CTF.

²⁴ Testimony of Donald Polson, Rex v. Donald Polson, AAOM W3265 1916 Donald Polson, CTF.

²⁵ Deposition of Elizabeth W., AAOM W3265 1900 Andrew Quinlan, CTF.

²⁶ Deposition of Bridget C., AAOM W3265 1908 Frank Halligan, CTF.

remain unclear whether they had more tightly drawn codes of sexual behaviour than unmarried women. It seems likely they did not. While a degree of intimacy was sought in some contexts by women, and in romantic liaisons they might experiment with sexual pleasure right up to the boundary of their codes of sexual behaviour, shared understanding of sexual boundaries appear to have existed. Commonly, women drew the line when men attempted to put their hands up their skirts. Elizabeth W., for instance, tried to leave Quinlan once he did this and called him a 'dirty . . . blackguard' when he tried to force the issue.²⁷ Sixteen-year-old Gladys M., who was assaulted by her employer, tolerated his attempts to kiss her, but quit the job when her boss went 'as far as' to put his hand on her leg under her dress.²⁸ Two married women prosecuted men who tried to touch their 'privates'.²⁹

As first wave feminists' realised, the sexual double standard controlled and limited the autonomy of women both inside and outside marriage.³⁰ Some men clearly knew they had offended women. Albert Greenwood apologised to his employer's wife, Mrs E., and pleaded guilty to a charge of indecent assault.³¹ Men saw sexual opportunities in the briefest of encounters with women. West admitted to Mr McN., the hotel proprietor and the police that he knew his actions were wrong, but that the 'the sight' of Mrs McN., and his consumption of liquor, resulted in a state of 'temporary insanity'.³² Mate Honuku said that he mistakenly went into the bedroom of Mary T., the wife of a hotel proprietor, but when he saw her lying on her bed, sat down on it and started 'funning' with her.³³ George Simpson reckoned that Emily F. had invited him to visit her and to have sex even though Emily later said she explicitly told George that she was not interested in him. In all these men's explanations of their conduct there are traces of the construction of male sexuality as a male prerogative, and conversely, of women's sexuality as an object to be gained. Frank Halligan's assault on Bridget C. is one example. He took her into the country for a picnic and then refused to take her home until he had 'got the best of her'.³⁴ Andrew Quinlan, for instance, frankly admitted that he had taken

²⁷ Deposition of Elizabeth W., AAOM W3265 1900 Andrew Quinlan, CTF.

²⁸ Cross-examination of Gladys M., Rex v. Victor Kallinikos, AAOM W3265 1918 Victor Kallinikos, CTF.

²⁹ AAOM W3265 1915 Albert Greenwood; 1916 Mate Honuku; CTFs.

³⁰ Brookes, p.142.

³¹ AAOM W3265 1915 Albert Greenwood, CTF.

³² Statement by Willy West, AAOM W3265 1908 William West, CTF.

³³ Statement of Mate Honuku and deposition of Constable Satherly, AAOM W3265 1916 Mate Honuku, CTF.

³⁴ Deposition of Bridget C., AAOM W3265 1908 Frank Halligan, CTF.

Elizabeth W. for a walk on the chance that she might 'give him one'. When she said 'no I did not think you were a chap like that', he said 'you know now and I am off.'³⁵ He later said to a mate: "'the girl W. was easy to get at but she is the toughest piece I ever tackled.'"³⁶ In this context, West's attempt to seduce Mrs McN. was a far fetched manifestation of the culture of male sexuality which legitimated men's attempts to 'have a try'. Such sexual arrogance objectified female sexuality, leaving women vulnerable to sexual danger.

Sexual arrogance could be replicated within marriage. Sex was central to the marriage contract: women traded it for the physical and financial protection husbands could provide.³⁷ In the cases, the married women turned to their husbands to deal with sexual assaults on their behalf, indicating that they considered their husbands their 'natural protectors'. All the married women attempted to report offences to their husbands in the first instance, only resorting to another man if their husbands were not available. But within marriage, sexual rights were not evenly shared between husbands and wives. Brookes has argued that in the early twentieth century, marital sexuality was posited as a husband's prerogative. A wife's refusal of sexual intercourse constituted desertion in law and thus was grounds for divorce, but not vice versa.³⁸ Another example of the prioritising of male sexuality within marriage was the specific exclusion of wives from the right to prosecute husbands for rape.³⁹ In effect, women became the sexual property of their husbands when they married. The sample produced a case of sodomy involving a married couple which provides an insight into the 'domestic misery' which could be suffered by wives as a result of the diametric construction of female and male sexuality. In 1906, Alice B. laid an 'information' against her husband, Joesph, a 45-year-old labourer. She complained to the Magistrate that he refused to restrain his sexual demands on her while she recovered from a gynecological operation. She told the Magistrate that he had been 'using her back passage' for six months:

I told him I could not stand it, he began to make me feel very bad. I didn't agree to this & asked accused not to do it, he did it and took no notice of me. I was frighten[ed] to resist further as I thought he would strike me. . . . I told accused soon after the operation that the Doctor said he would have to refrain from having connection with me, but he still continued to do it.

³⁵ Deposition of Andrew Quinlan, AAOM W3265 1900 Andrew Quinlan, CTF.

³⁶ Deposition of Arthur H., AAOM W3265 1900 Andrew Quinlan, CTF.

³⁷ Brookes, p.141, who drew on Carole Pateman's work.

³⁸ Brookes, p.153.

³⁹ s.191, *Criminal Code Act*, 1893. Re-enacted as s.211, *Crimes Act*, 1908.

After I spoke to accused about his conduct, he said if [I] didn't like it, I could get the hell out of it.⁴⁰

Joseph B. exploited his physical superiority to enforce his conjugal rights. His right to do so was upheld by the common jury. He was found not guilty and acquitted. Joseph B.'s brutal action was an extreme manifestation of the attitude which led other men to 'have a try' with women perceived to be available to them for sex.

Not all men agreed that men's rights of sexual access to women were unlimited. William W., who saw Lucy D. safely home after she was violently attacked by Patrick Campbell, heard 'a noise like someone scratching over the fence'. He assumed it was Lucy's assailant and called out "'Stop you coward & come back & face it.'" ⁴¹ Many women received sympathy and help from male friends and employers when they were attacked. A young man left off his work and went to the nearest town to fetch a constable for Lillia H. after she was attacked on a lonely road in rural Wairarapa, and a male friend took her home in his trap. ⁴² Mary P's screams caught the attention of her employer and several of his neighbour's, who 'gave chase' to her attacker and marched him to the Wellington police station. ⁴³ When Frank Halligan complained to Bridget C's employer, William L., that she had come out of her hotel room and struck him, tearing his eyelid, William was unsympathetic. He had spoken to Bridget who 'made a complaint' about Halligan. William told the Magistrate's Court: 'from what I could learn he had only got his deserts, and as soon as the Dr gave him permission to leave the hotel he would be requested to so.'⁴⁴

Irrespective of where women drew sexual boundaries, fear of disgrace influenced to whom and when they disclosed offences. Elizabeth W., for example, did not tell her parents of the sexual assault for a couple of weeks because she was too ashamed, and she said she was embarrassed to go to the police. ⁴⁵ Mrs McN., Bridget C., and Elizabeth W. were all worried about the social consequences of the assaults they endured. Bridget, for instance, said she did not want to tell the police 'because I knew it would be a disgrace to myself and to my people'. ⁴⁶ There certainly were consequences for women who complained of sexual assaults. A

⁴⁰ Deposition of Alice B., AAOM W3265 1906 Joseph B., CTF.

⁴¹ Deposition of William W., AAOM W3265 1901 Patrick Campbell, CTF.

⁴² Depositions of Victor S. and Lillia H., AAOM W3265 1906 William Lovett, CTF.

⁴³ Depositions of William G. and James M., AAOM W3265 1904 William Harrington, CTF.

⁴⁴ Deposition of William L., AAOM W3265 1908 Frank Halligan, CTF.

⁴⁵ Cross-examination of Elizabeth W., AAOM W3265 1900 Andrew Quinlan, CTF.

⁴⁶ Deposition of Bridget C., AAOM W3265 1908 Frank Halligan, CTF.

domestic servant named Ida C. lost her job.⁴⁷ Elizabeth W. was branded as unchaste after disclosing under cross-examination that she had been assaulted by two other men, even though the assaults were coercive. Women's appreciation of the burden of shame attached to sexual assault was reflected in their equating the value of their lives with sexual honour.⁴⁸ Mrs McN. said she would rather die than be sexually assaulted by West. Bridget C. said 'I struggled with him to save myself'.⁴⁹ Emily F. screamed out 'murder'.⁵⁰

Women's fear of disgrace seems to have been the realisation that their actions towards the accused men could come under scrutiny, and that they might be blamed for offences. Once Mrs McN. realised West was drunk and was not going to leave her room, what should have been a simple service – fetching a drink – became an 'indiscretion' on her part which she believed had the potential to adversely affect people's perception of her character. As suggested in chapter four, the fact of a man and a woman or girl being alone in a room was subject to an interpretation of impropriety. Mrs McN. preferred to try to persuade West to leave and wanted to avoid a scene – indeed, she wanted no-one to know of the occurrence. When asked why she did not scream, Mrs McN. said that '[u]nder the circumstances it was not the natural thing for me to call for help.'⁵¹ Likewise, Bridget C. preferred to try and come to an arrangement with Frank Halligan rather than inform the police. She agreed to say nothing provided he 'clear away as soon as' he could.⁵² The police became involved after Halligan tried to sexually assault her a second time.⁵³ Within the sexual double standard, it was a very short step between respectability and unrespectability, and between chaste and fallen.

The case in court

In August, West called in at the Wellington police station to see if he could recover his revolver. He asked Detective Cassells if there was any 'danger' of the McNs returning to New Zealand and of him 'getting into trouble for going into her room and doing what I did.' Cassells

⁴⁷ Deposition of Agnes B., AAON W3265 1908 Patrick Ryan, CTF.

⁴⁸ Bavin-Mizzi, p.77.

⁴⁹ Deposition of Bridget C., AAOM 1908 Frank Halligan, CTF.

⁵⁰ Deposition of Emily F., AAOM W3265 1902 George Simpson, CTF.

⁵¹ Cross-examination of Ethel McN., AAOM W3265 1908 William West, CTF.

⁵² Deposition of Bridget C., AAOM W3265 1908 Frank Halligan, CTF.

⁵³ Deposition of Bridget C., AAOM W3265 1908 Frank Halligan, CTF.

charged West with attempted rape, to which West replied ““I know I had no right to do to her what I did do but I was mad with drink at the time””.⁵⁴

Mrs McN. was subpoenaed to give evidence at the Wellington Magistrate’s Court in August 1908. West was defended by a Mr Toogood who cross-examined Mrs McN. on what she was wearing when she answered West’s knock on the door, whether she felt West had behaved ‘properly’ towards her before that and addressed her by her christian name, and why she had not screamed for help or complained to the police.⁵⁵ Frederick Dobson and Detective Cassells also gave evidence and were both cross-examined about when the police were informed of the offence.⁵⁶ West reserved his defence and was committed to the Supreme Court for trial.⁵⁷

The *New Zealand Times* reported that West appeared a couple of days later at the August sittings. West was represented by T. W. Wilford. He gave evidence in his own defence. He admitted being in Mrs McN.’s room but denied ‘having done anything wrong’.⁵⁸ The jury took only a few minutes to return a verdict of ‘guilty’ and added that they were ‘unanimously of opinion that there had been nothing whatever reflecting on the character of the woman concerned’.⁵⁹ Mr Justice Cooper said he ‘quite concurred’ with the verdict and sentenced West to three years’ hard labour.⁶⁰

Analysis of the court case

Unlike the statutory offences against girls under the age of consent, there were no statutory limits upon the defences arguable in charges of rape, attempted rape, and indecent assault in cases involving women. Over half the men denied allegations, two said that the woman consented to it; one offered an alibi, and one pleaded guilty. Irrespective of the actual defence, virtually all defence strategies relied upon discrediting the women complainants’ character.

⁵⁴ Deposition of Detective Cassells, AAOM W3265 1908 William West, CTF.

⁵⁵ Cross-examination of Ethel McN., AAOM W3265 1908 William West, CTF.

⁵⁶ Cross-examinations of Frederick D. and Detective Cassells, AAOM W3265 1908 William West, CTF.

⁵⁷ Statement as to Plea and Committal form, AAOM W3265 1908 William West, alias Westphal, CTF.

⁵⁸ ‘Court reports. Alleged Attempted Rape. Trial Unfinished’, *NZT*, 22 August 1908, p.13.

⁵⁹ ‘Court Reports. Supreme Court Criminal. A Serious Offence. Three Years for Attempted Rape’, *NZT*, 24 Aug 1908, p.8.

⁶⁰ ‘Court Reports. Supreme Court Criminal. A serious Offence. Three Years for Attempted Rape’, *NZT*, 24 Aug 1908, p.8.

Character was a vital determinant of sexual injury in all legal discourse surrounding sex crime. It was a broadly conceived, malleable concept: the criteria altered depending upon the characteristics of victims. For women, sexual respectability was the single most important factor affecting legal perceptions of sexual encounters.⁶¹ Within the sexual double standard, the sexual identities available to women were very limited. They were either ‘good’ or ‘bad’, and the line defining them reflected narrow ‘norms’ of sexual ‘respectability’. Positioning a woman victim in relation to these opposites comprised the focus of legal arguments.

Charges of rape and attempted rape were criminal by definition when the sexual encounter took place without the consent of the victim. The determinant of consent was women’s character. As the Chief Justice ruled, ‘if it could be shown by . . . [a woman’s] previous character she was a person who would be likely to have consented then that was to be a relevant fact’.⁶² The admissibility of this evidence provided defence counsel with a powerful tool to shake women’s stories. Wilford, for instance, clearly considered West might avoid conviction if he argued that Mrs McN. consented to the encounter, despite West having already confessed to several witnesses including the police.

Just as Mrs McN. appears to have feared, any hint of impropriety in women’s interaction with the men who assaulted them was construed by defence counsel as evidence of consent, whether it arose from a voluntary or coercive sexual encounter. Moral suspicion was particularly aimed at unmarried women. Women including Elizabeth W., Bridget C., and Ida C. were subjected to long and gruelling cross-examinations in which their moral characters were held up to close scrutiny. The sexual history of Elizabeth W., for instance, was gone over in detail in court. She admitted that she had been ‘out’ with another young man three times. But also, she acknowledged that she had been assaulted on several occasions by employers.⁶³ Ida C., who worked as a maid in a Wellington boarding house, made a complaint of indecent assault after losing consciousness during an epileptic fit, brought on by a struggle with a boarder.⁶⁴ Ida’s allegation was thrown out of court following her admission of prostitution with several boarders and the birth of an illegitimate child.⁶⁵

⁶¹ Dubinsky, p.24.

⁶² ‘The Stoke Cases’, *NZT*, 11 Dec 1900, p.5.

⁶³ Cross-examination of Elizabeth W., AAOM W3265 1900 Andrew Quinlan, CTF.

⁶⁴ Deposition of Ida C., AAOM W3265 1908 Patrick Campbell, CTF.

⁶⁵ Indictment, AAOM W3265 1908 Patrick Ryan, CTF.

Witnesses were asked to give opinions as to women's character. Ida C. was given little support for her allegation.⁶⁶ Her employer testified that she was 'a very forward girl'.⁶⁷ The boarders, who gave her a reputation for 'skylarking' with them, subscribed for a lawyer to pay for their friend's defence.⁶⁸ Said one of them 'From what I can see anybody can get hold of her and pull her about. She is always ready for a bit of fun'.⁶⁹ Yet reputation was not always irrevocably damaging to a woman's complaint. A newspaper report for a Wellington case outside the sample recorded that a middle-aged married woman gained a conviction despite having been convicted previously for consorting with prostitutes, and having been attacked after accepting an invitation from a man to go to his place for a "spot" of whiskey'.⁷⁰ William L. testified that Bridget C. was in his employment for about 10 days during which time he had noticed 'nothing of an immoral character about her'.⁷¹ The extant files provide little information about whether marriage alleviated insinuations of poor sexual character, principally because there were no cross-examinations in two of the three cases. Mrs McN., however, was questioned about the degree of familiarity between her and West, suggesting that sexual morality was not assumed of married women.

Corroborative evidence of resistance was vital proof of a sexual assault. Witnesses testified about having heard screams; and seeing torn clothes, a dishevelled appearance, and physical injuries. Catherine H., for example, testified that her lady help Lucy D. arrived home 'in a dreadful state – her hat off – her dress torn in 2 or 3 places at the back. Her tie torn – a little blood on her tie from her mouth.'⁷² Bridget C. was attacked twice by Frank Halligan. The second took place in the hotel where she worked and he was a guest. Halligan forced his way into her room (she put a chair under the door handle to try to keep him out) but left her because she tore his eyelid in a scuffle. The hotel proprietor testified that when he went to see her to find out had happened she would not let him in the room until he identified himself. He said Bridget was 'very excited' and so nervous about sleeping alone that he told her to go and sleep in another girl's room.⁷³ Gladys M's mother testified that her daughter came home from work

⁶⁶ Depositions of Ida C., 1908 Patrick Ryan, CTF.

⁶⁷ Deposition of Agnes B., 1908 Patrick Ryan, CTF.

⁶⁸ Deposition of Martin J., AAOM W3265 1908 Patrick Ryan, CTF.

⁶⁹ Deposition of Alfred R., 1908 Patrick Ryan, CTF.

⁷⁰ 'Supreme Court. Criminal Sessions. Alleged Indecent Assault', *NZT*, 6 Nov 1918, p.3.

⁷¹ Deposition of William L., AAOM W3265 1908 Frank Halligan, CTF.

⁷² Deposition of Catherine H., AAOM W3265 1901 Patrick Campbell, CTF.

⁷³ Deposition of William L., AAOM W3265 1908 Frank Halligan, CTF.

after being assaulted by her employer 'crying fit to break her heart & trembling all over.'⁷⁴ The defence counsel, however, contested Gladys' claim to having been upset by the sexual advances made by her boss. She had gone home via the post office and posted a letter for him, suggesting that she was not as upset as her mother suggested. In the attempted rape cases in the sample, medical evidence of a struggle was sought. Dr Thomas Macallan, for instance, testified that the bruises he found on Bridget C.'s thighs were 'consistent' with her story that Frank Halligan had used 'considerable force' to part her legs during the assault. There were actually finger marks imprinted on her inner thighs.⁷⁵

The highest degree of resistance and of injury described in cases involved single women, suggesting that they had to establish a greater degree of resistance than married women to have their cases prosecuted by the police. While married women were still subject to insinuations about their sexual character, they appear to have been less easily morally typecast as likely to consent to sex than single women. In an ironic twist to the reading of 'good' character, it seems that silence could also be interpreted as a sign of good character. Mrs McN.'s character, for instance, was considered above reproach. She went to the greatest extremes documented in the sample cases to suppress knowledge of a sexual assault, culminating in her being subpoenaed to give evidence against her assailant.

Sexual reputation was the central but not the only determinant of women's character in court. Women's consumption of alcohol, for example, was raised by counsel in defence of their clients. A woman named Mary T. brought a charge of indecent assault against Mate Honuku with whom she had been drinking. She let him sit on her bed in her hotel room, but made a complaint when he tried to kiss her and touch her intimately.⁷⁶ Honuku was admonished by the Chief Justice, required to take out a prohibition order against himself and pay the costs of the prosecution. Mary T's 'partaking' of 'booze' held her to blame 'to an extent' for the offence.⁷⁷

Verdicts were not decided upon the character of the victim alone. West had incriminated himself by making the confession to the Mr McN. and Frederick D. He was also a 'foreigner'.⁷⁸ In her study of popular perceptions of rape in New Zealand between 1900 and 1920, Joanne Workman suggests that race negatively influenced views of men accused of sex

⁷⁴ Testimony of Susannah M., Rex v. Victor Kallinikos, AAOM W3265 1918 Victor Kallinikos, CTF.

⁷⁵ Deposition of Dr. Macallan, AAOM W3265 1908 Frank Halligan, CTF.

⁷⁶ Deposition of Mary T., AAOM W3265 1916 Mate Honuku, CTF.

⁷⁷ 'Before the Court. The Way of the Transgressor. Mate's Misadventure. Was the Lady to Blame?', *Truth*, 29 Jan 1919, p.8.

⁷⁸ 'Court Reports. Alleged Attempted Rape. Trial Unfinished', *NZT*, 22 Aug 1908, p.13.

crimes.⁷⁹ *Truth*, certainly, used colourful, and often derogatory slang like ‘dago’ to describe ethnic Greek men, or ‘chink’ for Chinese men. A young Maori man was described as ‘a gent of the spud and shark variety’.⁸⁰ But while such depictions might have been demeaning to offenders, it is less certain whether ethnicity biased jurors’ decisions about the outcome of cases. It was acknowledged that it might. Judges occasionally warned jurors to extend ‘British justice’ to non-British offenders.⁸¹ On the other hand, foreigners’ ignorance of the law did not excuse their acts. An Australian man’s pleas that he did not know that the age of consent was 16 in New Zealand (it was 14 in New South Wales) did not entitle him to leniency in the view of the Chief Justice.⁸² In fact it seems that good character could transcend concerns about race. A Chinese grocer, Young Fah, received good testimonials from two Wellington businessmen. Frederick T. said that there were ‘different class [of Chinese], & the Sing On Tie lot are looked upon as decent & respectable’. An auctioneer, Arthur J., showed his good view of Fah, testifying that ‘[w]e have broken our auction rules for him.’⁸³ Fah was acquitted.

The women who gained convictions in the sample, like Mrs McN., were those who could convince the jury that their actions in relation to an accused man did not incite his lust and so bring about an ‘assault’. The important criteria influencing juror’s interpretation of what comprised an ‘indiscretion’ depended upon resistance and shame. For women of the unskilled and skilled working classes, good character was an essential ingredient which could influence the meaning they attached to their own actions and those attached by others.⁸⁴ The criteria for adult women’s respectability had continuities with those required of adolescent girls, supporting the argument that the age of 12 years marked a definite demarcation in contemporaries’ attitudes towards female sexuality.

⁷⁹ Workman, p.6.

⁸⁰ ‘Before the Court’, *Truth*, 29 Jan 1916, p.8.

⁸¹ ‘The Stoke Cases’, *NZT*, 1 Dec 1900, p.3.

⁸² ‘Foul Fitzroy’, *Truth*, 24 Nov 1906, p.5.

⁸³ Testimonies of Frederick T. and Arthur J., *Rex v. Young Fah*, AAOM W3265 1915 Young Fah, CTF.

⁸⁴ Bavin-Mizzi, p.42.

Chapter Six

Male Victims

During the years of this study, all sexual acts between men were criminal. As Julie Glamuzina and Alison Laurie noted in respect of the 1950s, the public profile of male homosexuality in the Wellington district in the early twentieth century was mostly limited to newspaper coverage of criminal proceedings.¹ These ‘unnatural offences’ were categorised in criminal law as ‘crimes against morality’. The men who committed them were labelled in public as ‘degenerates’, ‘sexual perverts’ and ‘dangerous’. But, as George Chauncey and Steven Maynard have shown in relation to twentieth-century New York and Ontario, cities supported thriving homosexual subcultures. In New York, for example, homosexual men occupied a ‘gay world of overlapping networks’ in the streets, bathhouses, cafeterias, saloons, and private apartments, and several neighbourhoods were centres of gay life. Some aspects of gay life, like scale drag balls, were highly visible and tolerated by the heterosexual mainstream. Yet despite gay men’s ability to carve out a ‘cultural autonomy’, much of gay life remained invisible to outsiders because of the risks gay men faced from family, work mates, friends and the police.² There is no research describing the size and complexity of homosexual networks in early-twentieth-century Wellington. Aspects of the practice of and meanings attached to same-sex sexual relations can be reconstructed through the criminal trial files. This chapter attempts to build up a picture of the same-sex culture to provide the context in which cases of same-sex sex crime were understood. What males understood of the same-sex subculture determined their interpretation of other men’s sexual advances as sexually pleasurable or sexually dangerous.

This chapter is organised slightly differently from the previous four. There were fewer same-sex offences than heterosexual offences, and this is reflected in the dedication of only one chapter to the group. It is longer, though, than those individual chapters because it deals with all age groups of male victims. Charges of buggery, attempted buggery and indecent assault on a male comprised just under 30 per cent of the sexual charges

¹ Glamuzina and Laurie, p.150.

² George Chauncey, *Gay New York. Gender, Urban Culture, and the Making of the Gay Male World. 1890—1940*, New York: Basic Books, 1994, pp.2–4.

represented by the extant Wellington Supreme Court criminal trial files: 33 men were charged with offences against 46 victims. There were 17 boy victims aged 11 years and under, 15 adolescent victims (12 to 15 years old) and 14 adult victims (16 years and over). The chapter examines these three groups, and each is built around a close reading of one case. In the chapters about female victims, 'little' and 'older' girls were considered separately. Due to a paucity of cases for boys under seven year old (there were only four), this distinction has not been made in this chapter. It is still possible, however, to chart age-dependent changes in attitudes towards sexuality.

Boys

There has been very little historical research into boys' sexual relationships with men. Historians of homosexuality have traced the role of boys in the homosexual subculture, but the age of the 'boys' concerned tends to be older than 12 years old.³ A Canadian historian, Steven Maynard, has examined the sexual experiences of boys of a range of ages with men in early twentieth-century Ontario. He found that boys' experiences of sexual pleasure and danger were specifically affected by age differences between men and boys. Men's greater age, strength and positions of power over boys, were sources of sexual danger. However, there were distinct differences between adolescent boys' and younger boys' experiences. The older boys were often able to turn men's sexual interest to their own advantage, whereas younger boys were more vulnerable to unwanted or violent approaches.⁴ This section examines the notion of consent, first to investigate how boys' understood same-sex advances; and second, to examine the meanings attached to such encounters by parents and the legal system. The 1919 case of sodomy against six-year-old Bertie T. by an adult stranger named Horace Martin is used as an illustration.⁵ Of the 17 boy victims, eight were assaulted by strangers, four by neighbours, two by acquaintances, one each by a house-guest and a music teacher, and in one case the relationship was unclear. A stranger-attack is, therefore, representative of the case contexts.

The assault and prosecution of the case are reconstructed from depositions and a statement made by Martin to the police, and from newspaper reports. Martin's criminal trial file was typical of those involving boys 11 years of age and under, in that it did not contain

³ The discussions concern prostitution by working boys. For a summary, see Maynard, pp.195—96.

⁴ Maynard, p.196.

⁵ AAOM W3265 1919 Horace Martin, CTF.

both lower and upper court sources. However, the Supreme Court defence strategy and the sentencing hearing were reported in the newspaper.

The sodomy of Bertie T.

One day in 1919, Bertie Ts' mother gave him some money to spend while she went out. He spent the money on sweets at a shop near his Wellington home. On his way home he met a man:

When I met him [the accused] he said "Come here" He took me round to his place. . . . When I got there he put me on his knee and gave me a lot of kisses and then he took down my pants. He then laid me on his bed. He undid his "fly". When he had done this he put his "toolie" in my behind. He left it there for a little while, and then he took it out. He did up my pants. He then hunted around for a penny for me. He could not find one. He told me to come to his corner afterwards and that he would give me a bag of lollies. After he told me that he asked me to give him a kiss at the back door. I gave him a kiss, and then he let me go home.

Bertie immediately told his aunt what had happened, who informed his mother when she arrived home.⁶

Analysis of the sodomy of Bertie T.

In her study of community and gendered cultures in Taradale between 1896 and 1930, Caroline Daley identified a distinct 'boy culture' which was physical and based outdoors, demanding that boys be 'tough and daring'.⁷ She found little information about boys' sexual culture, however, noting that fathers rarely discussed sexuality with their sons, even after the increased emotional bond of fathers and sons associated with the rise of domestic masculinity in the twentieth century.⁸ In public discourse, boys' sexuality was subsumed within the general discussion of rates of offending against children. For example, the Christchurch Grand Jury, responding to an increase in sexual crimes against children in 1916, called for 'surgical' treatment of men convicted of sex crimes against 'children of

⁶ Deposition of Herbert (Bertie) T., AAOM W3265 1919 Horace Martin, CTF.

⁷ Daley, pp.114—15.

⁸ Daley, p.154.

both sexes'.⁹ So despite the greater physicality and independence of boy culture, adults assumed that boys' sexual encounters were characterised more by sexual danger than pleasure. The stories told in the case files indicate that boys' innocence of same-sex practices and inferiority to adult assailants tended to make them vulnerable to sexual assault.

The majority of boys described sexual assault as a physical assault, indicating their ignorance of same-sex sexuality. Bertie T.'s description of the assault using matter-of-fact language, for example, gives no indication that he understood Martin's putting of his 'toolie' into his (Bertie's) 'behind' as sodomy. Other boys who were sodomised used similar language. Seven-year-old Rupert McK., for instance, said his assailant 'took out his "dickey" & started, & tried to stick it up my back, my bum.'¹⁰ Rupert said that he had 'never heard of boys doing this sort of thing before'.¹¹ And 10-year-old Thomas M. said that Cecil Meyrick 'took out his private and stuck it in my bum'.¹²

Naivety about same-sex relations did not mean boys' were uninformed about heterosexual sex. For example, 10-year-old Arthur E. associated sexual meaning with sexual acts. He told the court that William Conway 'got on top of me and did rude things, he did f-u-c-k me' . . . He put his privates down by my privates. I was lying on my back. He lay right down on me . . . He moved up & down'.¹³ But as the sexual act committed upon Arthur appeared to involve simulated heterosexual sex, it is unclear from Arthur's description whether he understood the act to have a specifically homosexual meaning. In fact, some boys' curiosity about sex could lead to situations of sexual danger. British research suggests that males, like females, tended to collect information about sex from a variety of sources including the streets, work mates, other children, and marriage.¹⁴ Aspects of this are borne out in the Wellington material. The curiosity of one eight-year-old boy about sex was indicated when he agreed to cooperate with a youth who asked if he wanted to 'do some rude trick'.¹⁵ The same researchers pointed out that smutty talk between men was a gender specific means of relaying information about sex.¹⁶ Raising the topic of sex with females seems to have been a strategy used by several assailants to get boys interested in sex play.

⁹ Presentment of the Christchurch Grand Jury, 31 Jul 1916, J 1 1917 1221.

¹⁰ Deposition of Rupert McK., AAOM W3265 1906 A P Downes, CTF.

¹¹ Cross-examination of Rupert McK., AAOM W3265 A.P. Downes, CTF.

¹² Deposition of Thomas M., AAOM W3265 1910 Cecil Meyrick, CTF.

¹³ Deposition of Arthur E., AAOM W3265 1905 William Conway, CTF.

¹⁴ Porter and Hall, p.255.

¹⁵ Deposition of Albert E., AAOM W3265 1914 C.W.F. Parrant, CTF.

¹⁶ Porter and Hall, p.250.

Nine-year-old Mervyn H. said that Thomas Inchey told him that 'he used to get the little girls down at school to pull his thing and do rude things with it [then Inchey] unbuttoned his trousers and pulled out his thing', and later asked Mervyn to show him his own 'thing.'¹⁷ Frank Robertson employed a similar approach with eight-year-old William R. 'When he [Robertson] got in the room', said William, 'he caught hold of me. He took hold of my dickie he said "Do you play with the girls diddles." I said "No".'¹⁸

Boys' understanding of sexual danger was not only determined by the extent of their sexual knowledge. Daley found that boys' challenges to adult authority were a central facet of men's memories of childhood, but noted the difficulty of determining the relationship between her respondents' nostalgia for their childhood and the actuality of boys' cultures.¹⁹ The criminal trial files contribute to historical knowledge about the nature of boys' relationships to adults. The cases suggest that boys' were not removed from the assumptions of obedience to adults. Boys were easily beguiled by offenders using commands or simple ruses to entice them into a situation conducive to sexual assault. Bertie T., for instance, reacted without hesitation to Martin's command to 'come here.' Eight-year-old Stanley P. explained to the court that he took his trousers down in Roderick McKenzie's hotel room because McKenzie asked him to.²⁰ Boys like five-year-old George Y. accepted requests to 'go' messages, especially when money was offered.²¹ And 11-year-old Antoion [sic] M. was out selling *Truth* one Saturday night in 1909. He went into a hotel and asked Charles Taylor if he wanted to buy one. Taylor refused but told Antoion that he would give him money if he went outside with him. Antoion agreed, though he did not understand what Taylor wanted to do or where they were going.²² Similarly, eight-year-old Peter A. and nine-year-old John H. said they did not know what Albert Downes meant when he asked the boys if he could do 'something' to them, but they lay down as Downes requested nonetheless.²³

The physical nature of boys' culture would suggest that boys might put up greater resistance to assailants than would girls of the same age. This does not appear to be the case.

¹⁷ Deposition of Mervyn H., AAOM W3265 1908 Thomas Inchey, CTF.

¹⁸ Deposition of William R., AAOM W3265 1918 Frank Robertson, CTF.

¹⁹ Daley, p.115.

²⁰ Testimony of Stanley P., *Rex v. Roderick McKenzie*, AAOM W3265 1918 Roderick McKenzie, CTF.

²¹ Deposition of Mervyn T., AAOM W3265 1908 Thomas Inchey; deposition of George Y. AAOM W3265 1918 Allan Talbert; CTFs.

²² Cross-examination of Antoion M., AAOM W3265 1909 Charles Taylor, CTF.

²³ Depositions of Peter A. and John H., AAOM W3265 1911 Fredercik Hunter, CTF.

Rather, like girls, boys' resistance tended to increase as they aged. Six-year-old Bertie T. and five-year-old Bella M. (chapter two) both complied with assailants. But nine-year-old Alma B. (chapter three) expressed definite sexual boundaries by resisting her assailant once she realised that he intended to harm her. Eight-year-old William R. also drew limits regarding sexual behaviour. When approached by Frank Robertson, William politely answered all his questions, but became uncooperative when Robertson asked him to perform an indecent act on another child. 'He wanted me to take Tommy's trousers down. I didn't take Tommy's trousers down.'²⁴ In another case, 10-year-old Mervyn H. was talking to a swagger whom his father, a publican, had given a 'shake down' for a night. When the man lay on top of Mervyn and started 'going up and down', Mervyn said 'get away', then said that he wanted a drink of water as an excuse to run away.²⁵

When assailants pressed their sexual desires on boys, their smaller physical size made them vulnerable to sexual danger. Some sexual assaults were represented as terrifying ordeals. Ten-year-old Thomas M., for example, was dragged by the neck into Newtown Park by Cecil Meyrick and sodomised. Afterwards, Thomas was reported to be 'very white',²⁶ and later on that night was in 'a very nervous condition'.²⁷ James M. said his eight-year-old son was frightened for several hours after he was molested.²⁸ Boys' sexual innocence of same-sex sexuality, their obedience of adults, physical size, and sometimes, their sexual curiosity, made them vulnerable to sexual assault. The next part of this section examines whether boys' definition of consent was recognised by adults.

The prosecution of the case against Horace Martin

When Mrs T. heard about the offence, she washed Bertie, then took him back to the street in which it happened. Bertie pointed Martin out. Martin apologised for what he had done and said he would commit suicide if Mrs T. informed the police. He refused to give her his name, and as she and Bertie walked away Martin kept calling to them to 'let the matter drop'. Eventually Mrs T. found out his name and reported the matter to the police.²⁹ Martin

²⁴ Deposition of William R., AAOM W3265 1919 Frank Roberston, CTF.

²⁵ Deposition and cross-examination of Mervyn H., AAOM W3265 1908 Thomas Inchey, CTF.

²⁶ Depositions of Frederick M. and Constable Taylor, AAOM W3265 1910 Cecil Meyrick, CTF.

²⁷ Deposition of Dr. Dawson, AAOM W3265 1910 Cecil Meyrick, CTF.

²⁸ Deposition of James M., AAOM W3265 1906 Joseph Bradley, CTF.

²⁹ Deposition and cross-examination of Alice T., AAOM W3265 1919 Horace Martin, CTF.

was arrested in Palmerston North five days later and made a signed statement to the police admitting the offence.³⁰

Although Martin had admitted the offence to Mrs T. and to the police, he did not plead guilty when charged. He was indicted for sodomy, attempted sodomy and indecent assault in August 1919. Martin gave evidence which conflicted with Bertie's and his own earlier statements to the Mrs T. and the police.

Martin said he had been listening to 'the melodies' of a gramophone at his lodgings when the boy came in and asked to hear it. Martin told him 'that the performance was finished'. He went to his bedroom; Bertie followed. Martin chastised him for this. Later he met the boy's mother in the street and tried to explain 'but she would not allow it.' He explained that his threat to commit suicide was made because he feared the police, and his confession to police was induced by a promise of probation. His counsel, Mr P.J. O'Regan, contended that there was no evidence on the charge of sodomy. Mr Justice Stringer agreed. The jury returned the verdict 'guilty' of indecent assault and Martin was sentenced to five years reformatory treatment.³¹

Analysis

Martin was charged under sections 153 and 154 of the Crimes Act 1908, which prohibited all sexual acts between males, irrespective of age and consent. Because consent was no defence to a charge, defence counsel attempted to undermine the statutory sexual protection of male children by attacking the character of the boys and their parents. In doing so, they employed the same stereotype of the 'rough' child to discredit the evidence of boys' as they did in cases involving girls' aged 11 years and under.

Martin's counsel portrayed Bertie as the antithesis of the ideal child. He argued that Bertie was disobedient and bad mannered: in Martin's version of events the boy had not only impudently asked to listen to Martin's gramophone but refused to leave the premises when requested to do so, requiring Martin to chastise him. Vindictiveness on the part of children or their parents was also alleged by other men when accused of crimes against children of both sexes. Boys were apparently chastised for breaches of manners, such as using bad language and urinating in an inappropriate place,³² or for impudence and entering

³⁰ Deposition of Constable Cleverley, AAOM W3265 1919 Horace Martin, CTF.

³¹ 'Another Case', *NZT*, 6 Aug 1919, p.10.

³² Testimony of Thomas Inchey, *Rex v. Inchey*, AAOM W3265 Thomas Inchey, CTF.

the accused man's house without permission.³³ For example, a 57-year-old tailor named John Nicolle and his wife had no children but took in those of friends temporarily and let the neighbourhood boys and girls play at their home, sleep over, and take meals with them.³⁴ After a couple of years Nicolle was charged with indecently assaulting six children. Nicolle claimed he was the pawn in a fight between the children: one faction made the complaint so that they 'could have the run of the house.'³⁵ In another example, Thomas Inchey thought that the father of nine-year-old Mervyn H. had 'called him names' and had a vendetta against him.³⁶

In contrast to this defence strategy, the parents in the study believed that men were sexually dangerous to their boys and took their sons' complaints seriously. Elizabeth McK., for instance, believed her son, Rupert. She admitted that he might make up some reason for returning home late (as he was on the night of the assault), but that on this occasion she did not think he 'invented an excuse' because he 'kept on repeating the same thing over & over again & he seemed very much upset.'³⁷

The fact that parents prosecuted charges against men for assaults on their sons clearly indicates that they considered their boys' sexual safety worth protecting. Mrs T. was outraged and angered by Martin's assault on Bertie. She told him 'that it was a pity the Germans did not give . . . [him] a few bullets so as to save him returning to ruin' Bertie.³⁸ Her use of the phrase 'ruined', might suggest that she considered Bertie's moral reputation to be damaged by Martin's behaviour. This attitude was much more commonly associated with the moral 'pollution' of girls, which makes Mrs T.'s use of it all the more interesting. She seems to have considered the moral consequences of the assault to be as serious as the physical. Mervyn H.'s father threatened Thomas Inchey with community initiated punishment, telling Inchey that if he 'did not get straight away we would Tar & Feather him'.³⁹ And the parents of 11-year-old Antoin M. went out looking for him when he failed to return home at the usual time from his job selling *Truth* one Saturday night in 1909.⁴⁰ These were the actions of parents who cared about their sons.

³³ Testimony of John Nicolle, Rex v. Nicolle, AAOM W3265 1917 John Nicolle, CTF.

³⁴ Testimony of John Nicolle, Rex v. Nicolle, AAOM W3265 1917 John Nicolle, CTF.

³⁵ Cross-examination of John Nicolle, Rex v. Nicolle, AAOM W3265 1917 John Nicolle, CTF.

³⁶ Deposition of Constable Grey, AAOM W3265 1908 Thomas Inchey, CTF.

³⁷ To the Court, Elizabeth McK., AAOM W3265 1907 A.P. Downes, CTF.

³⁸ Deposition of Alice T., AAOM W3265 Horace Martin, CTF.

³⁹ Deposition of Thomas H., AAOM W3265 1908 Thomas Inchey, CTF.

⁴⁰ Deposition of Martha M., AAOM W3265 1909 Charles Taylor, CTF.

A boy's word and parental support for a charge, though, were insufficient evidence on their own to secure a conviction. The jury agreed with Mrs T. and convicted Martin, but only of the lesser offence of indecent assault. There were no corroborative witnesses, neither was there any medical evidence of sodomy. One difference from cases involving girls under 11 years of age is that, offences committed upon boys were rarely interrupted by adults. Boys were assaulted while carrying out the same types of chores or leisure activities as girls (like carrying out messages or playing in the street), but they appear to have been less closely supervised than girls.⁴¹ Perhaps the sexual danger posed to boys was not as well recognised as that to girls. As well, it is possible that boys' greater physical independence from homes might have led adults to believe that boys could look after themselves. Indeed, some boys were expected to make the complaint to the police themselves. Elizabeth McK, for example, sent her seven-year-old son Rupert to the police station on his own to make a complaint to the constable.⁴² And 10-year-old boys Arthur E. and Thomas M. both went to the police directly, before telling their parents. Arthur even followed his assailant to his house and then took the police there.⁴³

To actually prove sodomy, the prosecution had to show that Bertie had been anally penetrated.⁴⁴ The usual way of doing so was by medical evidence of penetration. Mrs T., for example, took Bertie along to the doctor on the day of the offence, but she had inadvertently destroyed any evidence that might have supported the charge by washing Bertie 'for the sake of cleanliness'.⁴⁵ The lack of medical evidence, however, did not necessarily destroy a case. Roderick McKenzie (the same man mentioned in chapters two and three) was convicted of attempted buggery on eight-year-old Stanley P. even though the doctor's examination of Stanley found no 'marks of violation'.⁴⁶

Although the charge was reduced, Martin was convicted. The jury agreed with Mrs T. that men should not be allowed to sexually interfere with boys. Martin, however, recognised different sexual boundaries. By admitting the offence to Mrs T. and to the police, he clearly showed that he knew what he had done to Bertie was wrong. His admission reveals a noticeable tension between one form of sexual desire, and moral codes. This

⁴¹ Daley, p.113.

⁴² Deposition of Elizabeth McK., AAOM W3265 1907 A.P. Downes, CTF.

⁴³ Deposition of Arthur E., AAOM W3265 1905 William Conway; deposition of Frederick M., AAOM W3265 1910 Cecil Meyrick, CTFs.

⁴⁴ s.153 *Crimes Act, 1908*.

⁴⁵ Cross-examination of Alice T., AAOM W3265 1919 Horace Martin, CTF.

⁴⁶ Deposition of Dr. Dawson, AAOM W3265 1918 Roderick McKenzie, CTF.

tension was shared by many men who, in today's terms, would be labelled paedophiles. Joseph Brain also acknowledged that his sexual desires were in conflict with sexual mores prohibiting sexual relations with children. Brain was charged and convicted in 1910 of sexually assaulting a couple of boys to whom he taught music. He said "I admit it I know I had no right to do what I did It was wrong I have fought hard against it for a long time".⁴⁷

Whether a paedophile subculture existed in Wellington is difficult to detect. A few men appeared before the Supreme Court on more than one occasion for sexual assaults on boys and girls. Roderick McKenzie, for instance, was found guilty of three offences in Wellington between 1900 and 1920. His victims included a six- and an eight-year-old girl and an eight-year-old boy.⁴⁸ Martin, for instance, had a history of sexually assaulting boys. Once Martin was convicted for the indecent assault of Bertie, the police discovered that he had a reputation while acting as a scoutmaster in Hawke's Bay.⁴⁹ Certainly, offences against boys and girls under 12 years old made up the largest single group of offences prosecuted in Wellington between 1900 and 1920. The age and sex of victims were available for 216 of the 266 charges prosecuted during the period. Of these, 96 or 43.8 per cent involved children (19.8% were boys). This was probably inflated out of proportion to other types of offending because of more widely held concerns about the sexual safety of children. But, it does indicate that a large number of men considered children as potential sexual partners. An analysis of age-of-offender statistics for the sample cases, moreover, (offenders ages were available for 69 of the 70 offences) indicates that in nearly 75 per cent of these, the offenders were at least 10 years older than the victims.⁵⁰ The criminal trial files hint that men with sexual interest in children may have had access to child pornography: a couple of assailants, for example, took naked photographs of boys.⁵¹ But it cannot be established whether these photographs, and others, were actually sold.

What is clear from the criminal trial files, though, is that men and boys did engage in consenting same-sex relations, including prostitution, and though the boys tended to be adolescents, rather than 'children'.

⁴⁷ Deposition of John Cassells, AAOM W3265 1910 Joseph Brain, CTF.

⁴⁸ AAOM W3265 1908 and 1918 Roderick McKenzie, CTF.

⁴⁹ Report of Constable O'Halloran, [day and month destroyed] 1919; and report of Constable Brenchley, 14 May 1919; AAOM W3265 1919 Horace Martin, CTF.

⁵⁰ Ages compiled from the Return of Prisoners Tried and CTFs.

⁵¹ See AAOM W3265 1911 George Neish; 1915 Andrew Finlay, CTF.

Adolescent Boys

Adolescent boys comprised a third of all male victims. Of the 16 adolescent victims, 13 were assaulted by non-strangers: six by teachers, four by acquaintances and community members, three by sexual acquaintances, and one by a work contact. The trial in 1900 of Brother Wibertus (Edouard Forrier), a Marist Brother and teacher at the Stoke Orphanage (St Mary's Industrial School) in Stoke, near Nelson, is used as the case study for this part of the thesis. Brother Wibertus was accused of indecently assaulting five adolescent 'inmates' at the school during the 1890s. The case provides an insight into the formation of adolescent boys' understandings of sexual pleasure and danger, and the meanings attached to them by contemporaries. The case also provides an example of an assailant exploiting a position of power within an institutional setting for his sexual pleasure.

The sexual assaults of Edward Matthews, Thomas Owens, William Hardwick, William Guckert, and James Richardson

In mid 1900 a scandal erupted in Nelson over allegations of mistreatment of boys at the Stoke Orphanage. Marist Brothers ran it as an orphanage and a private industrial school for Roman Catholic boys.⁵² The controversy resulted in a Commission of Inquiry into the management of the school which sat in July and August 1900. An ex-inmate of the school laid a complaint with the commissioners that he had heard a boys telling other boys that Brother Wibertus had 'treated him indecently'.⁵³ and later to the laying of 16 criminal charges against two brothers. Brothers Wibertus and Kilian were both charged with common assault and summonsed to appear in the Nelson Magistrate's Court in late September 1900. On the day of the depositions hearing, Brother Wibertus was further charged with six counts of indecent assault which occurred in the 1890s.⁵⁴

Brother Wibertus was the tailoring master and a teacher at the school. He had a formidable reputation for violence and excessive punishment which led to his removal from

⁵² In May 1900, two boys absconded from the school. They were arrested and punished with sentences of solitary confinement. Under school regulations, the term of punishment could be equal to the length of time the boys were absent from the school. Some Nelsonians considered the length of time involved in this case excessive (three months). See Gallaher, pp.62-64.

⁵³ Report of the Royal Commission on Stoke Industrial School, *AJHR*, 1900 E—3B, Appendix K, p.97.

⁵⁴ 'The Prosecutions', *Nelson Evening Mail*, 20 Sep 1900, clipping, P 10/1 Stoke Industrial School 1900.

the school following the Inquiry in August 1900.⁵⁵ The five victims were all in his tailoring class during their time at the school.⁵⁶

The majority of the assaults occurred in a storeroom for clothes and sheets known as 'the old study', which Brother Wibertus supervised as part of his duties.⁵⁷ The events preceding and subsequent to the assaults committed in the old study followed a pattern. Brother Wibertus would send a boy up alone to the study on an errand related to the tailoring work. Matthews and Owens, for instance, said they were assaulted when sent to tidy the room by Brother Wibertus.⁵⁸ Hardwick and Guckert were sent up with clothes or sheets on several occasions.⁵⁹ Richardson asked Brother Wibertus for a change of clothes and was sent up to the old study to get them.⁶⁰ After sending a boy to the study, Brother Wibertus would leave the tailoring shop about five or ten minutes later and go to the old study himself. The door was closed on all occasions. The boy and Brother Wibertus would remain in the room together for about 15 minutes. They would then leave separately, between five and ten minutes apart.⁶¹

The boys were assaulted once the door was shut. Matthews said that Brother Wibertus:

used to try to do something to me but never succeeded . . . he used to begin feeling about my private parts. He used to unbutton my trousers and fiddle about with my Penis He also used to have his own trousers unbuttoned & sometimes his person out but not often On one occasion he lead me over to the other side of the study where there was an old table and he tried to lay me backwards on this old table but I would not let him . . . I made too much of a row and the boys working in the dormitory could have heard it I did not complain to the Brothers but the boys commenced to barrack me in the yard two or three days afterwards and then I told the boy Walsh what had happened.⁶²

⁵⁵ Report of the Royal Commission on Stoke Industrial School *AJHR* 1900 E—3B, p.3.

⁵⁶ Brother Loetus' evidence, Report of the Royal Commission on Stoke Industrial School, *AJHR*, 1900 E—3B, p.60.

⁵⁷ Deposition of Hugh G., AAOM 1900 Edouard Forrier (Hardwick's case), CTF.

⁵⁸ Deposition of Edward Matthews and Thomas Owens, AAOM W3265 1900 Edouard Forrier (Cases of Matthews, Owens, Guckert, and Richardson), CTF.

⁵⁹ Deposition of William Hardwick and William Guckert, AAOM W3265 1900 Edouard Forrier (Cases of Edward Matthews, Owens, Guckert, and Richardson), CTF.

⁶⁰ Deposition of James Richardson, AAOM W3265 1900 Edouard Forrier (Cases of Matthews, Owens, Guckert, and Richardson), CTF.

⁶¹ AAOM W3265 1900 Edouard Forrier (both cases), CTF.

⁶² Deposition of Edward Matthews, AAOM W3265 1900 Edouard Forrier (Cases of Matthews, Owens, Guckert, and Richardson), CTF.

Owens described two assaults similar to the one on Matthews, but he told no one because he was afraid of Brother Wibertus' violence.⁶³ William Hardwick said that Wibertus would put his 'person' between his legs and 'work till dirt came and then he would wipe it off me'.⁶⁴ Hardwick threatened to tell Brother Loetus (the director of the school) 'on him for doing tricks'. Brother Wibertus replied 'don't you tell because it would bring misery on me' and Hardwick did not complain.⁶⁵ Guckert was only molested once. He did not object except to say "'Look out" . . . [as] it was no use'. He feared Brother Wibertus and thought that resistance might provoke Wibertus to hit him or be 'hard on him' at the school.⁶⁶ Richardson was also assaulted in the same manner as Hardwick when sent up to get clothes. But Richardson was also assaulted in Brother Wibertus' bedroom and in his own bed. Richardson told the court: ' I never told any body about these things until I told the Constable quite recently I had no reason for not telling Brother Loetus except I did not like to.'⁶⁷

Analysis

For the Stoke boys, the unequal power relationship between themselves and Brother Wibertus affected their formation of consent. For adolescent boys, consent could also depend upon their awareness of the same-sex sexual subculture, and their physical size.

Industrial school inmates were by law completely within the control of the school because the Manager was their legal guardian until they turned 21 years of age.⁶⁸ As well, any child committed to the school by a Magistrate (as were all the victims in this case) could not be discharged from the school without the permission of the Governor-General.⁶⁹

⁶³ Thomas Owens' statement, *Police v. Wibertus*, Evidence on charges of indecency, P 10/1 Stoke Industrial School 1900.

⁶⁴ Deposition of William Hardwick, AAOM W3265 1900 Eduoard Forrier (Cases of Matthews, Owens, Guckert, and Richardson), CTF.

⁶⁵ Deposition of William Hardwick, AAOM W3265 1900 Eduoard Forrier (Cases of Matthews, Owens, Guckert, and Richardson), CTF.

⁶⁶ 'The Stoke Orphanage Cases', *EP*, 3 Dec 1900, p.6.

⁶⁷ Deposition of James Richardson, AAOM W3265 1900 Eduoard Forrier (Cases of Matthews, Owens, Guckert, and Richardson), CTF.

⁶⁸ P. Whelan, 'The Care of Destitute, Neglected and Criminal Children in New Zealand 1840—1900', Masters thesis in history, Victoria University of Wellington, 1956, pp.155—56.

⁶⁹ Whelan, p.156.

This situation of an unequal power relationship influencing consent was not unique to adolescent boys. Other male victims and also female victims experienced difficulty in challenging men to stop offending when the abuser held a position of authority over them. Such relationships included, for instance, boys and their music teacher, a lieutenant in the Territorials and several young men who were Senior Cadets, a Military policeman and two military prisoners, a boy's senior work colleague, or a man trusted to care for neighbourhood children.⁷⁰ Ten-year-old Arthur T., for instance, was molested by his music teacher. Arthur said that he had 'said nothing to him about him doing it. I did not like to speak to him.'⁷¹

Yet in the Stoke cases, consent was still clearly an issue as boys did withhold it. Matthews and Guckert resisted Brother Wibertus' advances. Hardwick even managed to turn the situation to his advantage. After Wibertus pleaded with him not to tell Brother Loetus, Hardwick invoked his threat of disclosure to limit Brother Wibertus' violence towards him. At least on one occasion this threat enabled Hardwick to avoid getting a 'clout'. Hardwick also commented that the tailoring boys got better clothes than the others.⁷² Evidence of Brother Wibertus having rewarded the boys suggests that some boys' lack of consent may have been more ambiguous than others. Hardwick, for instance, appears to have been aware of the advantages of staying in Brother Wibertus' favour, while Matthews and Owens resisted him outright.

This difference in boys' dealing with the assault suggests that some of the tailoring boys at Stoke may have complied with Brother Wibertus' coercive sexual advances, for which they received his protection in the way of clothes and his refraining of violence, while others interpreted the assaults simply as sexually threatening. Richardson, for example, detailed receiving clothes after one assault: 'Then I did up my trousers he gave me the clothes I asked for.'⁷³ Matthews, on the other hand, shouted out and tried to resist the offence. In her study of incest, Linda Gordon has pointed out that sexual abuse was not necessarily 'motivated only by hostility or . . . experienced simply as abuse.' Consequently, 'the very definitions of acquiescence and resistance . . . [are] challenged, blurred, and

⁷⁰ Respectively, AAOM W3265 1910 Joseph Brain; 1913 Joseph Smith; 1918 David Williamson; 1918 John Slines; 1917 John Nicolle; CTFs.

⁷¹ Deposition of Arthur T., AAOM W3265 1910 Joseph Brain, CTF.

⁷² Deposition of William Hardwick, AAOM W3265 1900 Edouard Forrier (Hardwick's case), CTF.

⁷³ Deposition of James Richardson, AAOM W3265 1900 Edouard Forrier (Cases of Matthews, Owens, Guckert, and Richardson), CTF.

perhaps reformulated' within the context of particular cases.⁷⁴ A similar analysis seems to fit this case of institutional sexual abuse. Hardwick, for instance, objected to Brother Wibertus' advances, but his acquiescence was not necessarily influenced only by his perceived powerlessness vis a vis Brother Wibertus, but his realisation that he might actually be able to increase his power in relation to Brother Wibertus.

Other cases in the study provide examples of adolescent boys exchanging sex for 'pleasure'. In this sense, sexual pleasure is not necessarily literal, but includes examples of adolescent boys turning a sexual situation to their advantage. Such behaviour is evidence of a similar kind to that found by Jeffrey Weeks and Steven Maynard in their studies of working class boys' relationships with men. In urban England and Ontario during the late-nineteenth and early twentieth centuries, working class youths were essential participants in the homosexual subculture. Messenger boys, stable lads and newsboys were well known to supplement their low wages through casual male prostitution.⁷⁵ In Wellington, youths working in poorly paid occupations, particularly newspaper and telegraph boys, and railway cadets, all engaged in sexual relations with men for money and were regarded as potential partners by men seeking casual homosexual encounters. John Lavigne, for example, who attempted to pick up a 15-year-old telegraph messenger, Clement H., was well known by the Government Post Office telegraph boys. They told their supervisor that he had 'been accosting them and making a nuisance of himself.'⁷⁶ He claimed to have slept with two boys at the Post Office and asked Clement if he could suggest any boys who might sleep with him.⁷⁷ Similarly, 12-year-old Kenneth R. was an *Evening Post* paper boy. He knew the man who he had sex with because he 'used to hang around the paper boys'.⁷⁸ Adolescent boys sold sexual favours for material gain by turning men's sexual desires to their own advantage. Many of the adolescent boys in the study jumped at the chance to make some money or be treated to a trip to the theatre or to Newtown Park, for a tram ride to Oriental Bay or a drive in a taxi, and were prepared to trade their company and sex for these things.

The type of qualified consent hinted at in some of the Stoke cases can be detected in other ones when adolescent victims' evidence of consent was ambiguous. In New Zealand between 1900 and 1920, boys and men who admitted being voluntary partners in a same-sex

⁷⁴ Linda Gordon, *Heroes of their Own Lives. The Politics and History of Family Violence, Boston 1880—1960*, Virago: London, 1988, p.209.

⁷⁵ Maynard, p.192.

⁷⁶ Deposition of James T., AAOM W3265 1917 John Lavigne, CTF.

⁷⁷ Deposition of Clement H., AAOM W3265 1917 John Lavigne, CTF.

⁷⁸ Deposition of Kenneth R., AAOM W3265 1919 Julian Huggens, CTF.

encounter were liable to be charged with offences. In Wellington in 1920, for instance, Albert Davies and Percy Francis were jointly tried for buggery after being discovered together in a public convenience by a policeman.⁷⁹ Male partners therefore sometimes assumed the role of ‘victim’ to prevent being prosecuted. This situation was reflected in the cases by a tension between complainants, who apparently sought out sexual contact, and their consequent court status as ‘victims’.

The relationship between a 14-year-old boy, Colin B. and 41-year-old Andrew Finlay is one illustration. In 1914, Colin was looking in the window of a Wellington bicycle store when Finlay came up and asked him if he would like to go to the theatre. Finlay paid for Colin’s admission, and subsequently paid for a variety of entertainment. After a few ‘appointments’ Finlay took Colin to his bedroom and ‘put his hand up the leg of . . . [Colin’s] trousers’. Colin made several more visits to Finlay at his Hotel over the next week, and they continued their outings. Finlay then went to Auckland and shortly after left New Zealand. He sent Colin several letters from Australia, and in July 1915 wired him that he was arriving in Wellington. Finlay stayed at Colin’s place. He was given a ‘bed sitting room’ to himself, but Colin slept with him there. On two occasions Finlay got into Colin’s bed. The first time Colin said Finlay ‘undid my pyjamas & started fooling round with me touching me on my private parts. The next morning he put his private parts between my legs’ and other sexual acts including petting and oral sex took place. Finlay bought Colin a bicycle valued at £12 and occasionally gave him pocket money, a few ties, a shirt ‘and several things like that’. While Finlay stayed at his house, Colin also introduced him to two of his friends to whom Finlay also made sexual advances. It is unclear how Finlay came to the notice of the police.⁸⁰ In 1915, though, Colin appeared in court as one of three victims of indecent assault by Finlay. Colin gave the details of their relationship reluctantly. When outlining the sex, Colin had to be prompted by the prosecuting policeman who said: “Go on, you have told us more than this before”.⁸¹

How adolescent boys interpreted same-sex advances could depend upon their knowledge of same-sex sexuality. Awareness increased with exposure to sex. Brother Wibertus’ actions were a topic of conversation amongst the Stoke boys. They knew that the signs of an imminent sexual assault involved a boy being sent to the old study alone and of

⁷⁹ Supreme Court. Criminal Sessions Open. Unnatural Offence’, *NZT*, 3 Aug 1920, p.5.

⁸⁰ Deposition of Colin B., AAOM W3265 1915 Andrew Finlay, CTF.

⁸¹ Deposition of Colin B., AAOM W3265 1915 Andrew Finlay, CTF. See also AAOM W3265 1915 Fortunatus Wright; 1916 Thomas McNamara; 1918 John Slines; 1918 William Callaghan; 1919 James Whiting; 1919 Julian Huggens; CTFs.

Brother Wibertus following.⁸² But whether the boys associated Brother Wibertus' activities with homosexuality is less clear. As outlined in chapter one, some boys like Colin B. and Kenneth R. understood the coded language and acts of the homosexual subculture. At Stoke, some of the boys may have made the connection because they used what appears to be homosexual slang to refer to the assaulted boys. The boys were known around the school as the 'Pets'. Though the common interpretation of the term in the late twentieth century refers to school children who receive special attention from a teacher, during the early twentieth century, the term also had a specifically homosexual connotation. Writing in 1935, Frank Sargeson, an active homosexual and writer, used the term 'pet' in a story to describe a man who as a boy, had been involved in a sexual relationship with an older man.⁸³ This type of relationship resonates with the wolf/punk relationship identified by Chauncey in his work on the homosexual subculture of New York between 1890 and 1940. These relationships were organised on 'the basis of power and status hierarchy dictated by age . . . and sometimes took on a coercive edge'. Wolves were 'active pederast[s]' who liked to take the 'man's role' in sex with youths ('punks'). Generally, 'punk' referred to 'a youth who let himself be used sexually by an older and more powerful man, the wolf, in exchange for money, protection, or other forms of support.' Such relationships tended to be situational, existing primarily amongst men who were 'exceptionally disengaged from the family and neighbourhood systems that regulated normative sexuality: seamen, prisoners, and . . . transient workers'.⁸⁴ As Jeffrey Weeks has pointed out, boarding schools were well-known sites of situational homosexuality.⁸⁵

The extent of adolescent boys' consciousness of the same-sex sub-culture was uneven. Some adolescent boys recognised circumstances as sexually dangerous. Twelve-year-old Robert T., for instance, alerted the brother of 10-year-old Thomas M. that he had seen a man take Thomas into Newtown Park and thought that the man 'must have taken out his private' to Thomas.⁸⁶ In contrast, a 13-year-old boy named Cecil G. was upset and frightened when the man with whom he was walking home attacked him in a public toilet.

⁸² Depositions of William Guckert, Edward Matthews, William Hardwick, AAOM W3265 1900 Edouard Forrier (Cases of Matthews, Owens, Guckert, and Richardson), CTF.

⁸³ Cited in Michael King, *Frank Sargeson. A Life*, Viking: Auckland, 1995, p.158.

⁸⁴ Chauncey, p.88.

⁸⁵ Jeffrey Weeks, *Sex, Politics and Society. The Regulation of Sexuality Since 1800* (2ed.), London: Longman, 1989, p.109.

⁸⁶ Deposition of Frederick M., AAOM W3265 1910 Cecil Meyrick, CTF.

Cecil had gone into the toilet voluntarily because he wanted to use the urinal.⁸⁷ The assailant, Charles Chadwick, appears to have interpreted Cecil's action as an invitation to sexual activity. When he was pulled into a stall by his assailant, Cecil assumed the man thought that he wanted to defecate. He told the man that he did not '... want to do any business' meaning I did not want to go to the closet.'⁸⁸ Fifteen-year-old Maurice L. was assaulted by a man named Patrick Murphy when Maurice went to a hotel to pick up some washing for his laundress mother. For Maurice, 'it was the first time anything had happened. I didn't know what he meant by it. Nobody ever mentioned anything of a similar nature to me before.'⁸⁹ Consequently, ignorance of same-sex relations meant that adolescent boys could be unaware that other males were potentially sexually dangerous.

That boys did experience sexual assault as sexually dangerous is shown by their resistance to offences. Twelve-year-old Julian S., for example, 'struggled' to get away from a 41-year-old assailant but could not.⁹⁰ Adolescent boys' resistance did, however, tend to be more assertive than younger boys' and girls', and adolescent girls'. Their first reaction in an assault situation was to 'sing out' for help.⁹¹ But they went further than defending themselves. Fifteen-year-old Henry T., for example, chased his attacker through the streets of Wellington until he lost sight of him.⁹² And when 15-year-old Maurice L. objected to Patrick Murphy's sexual overtures, he pulled his knife out of his pocket, opened it and demanded to be let out of the room. Lewis said '... as I was going out the door he pulled me onto the couch... He tried to get me to lie down on the couch & touched my privates with his hand. I stuck the knife in his hand... He never touched me again after that.'⁹³

The context of the Stoke cases was unusual among the extant cases in the study, for there were no other cases involving so many victims within an institution. Nevertheless, the dynamics of these sexual assaults provide as a point of entry into adolescent boys' experience of same-sex encounters as a sexually pleasurable, dangerous, or a mix of the two.

⁸⁷ Deposition of Cecil G., AAOM W3265 1914 Charles Chadwick, CTF.

⁸⁸ Deposition of Cecil G., AAOM W3265 1914 Charles Chadwick, CTF.

⁸⁹ Cross-examination of Maurice L., AAOM W3265 1919 Patrick Murphy, CTF.

⁹⁰ Deposition of Julian S., AAOM W3265 1905 Allan Gibson, CTF. AAOM W3265/2923 Return Of Prisoners Tried, 1902—12, p.50.

⁹¹ Deposition of Henry T., AAOM W3265 1902 Dennis Riley; depositions of Arthur E. and James G., AAOM W3265 1905 William Conway; cross-examination of Rupert McK., AAOM W3265 Albert Downes; cross-examination of Antoion M. AAOM W3265 1909 Charles Taylor; CTFs.

⁹² Deposition of Henry T., AAOM W3265 1902 Dennis Riley, CTF,.

⁹³ Testimony of Maurice L., Rex v. Patrick Murphy, AAOM W3265 1919 Patrick Murphy, CTF.

The trials of Brother Wibertus

The indecent assault charges against Brother Wibertus were not expected by his defence counsel, Mr Fell. As Fell had insufficient time to prepare a defence, he declined to cross-examine the boys in the lower court. Brother Wibertus reserved his defence and was committed to trial on all six charges at the next sittings of the Nelson Supreme Court.⁹⁴ At the close of the case, Fell announced that his client's defence would be 'a total denial of the whole thing'.⁹⁵

The trials actually took place in Wellington between 29 November and 10 December 1900 (because the degree of public feeling had risen in Nelson to an extent that jeopardised the Brother's chances of a fair trial).⁹⁶ In his charge to the Grand Jury, Mr Justice Edwards pointed out that consent was 'no justification whatever' of a charge of indecent assault on a male, irrespective of whether the boys 'either actively or tacitly consented to the acts' alleged.⁹⁷ Messers Bell and Myers prosecuted for the Crown, and Messers. Skerrett, Fell, and Wilford appeared for Brother Wibertus.⁹⁸

In the end, only the cases involving Hardwick, Owens, and Guckert were tried. Brother Wibertus pleaded not guilty in each case.⁹⁹ The cases were tried separately but they were all characterised by poor performance by the witnesses and a similar defence strategy. The boys* changed details of the stories they told in the lower court, and contradicted evidence under examination and cross-examination. The defence argued that Brother Wibertus had been falsely accused of the crimes and attacked the boys' character to prove this. The boys, argued the defence, were motivated by the desire for revenge against their

⁹⁴ Charles Fell to M. Myers, 27 Sep 1900, P 10/1 Stoke Industrial School 1900.

⁹⁵ 'The Graver Charges. Brother Wibertus Committed for Trial. Defence Reserved', *Nelson Evening Mail*, 24 Sep 1900, clipping, P 10/1 Stoke Industrial School 1900.

⁹⁶ AAOM W3265/2922 Return of Prisoners Tried (Wellington and Wanganui) May 1888—August 1901, pp.243—245.

⁹⁷ 'Supreme Court. Criminal Sittings. His Honor's Charge', *EP*, 12 November 1900, p.6.

⁹⁸ 'The Stoke Orphanage Cases. Trial of Brother Wibertus. Breakdown of One Case', *EP*, 29 November 1900, p.6; 'The Stoke Cases. Trial of Brother Wibertus. Charge of Indecent Assault. Verdict of Not Guilty', *NZT*, 1 December 1900, p.3.

⁹⁹ 'The Stoke Orphanage Cases. Trial of Brother Wibertus. Breakdown of One Case.', *EP*, 29 November 1900, p.6; 'The Stoke Cases. Trial of Brother Wibertus. Charge of Indecent Assault. Verdict of Not Guilty', *NZT*, 1 December 1900, p.3.

* For the sake of simplicity, the generic term 'boys' is used to describe the victims in this case. They were, of course, all within the age group I have described as 'adolescent boys'.

harsh schoolmaster. Because the revelations of offences coincided with the Commission of Inquiry, Fell suggested that the boys were using the sympathy generated by the Commission to satisfy their vindictiveness. Under cross-examination, Hardwick and Owens admitted to having sexual relations with other boys at the school. Evidence of their being 'corrupt' was used to suggest the boys had the knowledge upon which to construct allegations of sexual abuse.

The prosecution acknowledged the difficulty in proving the offences. In Guckert's case, Mr Bell noted that sexual assault cases often resulted in only one witness being able to give evidence of the act committed. Nevertheless, Bell called other boys to testify to having seen Brother Wibertus and the victims enter and leave the study to corroborate the boys' stories.¹⁰⁰ He emphasised the number of offences,¹⁰¹ and the obstacles to the boys complaining.¹⁰² In Owens' case, Mr Bell warned the jury not to 'assume' that Owens was lying because he had 'admitted acts of depravity' himself, and suggested that he might have learned those practices from Brother Wibertus.¹⁰³

Hardwick's case was withdrawn by Mr Bell because Hardwick's evidence was so contradictory that it might not be 'safe' to continue.¹⁰⁴ Justice Edwards declared that 'personally . . . [he] would not punish a cat upon this evidence' and directed the jury to find a verdict of 'not guilty'.¹⁰⁵ A 'not guilty' verdict was returned in Owens' case. Guckert's case was tried twice before a 'not guilty' verdict was returned. The remaining two charges were then dropped by the Crown prosecutor. The Marist Brothers left the school as a result of the Commission of Inquiry.¹⁰⁶ Following the trial, Brother Wibertus left Wellington for Sydney, and nothing further is known of his activities.

¹⁰⁰ 'The Stoke Cases', *NZT*, 30 Nov 1900, p.2.

¹⁰¹ 'The Stoke Cases', *NZT*, 30 Nov 1900, p.2.

¹⁰² 'The Stoke Cases. Trial of Brother Wybertus. Charge of Indecent Assault. Verdict of Not Guilty', *NZT*, 1 Dec 1900, p.3. 'The Stoke Cases', *NZT*, 4 Dec 1900, p.3.

¹⁰³ 'The Stoke Cases. Trial of Brother Wybertus. Charge of Indecent Assault. Verdict of Not Guilty', *NZT*, 1 Dec 1900, p.3; 'The Stoke Orphanage Cases. Trial of Brother Wybertus. Verdict of Not Guilty', *EP*, 1 Dec 1900, p.2.

¹⁰⁴ 'The Stoke Orphanage Cases. Trial of Brother Wibertus. Breakdown of One Case.', *EP*, 29 November 1900, p.6.

¹⁰⁵ 'The Stoke Orphanage Cases. Trial of Brother Wibertus. Breakdown of One Case.', *EP*, 29 November 1900, p.6.

¹⁰⁶ Gallagher, p.65.

Analysis

As already outlined in relation to the case against Horace Martin, to prove a charge of same-sex offending the prosecution had to show that an offence occurred. The Crown case against Brother Wibertus lacked sufficient corroborative evidence to do this. In addition, the cases failed because the boys altered and contradicted their lower court evidence, and because of the length of time between the commission of the offences and the respective victim's first complaints about them.¹⁰⁷ Nevertheless, the cases raised the issue of the degree of sexual protection which should be accorded to adolescent boys and the type of boys who should be protected. The answer to both, it seems, lay in the construction of adolescent boys' character.

In her study of same-sex offending in late nineteenth-century Australia, Jill Bavin-Mizzi concluded that male complainants appeared to have been considered more trustworthy witnesses than were females. The truthfulness and character of male complainants was examined in only one of the 46 sodomy cases (involving victims of all ages) before the Supreme Courts of Victoria, Queensland and Western Australia between 1880 and 1900.¹⁰⁸ The evidence for Wellington cases involving adolescent boys is unusually limited. This is partly due to the type of documents that have survived in files. In only two of the 14 cases tried (two men pleaded guilty) do Supreme Court transcripts survive. Most of this section is therefore drawn from the depositions. In these, extensive cross-examinations of witnesses were made in only a handful of these cases. The available material does, however, suggest that the character of adolescent male complainants was considered relevant.

In early twentieth-century Wellington, adolescent boys' characters were judged against the ideals of adolescent behaviour. These revolved around understandings of respectable behaviour. In the late nineteenth century, larrikinism, characterised by boys' unruly presence in the streets, was closely associated with juvenile depravity. Boys were labelled larrikins if they hung about the streets, smoking cigarettes, were cheeky and used bad language, and stayed out late at night.¹⁰⁹ Defence strategy aimed at undermining adolescent boys' allegations of sexual assault suggest that this association continued

¹⁰⁷ 'The Stoke Cases. Trial of Brother Wybertus. Charge of Indecent Assault. Verdict of Not Guilty', *NZT*, 1 Dec 1900, p.3;

¹⁰⁸ Bavin-Mizzi, pp.138—39.

¹⁰⁹ Gregory, pp.1, 7.

through the early twentieth century. Their claims to sexual injury were viewed through the prism of respectability, especially through truthfulness, upbringing and sexual morality.

Truthfulness was the most consistent focus of character and was essential for witnesses to have credibility in court. In the Stoke cases, the judges were clear that the contradictions in the boys' evidence did compromise their reliability. In Owens' case, for instance, Justice Edwards said that 'it was absolutely dangerous to society if a witness in this Court were upon any point allowed to contradict the very clear evidence given by him in the Court below'.¹¹⁰ In other cases victims were also suspected of lying about assaults. Under cross-examination, 15-year-old Maurice L., for instance, flatly denied that he had been lying. 'It really happened', said Maurice.¹¹¹

The speed with which adolescent boys made complaints of assaults was one measure of truthfulness, and was considered to mediate their claims to sexual injury. The Stoke boys' failure to complain about the assaults fuelled the defence argument that the assaults had not occurred. Indeed, the length of times between the commission of the offences and the making of complaints was extraordinarily long. According to the Chief Justice, such complaints would not have been entertained had they not occurred in a school.¹¹² Other cases in the sample were prosecuted after delays in time but the complaints were always made promptly. John Dorne, for instance, was tried three years after assaulting an eight-year-old girl, but the police had been looking for him since her father laid a complaint on the day of the offence.¹¹³ The cross-examination of 15-year-old Maurice L., for instance, concentrated on when he made a complaint about the offence. Maurice did not complain to any of the people at the hotel in which he was assaulted but instead went home and told his parents.¹¹⁴ Thirteen-year-old John K. explained that he went straight home and told his father that Edward Madigan had indecently assaulted him on his way home from school.¹¹⁵

From boys' stories, it seems that the formation of consent was not altered by time. Boys gave a number of reasons for delaying complaints. Brother Wibertus' reputation for violence helped to silence some of his victims. Others felt uncomfortable. Richardson, for

¹¹⁰ 'The Stoke Orphanage Cases', *EP*, 1 Dec 1900, p.2.

¹¹¹ Deposition of Maurice L., AAOM W3265 1919 Patrick Murphy, CTF.

¹¹² 'The Stoke Cases. Charge Against Brother Wybertus', *NZT*, 4 Dec 1900, p.3.

¹¹³ Depositions of Henry W. and Constable Mason, AAOM W3265 1916 John Dorne, CTF.

¹¹⁴ Cross-examinations of Maurice and Alice L., AAOM W3265 1918 Patrick Murphy, CTF.

¹¹⁵ Deposition of John K., AAOM W3265 1913 Edward Madigan, CTF.

instance, said he 'did not like to' tell. Maurice L. told the court that he went straight home and told his father as he thought 'he was the best man to tell. The others [at the hotel] were strangers'.¹¹⁶ Edward Matthews was embarrassed by the rumour that he had been assaulted by Brother Wibertus. When asked by a concerned employee of the school about Brother Wibertus' conduct, Matthews 'simply turned red and didn't answer'.¹¹⁷ Matthews was teased in the school yard after he told another boy.¹¹⁸ Shame motivated another boy to maintain silence about the Stoke assaults. He requested not to be called as a witness 'for the simple reason that my relations I am sure would not like me to be mixed up in such matters.'¹¹⁹

The defence strategy ignored the bind that prevented the boys complaining and so allowed the abuse to continue. The boys were all cross-examined on their opportunities to make a complaint and their reasons for failing to do so. Guckert, for instance, had to admit that Brother Loetus treated him kindly and that he could have gained an audience with either Brother Loetus or Dean Mahoney if he had wished to do so.¹²⁰ Even though Guckert could tell them about the abuse, from what he said in court, he believed there was little chance they would believe him. Furthermore, it ignored Guckert's judgment that a complaint might actually worsen his treatment within the school. The Chairman of the Charitable Aid Board, George Rout, for one, appreciated the bind the boys were in. He feared the boys would 'not speak freely & truthfully [about the offences] until removed from the influence of the priests and Brothers.' He reckoned that Thomas Lynch retracted his allegations at the Inquiry because he was seated next to Brother Wibertus.¹²¹ [not explained]

The stereotype of 'rough' childhood that characterised aspects of defence strategies in cases against girls and boys and adolescent girls was also evident in those employed to defend men accused of sexually assaulting adolescent boys. Adolescent boys' presence on the streets was one focal point. John K. and Cecil G., for instance, were questioned about

¹¹⁶ Re-examination of Maurice L., Rex v. Patrick Murphy, AAOM W3265 1918 Patrick Murphy, CTF.

¹¹⁷ Statement of J.E.L. Haase, enclosure in George Rout to Sgt of Police, Nelson, 31 Aug 1900, P 10/1 Stoke Industrial School 1900. See also testimony of Maurice L., AAOM W3265 1919 Patrick Murphy, CTF.

¹¹⁸ Deposition of Edward Matthews, AAOM W3265 1900 Edouard Forrier (Cases of Matthews, Owens, Guckert, and Richardson), CTF.

¹¹⁹ Statement of John O'Connor ex-inmate of Stoke Orphanage, 21 September 1900, P 10/1 Stoke Industrial School 1900.

¹²⁰ 'Supreme Court. Criminal Sittings. To-day's Proceedings. The Stoke Case', *EP*, 10 Dec 1900, p.5.

¹²¹ George Rout to the Sergeant of Police, Nelson, 31 Aug 1900 (confidential), P 10/1 Stoke Industrial School 1900.

whether they loitered on their way home from school or on messages.¹²² As contemporaries blamed unruly behaviour by adolescent boys on poor parenting,¹²³ the quality of boys' upbringing was another issue. The only question asked of Colin B. under cross-examination was about his mother's drinking habits. The consumption of alcohol by women was stereotypical in contemporaries' construction of poor character. Mrs B. occasionally drank with Andrew Finlay. Her poor character was apparently used to discredit the prosecution case. Adolescent boys' untruthfulness was also measured by a boy's reputation for misbehavior or criminal record. This was assumed of the victims in the Stoke cases, since they were all committed to the school by Magistrates. Eliciting evidence of untruthfulness was, however, also part of Fell's defence strategy. For instance, he insisted on establishing Guckert's criminal record¹²⁴ at the outset of each cross-examination.

Adolescent boys' sexual character were less often examined than were their general characters, but this did occur in a couple of cases involving the possibility of sexual pleasure. The line of questioning adopted by defence counsel in these cases suggests that they were aware of male prostitution by working class adolescent boys, and constructed defences in relation to it. Although consent was not a defence to same-sex encounters, evidence of adolescent boys' moral depravity illustrated by their sexual history and knowledge could discredit their claims to sexual injury. Cecil G. and Maurice L., who were both assaulted as they moved about the city streets, were questioned about their previous contact with an assailant, their sexual knowledge, their resistance, and the speed at which they complained. Like the Stoke boys, the possibility that they acquiesced with their assailants was intended to suggest their depravity and so neutralise their claim to sexual injury.

Judging the culpability of an accused man was never a straightforward reflection of the victim's character. As the Stoke case shows, things like corroboration and witnesses' performance impacted on the outcome of cases. But in addition, interpretations of men's sexual orientation appears to have influenced jurors' perception of accused men's culpability for sexual assaults upon adolescent boys. The men who were convicted of sexual assault upon adolescent boys appear to have been more readily constructed in court as 'sexual perverts' and were considered 'dangerous' to society. Joseph Brain, for instance, was labelled a 'degenerate' and the judge who sentenced him described him as 'a dangerous

¹²² Cross-examination of John K., AAOM W3265 1913 Edward Madigan; cross-examination of Cecil G., AAOM W3265 1914 Charles Chadwick; CTFs.

¹²³ Gregory, p.34.

¹²⁴ 'The Stoke Cases', *EP*, 3 Dec 1900, p.6; 'The Stoke Cases', *NZT*, 10 Dec 1900, p.5.

man' who would have to be 'withdrawn from contact with the public.'¹²⁵ Referring to Charles Chadwick, who assaulted Cecil G., Justice Hosking said that it did not 'seem proper that a man of [the] prisoner's proclivity should be at large.'¹²⁶ The questions of sexual orientation and the sexual danger of homosexual men is considered further in the next section.

Adult Men

The meaning attached to same-sex advances depended upon perceptions of case contexts as a source of sexual pleasure, material gain, or danger. This section is based on 13 cases involving males aged over 16 years old. Of the 13, four were assaulted by a supervisor, three by work mates, two each by strangers and by acquaintances, and one each by a sexual acquaintance and a community member. The section illustrates the operation of sexual pleasure and danger through a 1916 case of indecent assault committed by Isidore Mount, a clerk, upon a married soldier named Ernest H.¹²⁷ Though the assault was committed by a stranger, it had overtones of a voluntary association between victim and assailant which characterise the representation of the other cases. This outline of this case has already been described in relation to stranger-assaults in Chapter One. It is described here in further detail. The case is reconstructed from depositions, the Supreme Court transcript, and newspaper reports.

The sexual encounter between Ernest H. and Isidore Mount

Ernest H. met Isidore Mount in Wellington city one night in 1916. Ernest had been running to catch the train to Trentham Army Camp after seeing a show at the Opera House with his wife. Mount told him that he had missed the train and offered to put him up for the night at his place. Ernest accepted.

They slept in a double bed. Once undressed and in bed Mount started to talk about 'his experiences in Spanish America, in a house of ill fame.' Ernest told Mount that he was tired and wished to sleep. After about 30 minutes Ernest was 'practically asleep':

¹²⁵ 'Ten Years for a Degenerate. Nervous But Dangerous', *Dom*, 5 Feb 1910, p.15.

¹²⁶ News of the Day', *NZT*, 17 Aug 1914, p.4.

¹²⁷ AAOM W3265 1916 Isidore Mount, CTF.

The next thing I knew was the approach of accused's person against my body. I was facing . . . lying on my side with my back to the accused. At the same time accused's hand passed over my body catching me by the private. I immediately knelt up threatening to knock his head off. I compelled accused to get out and light the light. I got up myself, and started to dress. I told accused to do likewise and accompany me to the Police Station. During the time we were dressing accused repeatedly pleaded on account of his mother that I should overlook the matter.¹²⁸

On the way to the police station the men met a constable. Ernest told him of the charge. The constable asked Mount if it was true and Mount replied "Yes but I did not mean anything by it."¹²⁹

Analysis

Adult men's understanding of same-sex encounters depended upon their knowledge of the homosexual subculture and their sexual orientation. Isidore Mount was clearly interested in homosexual sex. After he was arrested, he said to the police sergeant: "After we went to bed I felt a bit warm sexually. I had an erection of the penis I pushed myself against H. I felt his behind and also caught him by the penis. I had no bad intentions in what I done. What I did do was no more in what you would call horse play."¹³⁰

Men's sexual identity influenced their perception of same-sex advances. George Chauncey's work warns us not to assume that sexual identity in the past was organised within the hetero- and homo-sexual binarism that is prevalent in the late-twentieth century. He found that labelling and self-identification of men as homosexuals in New York only occurred in the middle of the twentieth century. Until then, non-exclusive heterosexuality did not jeopardise a man's identification as 'normal' provided he conformed to masculine gender conventions (as long as a man took the active role in a sexual encounter).¹³¹ In Wellington, the criminal trial files do reveal instances of men moving between heterosexual and homosexual partners. John Lavigne, for instance, attempted to solicit a male prostitute, but said he would settle for 'an old whore' if unsuccessful.¹³² Possibly, too, a homosexual identity was not necessarily the primary or only sexual identity of adolescent boys and adult

¹²⁸ Deposition of Ernest H., AAOM W3265 1916 Isidore Mount, CTF.

¹²⁹ Deposition of Constable O'Brien, AAOM W3265 1916 Isidore Mount, CTF.

¹³⁰ Deposition of Sergeant Wade, AAOM W3265 1916 Isidore Mount, CTF.

¹³¹ Chauncey, pp.12—14.

¹³² Deposition of Clement H., AAOM W3265 1917 John Lavigne, CTF.

men who hired themselves out for prostitution. Ernest H., though, was clearly heterosexual. Like other men who had not agreed to exchange sex for money or goods, Ernest perceived Mount's advances as sexually dangerous. He threatened 'to knock [Mount's] head off' and marched him straight down to the police station.¹³³ William B. threw Henry Williamson out of the room they shared in a hotel.¹³⁴ A lieutenant in the Territorials who sexually harassed four cadets in his charge was wrestled to the ground by the youths, had his pants pulled down, and hot candle grease poured on his 'behind'.¹³⁵

Men who sought out same-sex encounters understood certain words and actions to be signs of like-minded men. In New York between 1890 and 1940, homosexual men employed a variety of codes of dress, speech and style as signs of their sexual orientation. For instance, they bleached their hair and wore red ties.¹³⁶ Unfortunately, evidence of physical homosexual insignia is not available in the Wellington criminal trial files. However, men recognised the meaning coded within particular lines of conversation or proposals. Some instances have already been noted earlier in this thesis. For instance, men's pick up of boys for sex in Willis Street in Wellington seemed to turn on an invitation to the theatre or some other place of amusement; and the use of the term 'pet' most likely had a double meaning. Ernest H., for instance, showed his awareness of this language when he said he became suspicious of Mount's intentions after he talked about 'church choirs and music' and his 'experiences in Spanish America, in a house of ill fame'.¹³⁷ The significance of church choirs and music is not repeated in other cases. But discussion of promiscuous sex seems to have been a means of sounding out homosexual men. Ernest did not make it clear whether the brothel was heterosexual or homosexual. As noted earlier, offenders sometimes tried to get boys' attention by talking about sex with girls or women. These codes were also important in men's negotiation of sex with other men. William Callaghan, for instance, picked up a youth named William G. in Wellington. They walked around Oriental Bay, then on Callaghan's suggestion, went to an isolated spot on the pretense of finding a place to urinate. Callaghan took the boy's reply as a agreement to sex when he said to Gubb: "I'm

¹³³ Deposition of Ernest H., AAOM W3265 1916 Isidore Mount, CTF.

¹³⁴ Deposition of William B., AAOM W3265 1918 Henry Williamson.

¹³⁵ Deposition of Valentine S., AAOM W3265 1913 Joseph Smith, CTF.

¹³⁶ Chauncey, pp.3—4.

¹³⁷ Deposition of Ernest H., AAOM W3265 1916 Isidore Mount, CTF.

feeling like a girl to-night. . . Don't you?" William replied "No they don't worry me." Callaghan then suggested William 'tak[e] hold of' his 'tool'.¹³⁸

The extent of male victims' awareness of sex between men was reflected in the language they used to describe the men who made sexual advances to them and to describe the actual same-sex encounters. Some men attached a homosexual identity to assailants. They identified other men as a particular 'sort'. For instance, Thomas Cox was charged with indecent assault on a male in 1904. Cox gave the impression to the police that he was disgusted by homosexual men, possibly in an attempt to discredit the complainant and to dissassociate himself from the allegation. Cox said that when the complainant, Jeremiah W., told him that he and another man had 'played together', Cox told Jeremiah that he could 'go home by himself as I did not want any of his sort with me'.¹³⁹ Slang terms were occasionally used to describe such men. For instance, in 1918 a soldier described the man who made sexual advances to him as a 'queen'.¹⁴⁰ And in 1919, a policeman described one man: 'he "seemed queer." . . . he was "sort of soft."¹⁴¹

Compared to boys who predominantly failed to attach homosexual meaning to same-sex sexual assaults, some men (and some adolescent boys) used euphemisms to convey their meaning. A few of the ex-inmates of the Stoke Orphanage were aged in their mid to late teens at the time of the trials. When interviewed by the police they referred variously to boys being sent to the study for 'unnatural purpose[s]',¹⁴² 'indecent purpose[s]',¹⁴³ and to 'acts of indecency.'¹⁴⁴ Fifteen-year-old William Hardwick referred to Brother Wibertus 'doing tricks'¹⁴⁵ and 22-year-old James B. to his assailant's 'dirty tricks'.¹⁴⁶ Cruder slang was used by adult men and included terms such as 'pull me off' for

¹³⁸ Deposition of William G. AAOM W3265 1918 William Callaghan, CTF.

¹³⁹ Deposition of Detective Cameron, AAOM W3265 1904 Thomas Cox, CTF.

¹⁴⁰ Testimony of William B., Rex v. Henry Williamson, AAOM W3265 1918 Henry Williamson, CTF.

¹⁴¹ 'Another Case.', *NZT*, 6 Aug 1919, p.10.

¹⁴² Statements of John Sheedy and Richard Tierney, ex-inmates of Stoke Orphanage, 12 Sep 1900, P 10/1 Stoke Industrial School 1900.

¹⁴³ Statement of Richard Martin ex-inmate of Stoke Orphanage, 11 Sep 1900, P 10/1 Stoke Industrial School 1900.

¹⁴⁴ Statement of Cornelius Bradley, attached to report of Detective Bishop, re the attached instructions from the Commissioner of Police, 15 Sep 1900, P 10/1 Stoke Industrial School 1900.

¹⁴⁵ Deposition of William Hardwick, AAOM W3265 1900 Eduoard Forrier (Cases of Matthews, Owens, Guckert, and Richardson), CTF.

¹⁴⁶ Deposition of James B., AAOM W3265 Henry Williamson, CTF.

masturbation,¹⁴⁷ ‘suck’, ‘doddle’ or ‘gobble him off’ for fellatio¹⁴⁸ and either ‘pumping’ or ‘having a pump ship’ for sodomy.¹⁴⁹

Euphemism was used less extensively by male victims than adolescent girls and women. One explanation might be that some men felt no need to develop a system of euphemisms because modesty was not a component of masculinity, whereas it was central to the cultural construction of femininity. There is a small amount of evidence suggesting that the physical description of an offence by a man might have been influenced by concerns about respectability. Ernest H., for instance, avoided labeling the assault made on him. He described the offence, then referred to it in nebulous terms in the rest of his evidence. At one point he referred to ‘a thing of that sort’ and at another he commented: ‘I would suggest there was an attempt on what I have told the Court to-day.’¹⁵⁰ Euphemisms may have been the preserve of men ‘in the know.’ A 16-year-old youth who agreed to receive 10 shillings for sodomy was frank in his description of anal intercourse. He talked of a man trying ‘to penetrate me with his penis’ when explaining it.¹⁵¹ However, knowledge of same-sex relations among males does not appear to have been as universal as knowledge of heterosexual sex. A few men resorted to describing same-sex situations in terms associated with heterosexual assault. The adult witnesses involved in a 1902 indecent assault case on a boy referred to the man as having ‘attempted to commit a rape on the boy’.¹⁵² It is also possible that although some men had heard about same-sex relationships, they were unknowledgeable about the actual acts committed between men. In Wellington, as Bavin-Mizzi found in late nineteenth-century Australia, newspapers headlined and reported cases of same-sex offending as ‘unnatural offences’, thus downplaying the act of sodomy.¹⁵³ The term ‘sodomy’ was applied loosely in a couple of cases. The Police investigating the Stoke cases conflated all the sexual acts described by the boys as ‘sodomy.’ None of the boys actually described anal sex, and instead used such terms as ‘tickling’,¹⁵⁴ ‘feeling about’ or

¹⁴⁷ Deposition of Clement H., AAOM W3265 1917 John Lavigne, CTF.

¹⁴⁸ Depositions of William G. and Constable McLean, AAOM W3265 1918 John Carrig.

¹⁴⁹ Deposition of Patrick D., AAOM W3265 1919 James Whiting; deposition of Constable Smart, AAOM W3265 1909 Charles Taylor; CTFs.

¹⁵⁰ Cross-examination of Ernest H., AAOM W3265 1916 Isidore Mount, CTF.

¹⁵¹ Deposition of Arthur B., AAOM W3265 1916 Thomas McNamara, CTF.

¹⁵² Depositions of William E. and Thomas S., AAOM W3265 1902 Dennis Riley, CTF. See also deposition of Arthur E., AAOM W3265 1905 William Conway, CTF.

¹⁵³ Bavin-Mizzi, p.141.

¹⁵⁴ Deposition of Thomas Owens, AAOM W3265 1900 Eduoard Forrier (Cases of Matthews, Owens, Guckert, and Richardson), CTF.

playing with their genitalia,¹⁵⁵ or non-penetrative sex.¹⁵⁶ Another policeman assumed that sodomy had been committed because the father of a boy was worried that his son had caught a venereal disease from the offence.¹⁵⁷

A man's voluntary entrance into a same-sex encounter did not, however, imply that he experienced same-sex encounters only as pleasurable. The sexual boundaries of a couple of victims shifted within a relationship with one man. Seventeen-year-old Edgar R., for instance, went out with Fortunatus Wright on several occasions. Edgar accepted a tram ride and gifts of cigarettes, beer, and money, and even let Wright shave him. It seems he was happy to keep him company (he went to a party with Wright and hung about Wright's house) but once Wright attempted to undo Edgar's trousers a couple of times, Edgar threatened to 'yell out' and subsequently cut all association with Wright. Wright came looking for Edgar at his workplace, where Edgar's boss confronted him and told him to leave Edgar alone.¹⁵⁸ Twenty-year-old Jeremiah W. agreed to 'have one' with Thomas Cox. Jeremiah rolled onto his stomach and let Cox put his 'person' between his legs, but then changed his mind and 'shoved him over'.¹⁵⁹ Sixteen-year-old Matthew B. initially resisted his assailant, but let him go further every time he was approached. The relationship eventually resulted in mutual masturbation occurring and Matthew admitted that the acts were done only '[p]artly against my will'.¹⁶⁰ There were also traces of relationships which reflected Chauncey's wolf/punk relationship. He noted that these were most likely to exist in male communities marginalised from normal family structures, like those in prisons or amongst hoboes.¹⁶¹ The all-male environment of Stoke Industrial School has already been noted as a possible site of such relationships. A labourer on a Wairarapa sheep station, Thomas Cox, thought that such a relationship would lead to a satisfactory sex life. When his 'mate', Jeremiah W., rejected his advances, Cox lashed out, telling him "... he would get a

¹⁵⁵ Depositions of Edward Matthews and William Guckert, AAOM W3265 1900 Eduoard Forrier (Cases of Matthews, Owens, Guckert, and Richardson), CTF..

¹⁵⁶ Deposition of William Hardwick, AAOM W3265 1900 Eduoard Forrier (Hardwick's case); deposition of James Richardson, AAOM W3265 1900 Eduoard Forrier (Cases of Matthews, Owens, Guckert, and Richardson); CTFs.

¹⁵⁷ Re-examination of Constable Patton, AAOM W3265 1906 Joseph Bradly, CTF.

¹⁵⁸ Deposition of Edgar R., AAOM W3265 1915 Fortunatus Wright, CTF.

¹⁵⁹ Deposition of Jeremiah W., AAOM W3265 1902 Thomas Cox, CTF.

¹⁶⁰ Cross-examination of Matthew B., Rex v. John Slines, AAOM W3265 1918 John Slines, CTF.

¹⁶¹ Chauncey, p.88.

boy of his own & wherever he went the boy was to follow him & whenever he wants it he is to have it or of not the boy will get a hiding.”¹⁶²

Though Jeremiah W. managed to physically control his sexual encounter with Cox, some adult men experienced same-sex encounters as sexually dangerous because of the other man’s superior physical strength. Several victims maintained that they could not escape their assailants. Twenty-year-old Patrick D., for example, was attacked and sodomised by a James Whiting in 1919. The two men knew each other vaguely and went for a walk to the Wellington waterfront together. Whiting invited Patrick into a shed to get out of the wind. Patrick said they went in, then ‘he pushed me about and threw his arms round me and said “I am going to fuck you” and caught my right arm . . . He was holding me there . . . I was in a leaning position, having my head against a board . . . From the position that he had hold of me with the arm I could not get away’.¹⁶³ Sixteen-year-old Arthur B. said that he, too, could not move while being assaulted because his assailant stood behind him, holding by both his (Arthur’s) hands behind his back.¹⁶⁴

The use of force by men to gain same-sex partners suggests that homosexual sexual relations, like heterosexual relations, could involve an unequal construction of desire and of power. Asymmetry in power in same-sex offences lay in men’s positions of authority over others and in physical strength. The next section examines how these axes of power which influenced men’s experience of sex crime influenced the construction of men’s sexuality in the courts.

The trial of Isidore Mount

Mount appeared in the Wellington Magistrate’s Court in May 1916, and was defended by Mr McGrath. Ernest recounted the offence and his taking of Mount to the police station. McGrath cross-examined Ernest about whether he was hurt in the assault, why he did not seek lodgings with his wife, whether he had been drinking, what he talked to Mount about, and the extent of his resistance to the assault. The Resident Magistrate committed Mount to stand trial for indecent assault on a male. Mount reserved his defence and pleaded not guilty.¹⁶⁵

¹⁶² Deposition of Jerimiah W., AAOM W3265 1904 Thomas Cox, CTF.

¹⁶³ Deposition of Patrick D., AAOM W3265 1919 James Whiting, CTF.

¹⁶⁴ Testimony of Arthur B., Notes of evidence, AAOM W3265 1916 Thomas McNamara, CTF. See also Cross-examination of William G., Rex v. John Carrig, AAOM W3265 1918 John Carrig; CTF.

¹⁶⁵ AAOM W3265 1916 Isidore Mount, CTF.

The trial took place in August 1916. Humphrey O'Leary (who represented Love and Stirling, see chapter four) defended Mount. By this time, Ernest had been posted overseas with the Expeditionary Force and his depositions were read out in lieu of oral testimony. The jury returned a verdict of 'guilty'. O'Leary called for probation on the grounds that the offence was 'the least of its kind', that Mount had a previously 'unblemished character', and that his mother was dependent upon his earnings. The Chief Justice declined probation but agreed to deal with Mount leniently because of the low grade of the assault and sentenced Mount to 18 months reformatory treatment.¹⁶⁶

Analysis

Attitudes in court towards men's claims of sexual injury were guided by constructions of good character, and there were continuities with the cases of adolescent boys. Truthfulness and sexual morality counted. But in addition, men's status within families was relevant. Men's role as the breadwinner was central in the construction of masculinity.¹⁶⁷ In cases of sex crime, their work ethic and family commitments could be examined as a test of good character.

Male victims' claims of sexual injury were undermined by defence counsel suggesting motives for bringing charges. Evidence of a propensity for vindictive prosecution was elicited by raising a man's reputation for honesty. Men were thought to bring charges out of spite. In 1918, Humphrey O'Leary defended John Carrig on a charge of indecent assault on a male by arguing that 27-year-old William G. laid the charge 'out of spleen and in a spirit of revenge.'¹⁶⁸ O'Leary argued that Carrig had information about a theft committed by G. The jury accepted this explanation despite G.'s explanation that he had been 'had up' about it and paid a fine, so he had no reason to believe Carrig 'would tell anything about it.'¹⁶⁹ P.W. Jackson, defending Henry Williamson, a military policeman charged with the indecent assault of two deserters whom he arrested, argued that the deserters 'had concocted the story in a spirit of revenge.' Williamson was also acquitted.¹⁷⁰ Twenty-year-old Jerimiah W.'s complaint was dismissed as a 'No Bill.' The defence

¹⁶⁶ 'Supreme Court. Penalty for Crime. A Young Man's Lapse', *NZT*, 15 Aug 1916, p.7.

¹⁶⁷ Daley, p.301.

¹⁶⁸ 'Carrig Cleared', *Truth*, 9 Feb 1918, p.6.

¹⁶⁹ Cross-examination and re-examination of William G., AAOM W3265 1918 John Carrig, CTF.

¹⁷⁰ 'Supreme Court. Criminal Sessions. Charges Of Unnatural Offences. Disagreement of a Jury', *NZT*, 16 May 1918, p.6.

counsel successfully denigrated his character by linking his being 'discharged' by his employer with when the alleged assault took place.

The possibility of sexual precipitation as a defence, hinted at in extant criminal trial files relating to adolescent boys, was explicit in several cases involving men. For instance, in 1913 a lieutenant in the Territorials was tried for indecently assaulting two cadets while they were under his supervision. The police prosecutor anticipated the defence of precipitation. *Truth* reported that the prosecuting police officer, Inspector Hendrey, asked one of the young men 'Did you or any other boy, as far as you know, give defendant any encouragement for his conduct?' to which Arthur P. replied 'No!'.¹⁷¹ McGrath's cross-examination of Ernest H., for example, appears to have been leading to the conclusion that his encounter with Mount fitted the pattern of casual sexual encounters between men. He asked Ernest why, for instance, did Ernest H. stay with Mount whom he did not know, when he could have got a 'shake down' where his wife was staying?¹⁷²

Such an insinuation was linked to the possibility of same-sex prostitution, indicating that defence counsel were conscious of the same-sex subculture. Several men were cross-examined about whether they had accepted money for the assault. Sixteen-year-old Arthur B., for instance, said he 'never got the £1' he was promised.¹⁷³ Twenty-year-old Jeremiah W. denied having been offered '2/6 & a packet of cigarettes' for sex.¹⁷⁴ And Mount was said to have offered Ernest H. two shillings after the assault. Ernest, however, maintained he did not accept, but left it on the dressing table.¹⁷⁵

Although consent was impossible under the criminal code, the possibility that men consented to same-sex acts was frequently raised in court. Ernest H.'s quick, physical response to Mount's advances clearly established his sexual boundary. Nevertheless, he and other men found their boundaries challenged in court. Like Ernest, Jeremiah W. and Henry and William B., William G., Matthew B., and Alexander M. were all questioned about the degree of resistance they offered.

The meaning attached to sex crime was also influenced by the characteristics of an offender.¹⁷⁶ One man, at least, realised the importance of character in the construction of criminal culpability for sexual assaults. Charles Thompson stalked and indecently assaulted

¹⁷¹ 'Lieutenant in the Dock', *Truth*, 7 June 1913, p.7.

¹⁷² Cross-examination of Ernest H., AAOM W3265 1916 Isidore Mount, CTF.

¹⁷³ Cross-examination of Arthur B., AAOM W3265 1916 Thomas McNamara, CTF.

¹⁷⁴ Cross-examination of Jeremiah W., AAOM W3265 1904 Thomas Cox, CTF.

¹⁷⁵ Cross-examination of Ernest H., AAOM W3265 1916 Isidore Mount, CTF.

¹⁷⁶ Conley, p.527.

an 11-year-old girl in 1902. When the girl's sister confronted him about the stalking, he denied it, saying he 'was a respectable man'.¹⁷⁷ Later he said to the police: "You have made a great mistake you don't know who I am."¹⁷⁸ This weighing and balancing of character occurred in cases involving victims of all age groups. It is mostly discussed in this chapter, however, because cases involving two men brought the definition of male character into sharp focus.

The criteria for men's good character drew on a range of non-sexual issues. Joanne Workman has suggested that in New Zealand between 1900 and 1920, men of wealth and social standing were popularly believed to be 'unlikely candidates to rape'.¹⁷⁹ The predominance of working class offenders in the Wellington Supreme Court supports Workman's conclusion. The occupations of 85.8 per cent of offenders could be discerned from the criminal trial files, 'Returns of Prisoners Tried', and newspapers, and 72.4 per cent of them worked in unskilled, semi-skilled, or skilled occupations (see table 2, Appendix B). Middle class men were believed to receive preferential treatment. Rumours were rife, for instance, that men in 'high places' had intervened on behalf of Edward Pierard (a civil servant) to get the charges against him dropped. The *Evening Post* accused no less than the Premier, Richard Seddon, of personal interference. The newspaper also alleged that the Salvation Army had influenced a jury member to prevent conviction because the Army thought Pierard was one of their congregation.¹⁸⁰ And *Truth* expressed indignation that the Wellington city Stipendary Magistrate, Dr. McArthur, accompanied by General Godley, had gone personally 'to break the news' to the father of a man accused of indecently assaulting and exposing himself to several boys.¹⁸¹ Neither of these men were convicted.

The work status of both Ernest H. and Isidore Mount was stressed by their respective counsel. In the early twentieth century, work was essential in the construction of gender. A man's work history represented something of the essence of his character. William Callaghan, for instance, was convicted of an indecent assault upon a young man. His defence counsel said in amelioration of the offence that the case was 'a tragedy', because Callaghan had lived his life 'respectably'. He had one job in Christchurch which lasted 25 years.¹⁸² Some men posited themselves as responsible for the economic survival of

¹⁷⁷ Deposition of Catherine Willison, AAOM W3265 1902 Charles Thompson, CTF.

¹⁷⁸ Deposition of Detective Boddham, AAOM W3265 1902 Charles Thompson, CTF.

¹⁷⁹ Workman, p.6.

¹⁸⁰ 'Who is to Blame?', *EP*, 25 May 1901, p.4.

¹⁸¹ 'The Lieutenant Smith Scandal', *Truth*, 16 Aug 1913, p.4.

¹⁸² 'Up for Sentence', *NZT*, 5 Jul 1918, p.8.

their families. Men's economic power, gained through their role as breadwinners within the sexual division of labour, meant that they were regarded as providers for families.¹⁸³ Mount's mother, for instance, was said to be dependent upon his wage.

Honesty, sexual morality, work and family were constants in the criteria for men's good character in the early twentieth century. The advent of the First World War added men's war records to these criteria. During and after the First World War, men and their counsel drew upon the kudos attached to military service in amelioration of sex crimes. Aspects of the 'public myth' of soldiers, identified by Jock Phillips, were reflected in the construction of good character by men and their counsel. Soldiers were portrayed as 'honourable family men' who engaged in heroic self-sacrifice for the sake of women and children.¹⁸⁴ By bringing up their war records both male complainants and defendants (accused of sex crime against victims of both sexes and all ages) associated themselves with the kudos afforded to soldiers. Herbert Fletcher, for instance, was accused of indecently assaulting the eight-year-old daughter of Hermann C. in 1920. When confronted by Hermann, Fletcher pleaded that he was a returned soldier. Hermann was unimpressed, saying that Fletcher was 'a disgrace' to them and then struck him.¹⁸⁵ Active service, especially time at 'the front', was stressed. The evidence of Henry Williamson, who was accused of indecently assaulting two other soldiers, opened with an outline of his short but busy military career. At the time he was accused of the indecent assault, Williamson was only 19 years old. He had spent 18 months on 'firing' service with the 18th Reinforcements and was 'invalided' back to New Zealand with 'nerves'. He was discharged on his return, but re-enlisted and was posted to the Military Police.¹⁸⁶ Horace Martin's counsel, in his sentencing plea, called for leniency for Martin on account of his being a returned serviceman, 'invalided' back to New Zealand from the 'front', and his previous good character. Justice Stringer agreed despite the 'serious and somewhat disgusting' nature of the offence.¹⁸⁷ The kudos was so great that even men's attempts to enlist were brought up as evidence of good character. The examination of William Stirling (accused of the unlawful

¹⁸³ Daley, p.296.

¹⁸⁴ Phillips, pp.168—69.

¹⁸⁵ Testimony of Hermann C., notes of evidence, AAOM W3265 1920 Herbert Fletcher, CTF.

¹⁸⁶ Testimony of Henry Williamson, Rex v. Henry Williamson (second trial), AAOM W3265 1918 Henry Williamson, CTF.

¹⁸⁷ 'Supreme Court. Criminal Sessions. Case for Reformative Treatment', NZT, 9 Aug 1919, p.4.

carnal knowledge of 14-year-old Rubina G., see chapter four), opened with him explaining that he had enlisted twice but been turned down because of a 'broken foot'.¹⁸⁸

War records, however, failed to impress all observers of sex crime. The Napier Women's Progressive League protested a lenient sentence passed on a returned soldier for an indecent assault on a girl under 12 years of age in 1917. They were concerned that the increasing precedent of distinguishing soldiers from civilians might result in 'morally deranged or diseased' men escaping full punishment.¹⁸⁹ In practice, there appears to have been no consistent understanding of the psychological impact of war on men's behaviour. Herbert Fletcher, for instance, was judged insane by doctors at the Porirua Mental Hospital, in part because of a shrapnel wound to the head received during the War.¹⁹⁰ But Roy Delaney, who suffered from shell shock, was convicted of raping a nine-year-old girl in 1919. Despite the pleas of Delaney's counsel that the medical fraternity did not yet fully understand the effects of shell shock, Justice Stringer announced Delaney 'completely recovered' and sentenced him to 15 years' imprisonment with hard labour and one flogging of 10 lashes with the cat-o-nine-tails.¹⁹¹

The attitudes expressed about male sexuality in the cases of Bertie T., the Stoke Orphanage boy, and Ernest H., were representative of the beliefs and assumptions in the 46 cases available for the study. The cases took place against a backdrop of the same-sex subculture of Wellington. The meaning attached to sex crime against males was constructed in relation to it. Attitudes expressed about sexuality were age-dependent. Boys' experience of sex crime was characterised by sexual danger. Boys' sexual innocence of the same-sex subculture, their subordinate relationship to adults, and their smaller physical size made them vulnerable to sexual assault. Parents believed that their boys' should be protected from sexual assault. Defence counsel, however, frequently drew upon a stereotype of rough childhood to undermine children's character and neutralise boys' claims to sexual injury.

Adolescent boys' could experience sexual relations as sexually pleasurable or dangerous, depending upon their awareness and integration into the same-sex subculture. Those who engaged in consenting sexual relations could gain material benefits and

¹⁸⁸ Testimony of William Stirling, *Rex v. William Stirling* (first trial), AAOM W3265 1918 William Stirling, CTF.

¹⁸⁹ Hon Sec Women's Progressive League (Napier) to Rgt Hon Sir James Allen, Acting Premier, 6 June 1917, J 1 1917/1221.

¹⁹⁰ Re-examination of Dr. Hassell, notes of evidence, AAOM W3265 1920 Herbert Fletcher, CTF.

¹⁹¹ 'Petone Outrage'. *NZT*, 8 Aug 1919, p.4.

relationships, or a mix of the two. Not all boys were aware of the same-sex subculture. They, and other boys who rejected men's sexual advances, experienced such approaches as sexually dangerous. Assaults took place against an unequal construction of desire, weighted against boys by their same-sex sexual innocence, their inferior power to some men, and their physical size. Adolescent boys' increased participation in the same-sex subculture altered the legal construction of their sexuality. Character continued to be important, especially truthfulness and upbringing, but sexual morality became increasingly important.

Attitudes expressed about men's sexuality were most clearly defined in relation to the same-sex subculture. Virtually all the male victims were aware of the sexual possibilities of other men. While some welcomed men's advances, others considered that they exceeded their sexual boundaries. Some men experienced such assaults as sexually dangerous because of physical inequalities of power, but adult men, unlike boys and adolescent boys, were better placed to uphold their sexual boundaries through their physical strength. This ability to resist unwanted assaults was assumed in court. Although consent was no defence to same-sex charges, men's sexual character was posited as central to their credibility as witnesses.

As boys aged, their increased knowledge of the sexual possibilities of other men altered the meanings they and others attached to sex crime. There was no decisive age by which this knowledge was acquired. The transformation from sexual innocence to awareness was uneven, but usually occurred during the adolescent years. Nevertheless, men sought sexual relations with boys, adolescent boys and other men. Some acknowledged that their sexual desire breached others' codes of sexual conduct. Others simply used their physical power or positions of authority to coerce or force boys, adolescents and men into sexual relations. Concepts of good character were seized upon by men to ameliorate their culpability for crimes. Criteria included war records, family responsibilities and economic status.

The similarities and differences between attitudes expressed about male and female sexuality are explained in the conclusion to the thesis.

Conclusion

The two acts of sexual intercourse that occurred between Jessie F. and Edward Pierard provoked a variety of responses about the meaning of adolescent girls' and men's sexuality in early twentieth-century Wellington. While Jessie allowed Pierard to visit her until he was discovered, and to kiss and talk, she only consented to sexual intercourse under duress, believing that he would stop badgering her if she did so, and that he would not commit suicide. Pierard said he was obsessed by her – that 'the very Devil got hold of' him.¹ He admitted what he had done to Mrs F. and apologised for it. She was angry and upset and the situation resulted in a criminal prosecution. Yet three juries would not convict Pierard, despite his admission and the law dictating that sexual intercourse with any girl under the age of consent was criminal. Some of the public agreed with the verdict, arguing that men should not be prosecuted for crimes in which girls' 'consented', others deplored jurors' failure to implement the provision of the law.

Disputes over the meaning of sex crime provide a window into the sexual cultures of the past. Through the criminal trials of men like Edward Pierard, this thesis has examined the shape and meaning of the sexual cultures of the Wellington district between 1900 and 1920. Several cases have been closely analysed to reconstruct the meaning attributed to sexual encounters by contemporaries, by the parties involved in the actual sexual encounters and their families, communities, and the courts. This thesis has drawn on the court transcripts contained in the criminal trial files of the Wellington Supreme Court, and, to a lesser extent, upon newspaper reports of those trials. Although a range of attitudes towards sex crime have been revealed through the criminal trial files, the highly filtered nature of the sources can only ever represent part of the history of sex crime and sexuality in early twentieth-century Wellington. Nevertheless, by examining understandings of consent in response to particular sexual encounters, the thesis has uncovered several competing codes of sexual behaviour which help to refine the historical understanding of sexuality.

In Wellington between 1900 and 1920, the 'twin poles' of sexual pleasure and sexual danger framed the meaning attached to sexual encounters by the parties involved in it, and the meanings ascribed to it by others. As illustrated in the case of Jessie F. and

¹ Deposition of Matilda F., AAOM W3265 1901 Edward Pierard, CTF.

Pierard, sexual encounters contained the possibility for both sexual pleasure and danger. The very possibility of these influenced observers' attitudes towards sexual encounters. The resulting interpretations varied according to the circumstances of individual assaults and their location within wider social assumptions about age, gender and character.

At its broadest, the cultural context within which sex crime was understood depended upon the sex of the parties involved. Heterosexual and homosexual encounters invoked different frames of reference. Heterosexuality dominated sexual precept and practice. It was characterised by the sexual double standard which normalised men's sexual pleasure and objectified the sexuality of women and girls. This study has been unable to conclude the extent to which the heterosexual and homosexual sexual cultures of Wellington intersected. The available evidence, however, suggests that same-sex relations existed in a sub-culture outside the heterosexual norm. Same-sex relations were viewed partly within the sub-culture's view of such relations as an expression of legitimate sexual desire, and partly within the mainstream counter-view of homosexuality as sexually perverse.

In both sexual cultures, sexual encounters took place against a backdrop of unequal construction of sexual desire. Both related a construction of male sexuality as an aggressive, strong, and natural impulse. The sexuality of other men, women, and children irrespective of age, was objectified. Perpetrators of sex crime forcibly sexually assaulted victims of both sexes and a variety of ages. The actual power relations which enabled the objectification of sexuality depended upon the age and gender of victims.

Children under the age of 12 years old were sexually assaulted by strangers when they played in public streets, parks and reserves, and in or near their homes by household members, neighbours and local community members. Children were easily lured in to situations of sexual danger. Their sexual innocence, their subordinate position within child/adult relationships, and their physical size all made them vulnerable to sex crime. Few children of either sex understood the assaults committed upon them as sexual. The majority, especially 'little' girls and boys (under seven years old), described assaults as physical attacks, using matter-of-fact language, and did not attribute sexual meaning to them. Among 'older' girls, the sexual aspect of assaults was sometimes realised, but such awareness was not universal. 'Older' boys were less likely than girls of the same age to attribute homosexual meaning to same-sex assaults. While some appear to have recognised the sexual connotation of assaults, and were even sometimes vulnerable to sexual danger because they were sexually curious, they did not attach a specifically homosexual meaning to same-sex encounters.

Children's actual sexual innocence was upheld by adults. Parents, neighbours and community members condemned sexual assaults on children. They interrupted and prosecuted offences. But in the courts, defence counsel often attempted to discredit children's claims to sexual injury by invoking a stereotype of the 'rough' child to discredit their stories. This counter-view of children's sexuality, however, was a minority one. Children's compliance with an assailant was considered to be the result of childhood innocence, not consent. Sexual offences against children were the most prosecuted, and most convicted, sex crimes in Wellington between 1900 and 1920.

Adolescent girls were sexually assaulted by young men with whom they 'kept company', or were otherwise romantically or sexually involved, as well as by household members, employers, and by strangers. In this age group (12 to 15 year olds), codes of sexuality were contested between the girls, perpetrators, girl's parents and the courts. For many girls, physical sexual maturation was accompanied by increased interest in courting and socialising. This changed their sexual boundaries: girls were increasingly inclined to seek out sexual adventure. Not all parents approved of this behaviour. And while adolescent girls expressed an increased awareness of sexuality, demonstrated through their use of understanding of the culture of courting and heterosexual relations, some consequently also expressed feelings of shame and guilt about sex. The actual act of seeking sexual adventure, and even the possibility of it, fundamentally altered perceptions of female sexuality around the age of adolescence. Within the sexual double standard, active sexuality posited girls as 'fallen' or unchaste. Their sexual maturity was construed as the ability to consent to sexual relations by assailants and in the courts. Adolescent girls were cast as temptresses, their sexuality objectified, and their claims to sexual injury were harder to press through the courts than those of children.

The sexual double standard also shaped understandings women's sexuality. The concept of respectable character that influenced perceptions of children's and adolescent girls' sexuality was central to the construction of appropriate sexual mores for women. The pursuit of sexual pleasure was interpreted in court as victim precipitation in an offence. Women's previous sexual history and character, and resistance to assaults, were carefully examined in court as indicators of whether women were likely to have consented to sex crimes. Women's stories suggest that some were, indeed, more keen on sexual adventure than others, but all maintained sexual boundaries which they would not tolerate men exceeding.

The pursuit of sexual pleasure was also damaging to adolescent boys' and men's claims to sexual injury. Sex crime against males over 12 years of age was characterised by

the possibility of sexual pleasure and sexual danger. Some boys and men traded sex for material gain or in mutual relationships. Others were assaulted in the streets or at work. Their understanding of the same-sex subculture, sexual orientation, and physical size and strength, determined their responses to other men's sexual advances. Males became increasingly sexually knowledgeable about the same-sex subculture as they aged. This transformation coincides with most men's move into the male dominated world of work, but it remains unclear just how same-sex knowledge was acquired. Sexual knowledge was expressed through the language men used to describe homosexual men and through their recognition of the codes of the same-sex sub-culture. Men who sought other men and boys for pleasure cruised certain parts of Wellington city, and used standard pick-up lines to indicate their intent. But same-sex advances were also experiences sexually dangerous, violent attacks. In such situations, males were more likely to be assertive in their resistance to assaults and to be involved in chasing and prosecuting their assailants. Nevertheless, their increased physical strength did not protect them from sexual violence.

Like children, adolescent girls, and women, the character of adolescent boys and men was also critical in legal constructions of sexual injury. But because men's sexual activity was widely assumed in the early twentieth century, it decreased the significance of sexual morality in the assessment of character. Sexual morality was relevant, but non-sexual issues carried a lot of weight. For adolescent boys, honesty, obedience, and good behaviour were important. For men, character was judged by honesty, work records, and family responsibilities. War records came to occupy a central place in the men's representation of good character from the outbreak of the First World War. Class, race, and ethnicity intersected with the notion of respectability.

Whether in a heterosexual or a homosexual context, sexual relations took place against a backdrop of an unequal construction of sexual desire. The majority of the men who committed sexual assaults behaved according to a code of sexual mores which posited masculine sexuality as active and which objectified the sexuality of others. A use of force was expected by some men who were prosecuted for sex crime. Indeed, resistance by a sexual partner was central to the cultural construction of female sexuality as passive, enshrined in the sexual double standard. Men's codes of sexual behaviour were, nevertheless, diverse. They sought sexual partners in a number of occasions and through a wide range of relationships; from courtship, complete strangers, and family members. Their notions of suitable partners met with varied reactions by other people. Homosexual men were prosecuted because of their sexual orientation. And paedophiles were prosecuted

because their choice of children as sexual partners contradicted the cultural construction of childhood as a time of sexual innocence.

The public fear of stranger-attacks was out of proportion with the number of such cases actually prosecuted. Women, children and men faced more sexual danger from the men they knew. A minority of men acknowledged that they held different codes of sexual behaviour which were out of step with the codes of their victims and others by admitting offences and apologising for them. The majority, however, denied sexual assaults, alleging that they had been falsely accused out of spite, or that they simply could not understand the charges. Others argued that their 'victims' had consented. Drunkenness was frequently pleaded by men as an excuse for sex crime. Tension between sexual desire and sexual mores characterise prosecutions for sexual crime, illustrating that the sexual order imagined by legislation was challenged in the early twentieth century.

This thesis has argued that sexual codes of conduct changed as boys and girls grew up. For both sexes, sexual maturity and sexual activity were pivotal in determining the meaning they attached to sex crime and the meanings attached by others. Constructs of sexuality transformed as boys and girls aged from a presumption of sexual innocence in early childhood, to one of sexual agency in adolescence and adulthood. The stories told in the criminal trial files suggest that this transformation could not be assumed to have occurred at the same age for all individuals. But evidence of biological sexual maturity in girls, and an assumption of boys' sexual curiosity, posited adolescence – the ages of 12 to 15 – as the major site of transition from childhood to adult sexuality. Despite these strong presumptions, attitudes towards the sexuality of both sexes and all ages were contested. Victims, offenders, parents, legal counsel, jurors and judges expressed at times similar, and other times widely divergent understandings of the sexual cultures operation in early twentieth-century Wellington. Together, they contributed to a grid of cultural understandings of sexuality that are vividly recorded in court records.

Appendix A

Table 1
Number of offenders committed for trial or sentence in the Wellington Supreme Court 1900–20, comparing proportion of extant files to the total number committed on charges of sex crime.

Year	Cases involving female victims			Unnatural offences			Total		
	sample	W	% extant	sample	W	% extant	sample	W	% extant
1900	6	11	54.5	1	2	50	7	13	53.8
1901	6	9	66.7	0	0	-	6	10*	60
1902	6	7	85.7	3	3	100	9	11	90
1903	1	4	25	0	1	0	1	5	20
1904	3	4	75	1	1	100	4	5	80
1905	1	3	33.3	2	2	100	3	5	60
1906	5	7	71.4	2	3	66.7	7	11*	63.6
1907	4	11	36.4	0	3	0	4	14	28.6
1908	8	8	100	3	4	75	11	12	91.7
1909	4	5	80	1	1	100	5	6	83.3
1910	5	10	50	2	2	100	7	12	58.3
1911	5	9	55.6	2	3	66.7	7	12	58.3
1912	4	5	80	0	1	0	4	6	66.7
1913	6	8	75	2	2	100	8	10	80
1914	2	11	18.2	2	3	66.7	4	16*	25
1915	5	9	55.6	4	7	57.1	9	16	56.3
1916	7	12	58.3	2	5	40	9	17	52.9
1917	4	7	57.1	2	3	67.7	6	10	60
1918	4	9	44.4	6	7	85.7	10	16	62.5
1919	7	10	70	4	5	80	11	15	73.3
1920	2	7	28.6	1	3	33.3	3	10	30
T (N)	95	166		40	62		135	232	

Sources: CTFs, RPTs

Note: figures calculated by number of offenders per year, rather than charges

* indicates that the sex of a victim could not be ascertained from any of the sources. The sex of four victims could not be established: one each in 1901 and 1906, and two in 1914.

Graph 1
Comparison of the number of offenders tried and sentenced
1900-1920 with the extant sample
(Sources: RPTs, CTFs)

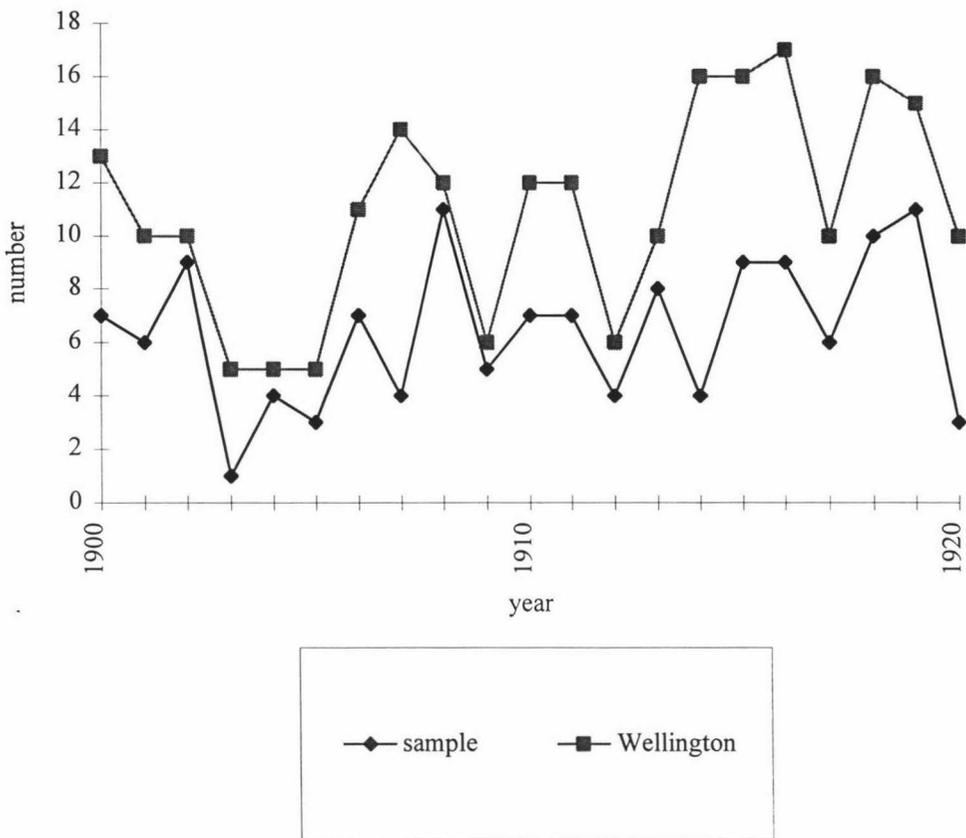


Table 2
Breakdown of victims included in the sample of extant files of prisoners
committed to the Wellington Supreme Court for trial or sentence 1900–20

Victims	Number	% of sex	% of total
Female victims:			
Girls 7 years and under	27	26.5	17.4
Girls 8—11 years	26	25.5	16.8
Adolescent girls	36	35.3	23.2
Adult women	13	12.7	8.4
Total	102	100	65.8
Male victims:			
Boys 7 years and under	4	8.7	2.6
Boys 8—11 years	13	28.3	8.4
Adolescent boys	16	34.8	10.3
Adult men	13	28.3	8.4
Total	46	100	29.7
Animals	7	100	4.5
Total	155		100

Source: CTFs

Appendix B

Table 1

Relationship between victim and offender in the sample of extant cases committed to the Wellington Supreme Court for trial or sentence 1900–20

Relationship	% by victim			% of all offences			Total
	Female	Male	Animal	Female	Male	Animal	
Stranger							
• completely unknown	34.3	19.6		22.6	5.8		28.4
• previous approach	2	4.4		1.3	1.3		2.6
• stalker	4	0		0.7	0		0.7
• pick-up	3.9	4.4		2.6	1.29		3.9
Stranger total	41.2	28.3		27.1	8.4		35.5
Non-stranger							
<i>Social contacts:</i>							
• sexual acquaintance	12.8	6.5		8.4	1.9		10.3
• acquaintance	4.9	13		3.2	3.9		7.2
• community member	3.9	6.5		2.6	1.9		4.5
• neighbour	7.8	8.7		5.2	2.6		7.7
• family friend	4.9	0		3.2	0		3.2
• boarders, houseguests, live-in employees	7.8	2.2		5.2	0.7		5.8
• family	6.9	0		4.5	0		4.5
<i>Work contacts:</i>							
• teacher	1	15.2		0.7	4.5		5.2
• workmate	0	6.5		0	1.9		1.9
• employee	3.9	0		2.6	0		2.6
• employer	2	0		1.3	0		1.3
• supervisor	0	8.7		0	2.6		2.6
• service worker, customer	3	0		2	0		2
• business contact	0	2.2		0	0.7		0.7
Non-stranger totals	58.8	69.6		38.7	20.7		57.6
<i>Unknown</i>	0	2.17			0.7		0.7
<i>Animals</i>			100			4.5	4.5
(N)	102	46	7	65.8	29.7	4.5	100

Source: criminal trial files

Table 2 Occupational groupings of victims and offenders in the sample cases

Occupation		Victims:	Total:	Offenders:
		Male %	%	%
1 High white collar	0	2.2	0.7	0
2 Low white collar	7.1	2.2	5.4	7.4
3 Petty proprietors	17.8	6.5	14.3	5.9
4 Skilled	7.9	13	9.5	8.9
5 Semi-skilled	10.9	10.9	10.9	16.3
6 Unskilled	32.7	26.1	30.6	46.7
7 Unknown	23.8	39.1	28.6	14.8
T	100	100	100	100
	n=102	n=46	n=148	n=135

Sources: CTFs, RPTs

1. totals exclude bestiality cases

2. children and wives categorised according to occupation of husband or responsible adult (parent, guardian)

3. This classification is based on the system of occupational categories used by Caroline Daley in her PhD thesis about gender and community in Taradale between 1886 and 1930. Daley adopted a six category system devised by Michael B. Katz and used in his study of Hamilton, West Canada. The categories are: 1. High white collar, professional, major proprietors, managers and officials. 2. Low white collar, clerks and salesmen, semi-professionals. 3. Petty proprietors, managers and officials. 4. Skilled. 5. Semi-skilled and service workers. 6. Unskilled labourers and menial service workers. Daley, pp. 281—82, and Appendix C.

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