

## **A Window on the Law**

*A historical study of the local media reporting of non-consensual sex crimes involving female victims aged 16 to 20 years*

Keith Soothill, *Lancaster University*

### **Abstract**

Media reporting is most people's window on the working of the law. This study of the newspaper reporting of non-consensual sex crime involving female victims aged 16 to 20 years in a local area over 120 years (1860-1979) demonstrates sizeable shifts both in the acquittal rate and in sentencing. The change in the proportion of contested cases is significant. A qualitative study on contested cases reveals the adversarial system at work. The focus in the paper is on the issue of consent and the reputation and/or behaviour of the complainant. Changes seem to mirror an increasing tension about the position of women in society. Newspaper text provides data that represent a barometer about public narratives surrounding a topic. The methodology used in the study demonstrates a way of examining change in a systematic way over a long timeframe.

**Key Words:** media, newspapers, history, consent, reputation

### **Introduction**

The focus of this paper is the reporting of sex crime in a local area, Lancaster in north-west England, over a long time-span - 120 years from 1860 to 1979<sup>1</sup>. Lancaster is a very old town receiving its first borough charter in 1193 (White, 1993); it became a city in May 1937. In the eighteenth century there were local beneficiaries from Lancaster being an important transit port in relation to the slave trade. In Victorian times it

---

<sup>1</sup> The interest in local sex crime over the period, 1860-1979, was developed originally in teaching Part 1 criminology students. The aim was to awaken a historical focus by considering changes over time.

became a leading centre in the world for linoleum manufacture. Since then, Lancaster as a manufacturing town has been in decline. However, Lancaster University opened in the mid 1960s and the service sector began to develop. In fact, during the 120 years of the study, while socially maintaining its status as a major assize town through much of the time, Lancaster has had mixed fortunes.

The aim is to use this town as a social laboratory in considering the reporting of sex crime. The study is substantive but there is also an interest in whether the methodology used - which embraces both quantitative and qualitative approaches - is an appropriate way to probe changes in sexual crime. But why a focus on the local media reporting of non-consensual sex crime and especially crime involving female victims aged between 16 and 20 years? There are at least two reasons. Firstly, this study is part of an ongoing research project on sex crime (e.g. Soothill, 2003; 2006; 2009). Secondly, it extends some earlier work on the reporting of sex crime in general (Soothill and Walby, 1991) and judges' (Soothill et al., 1990) and barristers' comments (Soothill and Soothill, 1993) in rape cases reported in *national* newspapers.

The specific focus of this study is on *change* in the reaction to non-consensual sex crimes involving female victims aged 16 to 20 years. Limiting the focus to this age group provides both a manageable study to present and also an important age control. Further, it is surmised that this age group of females experienced great change over the 120 years. Although females aged between 16 and 20 years had throughout the time-span passed the legal age of consent, there were very different expectations regarding their social and sexual behaviour over this time.

The study is concerned with both outcome and process. The overall focus is on identifying change using two approaches:

- The focus on *outcome* concerns conviction rates and sentencing of non-consensual sexual cases with female victims aged 16 to 20 years (1860-1979). It is basically a quantitative analysis using the local newspaper as the source of evidence.
- The focus on *process* considers the media reporting of the proceedings as a way of gazing through 'a window on the law'. This is basically a qualitative analysis. The specific focus is on the issue of consent and the behaviour and reputation of the complainant.

The choice of outcome measures - conviction and sentencing - is not contentious, but the choice of themes relating to processual issues is necessarily selective. However, the issues of consent and the legal response to the reputation and behaviour of the complainant are regarded as pivotal in many sex crime cases. There are, of course, other themes that are of potential interest in considering change over time. For example, the importance of corroboration and the increasing focus on medical evidence are likely to be relevant. However, this study is in the nature of a

demonstration project and is not intended to be exhaustive in its examination of themes.

Previous work in this area has not been extensive but, on occasions, it has been impressive. Edwards' book (1981) remains a powerful study of constructs of female sexuality as they inform statute and legal procedure. More recently, Bourke's *Rape: A history from 1860 to the present* (2007) has vividly portrayed the perception of rape, both in the mass media and the wider public. D'Cruze (1998) examines the nineteenth century courtroom as a theatrical arena, especially reminding that it was the woman whose reputation and personal integrity were on trial more than her attacker. D'Cruze's (2000) edited collection usefully examines how violence, including sexual violence, impinged on people's lives in the century before the Second World War, while Rowbotham and Stevenson (2003; 2005) usefully probe in their collections the relevance of history to present concerns by looking at Victorian and contemporary deviance issues, comparing continuities and differences. These would be hard acts to follow, but the present paper is simply a complementary offering trying to demonstrate a more systematic approach to some of the issues raised.

## **Methodology**

The overall study concentrates on sex offences adjudicated by the courts and reported in the *Lancaster Guardian* between 1860 and 1979. This is not a study focusing on the media representations of crime (e.g. Soothill, 2009), but uses newspaper reports as a direct source of evidence. This may seem a surprising source for convictions and sentencing, but the retention of court records relating to Lancaster has been patchy; in contrast, the local newspaper provides a consistent and continuous record of what is in the public domain in this local area. A search of this newspaper - that is, over 6,000 editions - was carried out to identify any mention of sex offending. The classification was broad, so including all indictable offences (e.g. rape, indecent assault, incest) and appropriate non-indictable offences (notably prostitution-related offences and indecent exposure). More unusually, contraventions to local bye-laws such as activity charged as 'using obscene language' were also noted. As the court records are largely missing, there is no external validity to check the extent and accuracy of the coverage of sex offending in this local newspaper. However, it seems reasonable to argue that serious transgressions (such as rape) will almost invariably be reported, while minor transgressions (such as prostitution or indecent exposure) are less likely to have complete coverage<sup>2</sup>. This present study focuses on court cases relating to non-consensual sex crimes involving female victims aged 16 to 20 years and these seem likely to be routinely reported in a local newspaper. The term 'court appearances' is important,

---

<sup>2</sup> The exceptions are incest offences and cases involving young children where reporting restrictions are applied. So, for instance, legal restrictions on naming minors in newspaper reports have been imposed since 1933.

for the series also includes those acquitted for a sex crime. As Table 1 shows, the timeframe was divided into six periods of twenty years.

**Table 1. Timeframe of the study**

Years	Periods
1860-1879	Mid-Victorian
1880-1899	Late-Victorian
1900-1919	Edwardian and the Great War
1920-1939	The Inter-War Years
1940-1959	Second World War and the Post-War Period
1960-1979	Increasing liberalisation of sex laws

In this study I aim to use newspaper text to provide data that represent a barometer about public narratives surrounding non-consensual sex crime involving female victims aged 16 to 20 years. Elsewhere (Peelo and Soothill, *forthcoming*), I have argued for a 'mixed methods' approach in considering newspaper representations of crime. Rather than presenting a clear divide between qualitative and quantitative research methods, in practice the ways in which methods are used suggest that there has been a continuum along which methods sit. In our previous work focusing on homicide and the media (e.g. Peelo and Soothill, 2000; Soothill et al., 2002; 2004; Peelo et al., 2004; Peelo, 2006), our studies offer examples that range from using just one reported homicide to a series of over two and a half thousand homicides as well as examples of using both quantitative and qualitative approaches and highly detailed analyses of text. Essentially I maintain that research is a systematic use of methods that illuminate a specific problem being considered. What makes research different from other types of knowledge, including, for example, practitioner experience, journalism or instinct, is systematic collection and analysis providing evidenced interpretations.

*The numbers in the series*

Table 2 divides the total series into five major categories for each of the twenty-year periods and indicates how the reporting of different sexual offences peaks at different periods.

The 'serious non-consensual' category (which principally includes rape and indecent assault) is always quite sizeable averaging between five and eight cases per year in each period with the highest number of persons in the last twenty years (1960-79). In fact, the figures displayed in Table 2 are misleading in terms of representing sexual offending in the local area of Lancaster. Many of the more serious cases will have occurred elsewhere in the county and come to Lancaster to be tried at the Assizes. Furthermore, in the nineteenth century (before the advent of popular national newspapers) the newspaper also served the wider function of reporting cases from

elsewhere in the country. Hence, this study includes *all* the appropriate non-consensual cases, whether the case happened in Lancaster or Burnley or even London.

**Table 2. Number of persons appearing in a court case involving a sexual offence and reported in the *Lancaster Guardian* (1860-1979)**

Type of sexual offence	1860-1879	1880-1899	1900-1919	1920-1939	1940-1959	1960-1979	Total
Non-consensual	97	141	106	103	148	153	748
Bigamy	27	23	22	49	83	3	207
Indecent exposure / indecency	17	55	20	11	80	53	236
Prostitution-type offences	5	79	77	-	-	-	161
Using obscene language	3	203	159	40	15	19	439
TOTAL	149	501	384	203	326	228	1791

There was a total of 87 persons charged in cases involving female victims aged between 16 and 20 years, thus averaging around two persons every three years appearing in court for these offences. In the qualitative study, *all* examples of the two themes explicitly mentioned in the text of the reports are presented. This approach helps to avoid the criticism sometimes made of qualitative work that the cited examples are highly selective.

## Results

Table 3 considers the series in terms of the outcomes. At least three points can be usefully made:

- Taking the 120-years as a whole, approaching one-third (31%) of the alleged offenders are acquitted or discharged. Approaching another one-third (30%) are awarded a custodial sentence, while one-fifth (20%) are awarded a non-custodial sentence. Finally, there is a further one-fifth (20%) for whom there is 'no information' regarding outcome. The latter are largely cases committed for trial elsewhere or juvenile cases.
- The acquittal rates change over time. In the sixty years (1860-1919) up to the end of the First World War, approaching one in two defendants are acquitted. In contrast, for the last sixty years (1920-1979) around one in five of the defendants are acquitted. (The apparent very low rate

for the 1940-1959 period is distorted owing to the comparatively large numbers of 'no information' cases in this period).

- Custodial sentences are the dominant penalty following conviction for the first 80 years (1860-1939), while non-custodial sentences are the dominant penalty for the final forty years (1940-1979). In fact, non-custodial sentences only became much more pervasive after 1920.

The outcomes are clear and the next task is to try to understand why these very substantial changes took place. Important clues are provided by the comments of judges, magistrates and lawyers. A crucial distinction is between contested cases (where the defendant puts in a 'not guilty' plea) and non-contested cases (where the defendant pleads guilty and the defence counsel's main role is in presenting a plea of mitigation). Table 4 shows the number of contested and non-contested cases for different types of non-consensual activity for the six periods (1860-1979). The 58 cases are divided into those involving two or more defendants (12% - that is, 7 out of 58), single defendants aged 23 years or under (41%) and single defendants aged 24 years or over (47%)<sup>3</sup>. In addition, there are eight cases where there is no information on whether the case is contested: these are mainly cases where only the committal proceedings are reported and the defendant has not entered a plea. There are at least four points to make in relation to Table 4:

- Offences involving two or more defendants are rare - only 7 such cases over the entire period, thus averaging one case every 17 years. All these cases are contested.
- While older defendants outnumber younger defendants in the early periods, there is, however, a definite later shift towards younger defendants, especially in the last period (1960-1979) where younger defendants outnumber older defendants.
- Where it is known, around three-quarters (or 71%) contest the case - however, older defendants are more likely to contest with 78% doing so compared with 54% of the younger defendants.
- There is a major shift over time. Up to the beginning of the Second World War, the vast majority were contested, while after the Second World War it is a very different picture with more being non-contested than contested, that is, guilt being more readily admitted after the Second World War.

---

<sup>3</sup> A defence to the charge of unlawful sexual intercourse *with a girl under 16 years* is known as the 'Young Man's Defence'. Using this defence a man who is under the age of 24 years is not guilty of the offence if he believes the girl to be of the age of 16 or over and has reasonable cause for the belief. While this defence is not strictly relevant to this study, it still seemed a useful age divide when making a distinction between younger and older defendants. However, one also needs to recognise that over time there will have been changes in perception in terms of how age might affect responsibility in relation to both defendants and victims.

**Table 3. Conviction rates and sentencing of non-consensual sexual cases with female victims aged 16 to 20 years as reported in the *Lancaster Guardian* (1860-1979)**

OUTCOMES	1860-1879		1880-1899		1900-1919		1920-1939		1940-1959		1960-1979		TOTAL	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Acquitted, discharged etc.	6	40	7	54	4	44	2	20	2	10	6	32	27	31
Awarded a non-custodial sentence	1	7	1	8	-	-	3	30	5	24	7	37	17	20
Awarded a custodial sentence	6	40	4	31	4	44	5	50	2	10	5	26	26	30
No information (e.g. committed for trial etc.)	2	13	1	8	1	11	-	-	12	57	1	5	17	20
<b>TOTAL</b>	<b>15</b>	<b>100</b>	<b>13</b>	<b>100</b>	<b>9</b>	<b>100</b>	<b>10</b>	<b>100</b>	<b>21</b>	<b>100</b>	<b>19</b>	<b>100</b>	<b>87</b>	<b>100</b>

Note: Percentages may not total 100 owing to rounding.

**Table 4. Number of contested and non-contested cases for different types of non-consensual activity for the six periods (1860-1979)**

Types of cases	1860-1879			1880-1899			1900-1919			1920-1939			1940-1959			1960-1979			TOTAL		
	Con.	Non con.	n/k	Con.	Non con.	n/k	Con.	Non con.	n/k	Con.	Non con.	n/k	Con.	Non con.	n/k	Con.	Non con.	n/k	Con.	Non con.	n/k
Two or more defendants	2	-	-	-	-	-	-	-	-	2	-	-	2	-	-	1	-	-	7	-	-
Defendant aged 23 years or under	2	-	-	1	1	-	3	-	-	3	1	-	2	3	-	2	6	2	13	11	2
Defendant aged 24 years or over	3	-	3	7	1	1	4	-	2	2	-	-	3	2	-	2	3	-	21	6	6
<b>Total</b>	<b>7</b>	<b>-</b>	<b>3</b>	<b>8</b>	<b>2</b>	<b>1</b>	<b>7</b>	<b>-</b>	<b>2</b>	<b>7</b>	<b>1</b>	<b>-</b>	<b>7</b>	<b>5</b>	<b>-</b>	<b>5</b>	<b>9</b>	<b>2</b>	<b>41</b>	<b>17</b>	<b>8</b>

The next task is to probe the processes which underpin the various outcomes. What is actually happening in the court interaction as portrayed by the newspaper reports? Contested cases demonstrate the adversarial system in action. These are the cases where the defence challenges the account of the prosecution. Are there shifts over time? Two themes are considered in probing such shifts - the issue of consent and, secondly, the behaviour and reputation of the complainant.

As Table 4 shows, there are 41 contested cases and there are seven or eight such cases in each period except for the last period when the figure drops to five (these are highlighted in bold in Table 4). This fall reflects the rise of non-contested cases in this period. While many cases have just short and uninformative reports, there are 16 contested cases (listed in Table 5) where the two relevant themes are explicitly mentioned in the newspaper reports.

**Table 5: Cases of non-consensual sex crimes involving females aged 16 to 20 years where issues of consent and/or the reputation or behaviour of the complainant are explicitly mentioned in reports in the six 20-year periods**

<b>Case identification</b>	<b>Year of report</b>	<b>Issue of consent mentioned</b>	<b>The reputation and behaviour of the complainant mentioned</b>
A	1860		YES
B	1869	YES	
C	1875		YES
D	1887		YES
E	1888		YES
F	1893		YES
G	1903	YES	
H	1920	YES	
I	1927	YES	
J	1935	YES	
K	1940		YES
L	1948		YES
M	1953		YES
N	1960	YES	YES
O	1965		YES
P	1973		YES

As Table 5 shows, each of the six periods has three relevant cases, except for the 1900-1919 period which has only one. However, the distribution of the themes varies. While cases involving the issue of consent are particularly concentrated in the 1920 to 1939 period, the reputation and behaviour of the complainants are more likely to be explicitly mentioned in the nineteenth century and since the Second World War. In only one case (case N in 1960) do the two themes overlap.



*The issue of consent*

Lack of consent is the crux of the matter in relation to rape cases, whereas earlier authorities emphasised the use of force. In fact, interestingly, the issue of consent can be considered as the mirror to the issue of the use of force. Smith and Hogan (1988: 433) note that this subtle change of emphasis occurred in the middle of the nineteenth century in the cases of *Camplin* [(1845) 1 Den 89] and *Fletcher* [(1859) Bell CC 63], but old habits die hard. In this series there were just six cases where consent (or otherwise) was explicitly mentioned in the reports:

1. In 1869 a 17-year-old mason was charged with a criminal assault on a young woman of “about 19 years of age”. The report notes that “The learned counsel contended at great length - and very ingeniously pointed out circumstances in the evidence which, he alleged, pointed to the conclusion - that the young woman herself was a consenting party to what took place.” The jury were clearly not convinced and found the defendant guilty. He was sentenced to five years’ penal servitude”. (*Lancaster Guardian*, 6 March 1869)
2. In 1903 a 23-year-old carter was accused of committing a rape on a 17-year-old domestic servant. His defence was that “the girl *partially* consented” (emphasis added). The judge summed up, “saying the defence was at variance with the medical evidence”. The jury found the defendant guilty and he was sentenced to five years’ penal servitude. (*Lancaster Guardian*, 31 January 1903)
3. In 1920 a 42-year-old dealer was accused of the abduction of a girl who lived next door to his home. The defence was that the “the girl asked prisoner to take her away”. The defence failed and the accused was sentenced to three months’ hard labour. (*Lancaster Guardian*, 23 October 1920)
4. In 1927 a 26-year-old farm labourer pleaded not guilty to committing an indecent assault on a 19-year-old girl. There is evidence that “he seized her by the throat and there was a struggle, in which he bruised her throat.” Nevertheless, the accused insisted “he was on his way to chapel and the girl allowed him to embrace her and ‘kiss her every nine yards’. He admitted he put his arm round the girl’s neck, and pulled her to the ground, but they did not struggle. This the girl repudiated”. The defendant was found guilty and sentenced to 15 months hard labour. (*Lancaster Guardian*, 29 October 1927)
5. In 1935 a 21-year-old farm labourer was charged with “a grave offence against a 17-year-old Keighley girl.” His defence “was that anything that occurred was by consent”. The defence claim succeeded in this case. However, the judge said, “You may be discharged, but you will not depart without a stain on your moral character.” (*Lancaster Guardian*, 20 September 1935)

6. In 1960 a 17-year-old soldier charged with “improperly assaulting” a 16-year-old schoolgirl “alleged that the girl was the instigator in what took place”. During the evening the accused asked the complainant for a dance, but instead of going on to the floor, he led her outside. The girl told the court that “I did not mind him kissing me, but when he was saying he loved me, I did not approve really.” The defendant claimed that the “it was the girl who led him outside ... They were there for 25 minutes kissing and then she voluntarily committed a certain act.” The jury found him not guilty and he was discharged. (*Lancaster Guardian*, 13 August 1960)

There seems to have been a shift. In the first four cases the defence of consent was rebutted, while in the last two cases the defence of consent seems to have been accepted with the outcome of an acquittal. This contrasts with the high acquittal rate of the early period and a lower acquittal rate of the later period. Does a focus on reputation and behaviour of the complainant help to explain these apparent discrepant findings?

*The behaviour and reputation of the complainant*

There are 11 occasions in the series of contested cases where the behaviour and/or reputation of the complainant is directly addressed. Again by considering *all* the occasions, there can be no challenge that the examples are highly selective.

The last case described in the previous section involving a 17-year-old soldier charged with “improperly assaulting” a 16-year-old schoolgirl is the only one where the issue of consent *and* the reputation and/or behaviour of the complainant come together in the same case. It is “alleged that the girl was the instigator in what took place”. In other words, the girl is proposed as an active player in the proceedings. There is certainly a clear tension in the report. She attended a Young Conservative’s dance with a number of friends including her elder brother with the girl telling the court that this was the first time she had been to a dance without her parents. This apparent naïvety contrasts with the alleged sexual sophistication of kissing outside for 25 minutes and then voluntarily committing “a certain act”. The defence’s account seems to have been accepted as the defendant was found not guilty and discharged.

The remaining ten cases show marked variations in portraying the alleged victim:

*The two relevant cases in the first period (1860-1879) demonstrate in different ways how the reputation of the alleged victim is crucial. The first case illustrates how seriously the rape of a virgin is taken and the second case indicates how the alleged behaviour of the complainant, quite irrelevant to the case, can be the trigger for a dismissal of a case.*

1. In 1860 a 25-year-old travelling showman was charged with criminally assaulting a 19-year-old girl: the prosecutrix was one of the performers. The accused gave her several glasses of rum punch and subsequently committed the assault complained of. He was found guilty and the judge, in passing sentence, said “he certainly thought it was one of the worst cases he had ever had the misfortune to hear” (*Lancaster Guardian*, 18 August 1860). Instead of protecting the girl, as she was an orphan, he “had violated the chastity of the prosecutrix, who, notwithstanding the temptations of her calling, had, up to that period, preserved her virtue.” The sentence of the court was penal servitude for life.”
2. In 1875 a local case headlined, ‘UNFOUNDED CHARGE OF RAPE’ (*Lancaster Guardian*, 5 June 1875) involved a discharged militiaman being charged with committing a rape upon a 16-year-old girl. The complainant lived with her parents but was by herself when the accused “came in, took hold of her by the waist, and dragged her through the yard into the privy, where he committed the offence with which he was charged. She called out aloud ‘George’, and when she was at liberty she ran out and met her mother, to whom she told what had occurred.” After various questioning, the report states that, “In reply to a further question, prosecutrix admitted being out all night on Whit-Sunday with George Mount [a neighbour], but denied that she slept with him on a haystack. At this point the Bench stopped and dismissed the case, and the prisoner was discharged”.

*There were three relevant cases in the next period (1880-1899). The respectability of the girls in the three cases was not challenged.*

3. In the report of a case in 1887 everything follows from the description of the complainant as “a thoroughly respectable girl employed as a domestic servant” (*Lancaster Guardian*, 8 January 1887). She was feeding some pigs at her master’s house when the accused went into the hut and committed an assault on her. The defence counsel acknowledged that the accused had been drinking at a public house and that he had “conducted himself in a way which he was very sorry for.” The defence further claimed “no harm seemed to have happened to the girl”. The defence counsel suggested that the plea of not guilty should be withdrawn and the prisoner should plead guilty to the minor charge of common assault. The Chairman said that the Court quite agreed to that course of action being adopted, adding that “the case was one which could not possibly be entirely overlooked, and a penalty of £3 would be inflicted upon the prisoner, in default of payment three months’ imprisonment.”
4. The next relevant case in 1888 also involved a domestic servant who was described as “a very respectable young girl” (*Lancaster Guardian*, 18 August 1888). An ex-pupil teacher aged 18 years was charged with

criminal assault upon this girl. She had been sent by the housekeeper to post a letter. At the post office she met the accused, who though a perfect stranger to her, accosted her. Despite saying that she wanted nothing to do with him, he insisted on accompanying her. Eventually after putting his arm around her and kissing her, he got hold of her and committed the assault complained of. The girl allegedly screamed but the other servants who were in the house could not hear any screams or any noise of the struggle. Ultimately she got away from the accused and rushed into the house in an agitated condition. When the accused was arrested, he replied saying, "No, not an indecent assault" (*Lancaster Guardian*, 20 October 1888).

For the defence, a curate at the Parish Church, Lancaster, said that the accused was a pupil teacher at the National School, Lancaster. The defence counsel made much of the accused's very good character, maintaining that nothing more than a kiss and a struggle for another kiss occurred in the passage. After a brief deliberation the jury returned a verdict of "Not guilty" and the prisoner was discharged. The reputation of the accused seems to have won the day over the claims of a "very respectable" domestic servant.

5. In 1893 a single man employed as a plasterer was charged with attempting to commit a rape on a 17-year-old girl who lived with her parents. The accused was a sometime lodger with a next door neighbour. It is alleged he walked into the house without knocking. He sent off the younger children on errands and then allegedly attempted the offence by throwing the complainant on to the hearthrug. The girl screamed but the accused stifled her scream with her clothes (*Lancaster Guardian*, 11 March 1893). The defence counsel "suggested that it was a case where the girl had been excited. When lighting his pipe, [the accused] took the cramp fell forward and stumbled against the chair on which the girl was sitting. She got excited and had imagined that the prisoner committed misdemeanour" (*Lancaster Guardian*, 8 April 1893). In cross-examination the prisoner said that the girl was "old-fashioned" like her mother. The defence counsel stressed that his client "had served his country and had under his control a hundred women without a blemish on his character. They had to put alongside that character the inaccuracies - not the falsehoods - of a mistaken nervous girl". After considering their verdict for half-an-hour, the jury returned a verdict of indecent assault. The prisoner who had been in prison one month was committed for two months with hard labour.

*There were no further reported mentions of the reputation or behaviour of the complainant until 1940. The three examples in the 1940-1959 period suggest that the complainant is expected to do more - for example, to take the opportunity to escape - as well as being allowed to do more - for instance, drinking in public houses - but can still be under a misapprehension as to what has happened to her.*

6. In 1940 a butcher's assistant was charged with an offence against a 17-year-old girl. The complainant and her friend got into a car with two men. The car stopped and the occupants got out. After an attempted assault, the accused suggested that they should go into a hut situated near by, and the girl, thinking she might have a chance to escape, agreed. In the hut the offence occurred.

As the case developed, the judge remarked to the prosecuting counsel, "Can you on this evidence ask a jury to commit this boy who is only 19 years of age?" After commenting that the girl could have run away and that she may have bitterly regretted the incident, the Judge asked whether the jury wished to go on with the case. Without retiring the jury intimated that they did not wish to hear the remaining evidence and the accused was accordingly discharged (*Lancaster Guardian*, 31 May 1940). The age of the defendant and the allegedly passive behaviour of the complainant seemed to produce a compelling mix for this case to be dismissed by the jury.

7. In 1947 there was the case of a 25-year-old boiler fireman being charged with the attempted rape of a 19-year-old single woman employed as a laundry worker. The complainant told how she had spent the evening with two women friends, visiting public houses and having six half pints of mild beer. After leaving the last public house, she met the accused and two other men at 10.50 p.m. The accused offered to accompany her home as he lived in the same direction. Despite her objections, the complainant alleged that the accused pulled her across the road and dragged her into a passage between two houses, which was in darkness. She alleged that the accused then got her on the ground and attempted to commit a serious offence. The complainant said she struggled but was handicapped by a partially paralysed right arm. Two witnesses living by the passage seemed to substantiate the girl's account. The police surgeon who examined the complainant confirmed the physical beating and said that "she smelt very slightly of drink but was perfectly sober" (*Lancaster Guardian*, 9 January 1948). Cross-examined, the accused said he had been married seven months and that his wife was standing by him. When the defence counsel started to call witnesses to speak as to the complainant's character, the Chairman ruled that such evidence was inadmissible. The jury found the accused guilty and he was sentenced to 12 months' imprisonment. Passing sentence, the Chairman said the magistrates had taken into consideration in the defendant's favour, the fact that his Army record was assessed as good. The fact remained that young women must be protected against brutal assaults of that kind, for brutal it was. Even though the particular young woman was in the habit of going to public houses, it did not deprive her of the protection she was entitled to have under the law.

8. In 1953 a 19-year-old nursing orderly described incidents in a Lancaster cinema when a 23-year-old was committed for trial for indecently assaulting her. At the trial after a hearing which lasted nearly two hours, the jury - without leaving the box - took less than two minutes to acquit the accused, a 23-year-old insurance agent, of either indecent assault or, alternatively, committing a common assault. What seemed to be a crucial response to the defence counsel was that the complainant "admitted that she had once before complained to an usherette about being interfered with by another man who on that occasion ran out of the cinema and her complaint on that occasion 'treated as a joke'". The Chairman said, "There is no corroboration here at all and the law states that in these cases without corroboration it is dangerous to convict. No one impeaches the young lady's good faith in this case. She may well believe that something was done which was in fact not done. ... You may in all the circumstances come to the conclusion that this young woman is perfectly honest, straightforward and sincere in her charge, but you may also decide to acquit this young man because you may think she is perhaps under a misapprehension" (*Lancaster Guardian*, 8 May 1953).

*The final three examples occurred in the last period (1960-1979). The case of the 17-year-old soldier who was acquitted has already been discussed. The other two cases both involve the complainants' drinking but with different outcomes.*

9. In 1965 a 28-year-old married man was cleared of assaulting a 17-year-old girl (*Lancaster Guardian*, 24 September 1965). She told the court that after talking to the accused and his two friends, she went with them to the John O'Gaunt Hotel, where she alleged that while her attention was diverted a gin and a gin and orange were put into her glass of orange juice. She alleged that on leaving the hotel at closing time, the accused began kissing her and made an improper suggestion. When she told him she would not do that she alleged he threw her to the floor and hit her. She got up and hit him back and he hit her again and left her. The accused told the court that he left the hotel with three men and walked straight home. He arrived home at 11 p.m. His wife was at home. He told the court: "There is no truth that I assaulted her. I was never alone with her." His alleged companions appeared as witnesses. Replying to the defence counsel, the complainant admitted telling the accused that she was pregnant by her boyfriend, but denied saying she had attempted to have an abortion to get rid of the child. The Chairman, in dismissing the case, told the accused that the Bench felt there was a doubt and they were giving him the benefit. Interestingly, gin was popularly used as an abortifacient, and this may have enhanced the doubt as to what was happening in this case.

10. The final case in the series related to an offence occurring in 1973. There were four reports with the final report of the trial being four column inches spread across four columns on page 12 of the newspaper and headlined 'GIRL HAD 'TERRIBLE ORDEAL'. Essentially the charge was that four men from Barrow, aged 19, 25, 27 and 28 years, were accused of raping a 17-year-old Lancaster girl. They were also accused of abducting the girl from Morecambe. The judge said at Lancaster Crown Court that the girl must have been terrified and frightened of her life when she was bundled into the back of the car at Morecambe, driven to a lonely country lane and raped. Three of the men were found guilty of kidnapping. By a unanimous verdict one of them was also found guilty of rape and by a majority verdict of 10-2 the jury found another of them guilty of rape. The 28-year-old was acquitted of all charges. The judge sentenced the three guilty men to three years' imprisonment, 12 months' imprisonment suspended for two years and Borstal Training respectively. When she was taken to a lonely country lane leading to a farm in Quernmore, she said she did not resist because she thought they would kill her if she refused. She agreed that she had drunk four or five whiskies and orange and one small champagne, but was not under the influence of drink. The Judge said all the men had far too much to drink. Very little chivalry was shown to the girl at the end of what must have been a terrible ordeal for her, he said (*Lancaster Guardian*, 23 November 1973).

## **Conclusions**

This study of the newspaper reporting of sex crime in a local area is the outcome of a long journey. It took over ten years to develop the database with the use of student labour. The present study focuses on non-consensual sex crimes involving female victims aged 16 to 20 years and uses the database as a resource for evidence.

The substantive results seem clear. The study usefully demonstrates the shift in the acquittal rate and the changes in sentencing of non-consensual sex crime over the 120-year time-span. The change in the proportion of contested cases is probably crucial. But newspaper studies do not show what prompts an accused in one era to contest a charge and an accused in another era to accept a charge. Such a change is likely to be related to the underlying assumptions which underpin the process. So, for example, defence counsel can pursue a line of questioning in one era which would be unacceptable in another. The qualitative study focusing on the contested cases provides some clues of the adversarial system at work.

Consent does not seem to present as a major issue in non-consensual sex crime in the nineteenth century. In contrast, reputations are crucial. If a good reputation is wanting for a female, then consent would be tacitly assumed. However, if respectability is awarded to the female, this respectability can still be capped by the respectability of the accused.

Recognising that consent is the crux of the matter is largely a twentieth century phenomenon eventually becoming firmly embedded in the Sexual Offences (Amendment) Act 1976.

The re-emergence since the Second World War of the importance of the reputation and behaviour of the complainant seems to mirror an increasing tension about the position of women in society. In relation to this study, females aged between 16 and 20 years are beginning to be seen differently. Females are increasingly being allowed to do things, such as drinking in pubs, without totally undermining any attempt to obtain justice in a non-consensual sex crime. In short, it is gradually being recognised that a good reputation is no longer regarded as pivotal to the success of a case.

Without making too strong a claim, it is still fascinating what an important role alcohol tends to play in the proceedings - both in terms of the actual assault and the subsequent interpretation in the court arena of what happened. In particular, in the years soon after the Second World War, patterns were changing. Not only were females drinking more openly in pubs with women friends but the courts began to recognise that such social acts did not deprive a woman of the protection she was entitled to have under the law. Another dimension which has not been discussed in this paper is, of course, the possible impact of alcohol on the behaviour of the defendant and the court's interpretation of an inebriated state. In several cases, alcohol is pivotal in various ways.

The methodology used in this study attempted to examine change in a systematic way over a long timeframe. By dividing the timeframe into 20-year segments comparisons are easy to make in terms of the crimes reported in this local newspaper and their outcomes. By revealing *all* the examples of the chosen themes found in the newspaper, the study avoids the familiar challenge that the qualitative work is highly selective. However, there are concerns. The newspaper is used to portray reality rather than simply representations of reality. Further, by focusing on one local area and a specific age group of complainants, the study has narrowed the context and contours of the empirical work. The filters of area and age produced manageable numbers to consider but, disappointingly, the media coverage of the cases was usually not as detailed as had been expected. In one of the very first reports (*Lancaster Guardian*, 18 August 1860), it was stated "the details of this case are necessarily unfit for publication"; words to this effect were repeated in several of the cases. As time went on, the sexual activity in question became much clearer but the detail of the reporting was rarely extensive.

Part of the motivation in developing this paper was a concern about the neglect of history in contemporary criminology. But does a focus on history simply feed an intellectual curiosity about our past or does it also have a contemporary relevance? It can, in fact, do both. As Edwards (1981: 173) reminds, "historical analysis of ideas and legal practices sheds considerable light on contemporary legal practice". Hopefully, this paper has demonstrated that there have been massive changes in both process and outcome over the 120 years of the study. It shows that change is



possible. Nevertheless, some contemporary laws and legal practices are still derived from earlier and perhaps outdated discourses. In fact, the paper does not indicate whether and what change is necessary in contemporary practice. Hence, there is still more to do for, as Schlink (2008: 178) has observed, “Doing history means building bridges between the past and the present, observing both banks of the river, taking an active part on both sides”.

### **Acknowledgements**

I wish to thank the Nuffield Foundation for the grant for the earlier part of the work on this project and to Emma Robinson and Hannah Yates for their assistance. An earlier version of this paper was presented at the British Society of Criminology Annual Conference in Cardiff, July 2009 where the comments of Jackie Turton and Helen Johnston were helpful. I wish to thank the three anonymous reviewers for their helpful comments.

### **References**

- Bourke, J. (2007) *Rape: A History From 1860 to the Present*, London: Virago.
- D’Cruze, S. (1998) *Crimes of Outrage: Sex, Violence and Victorian Working Women*, London: UCL Press.
- D’Cruze, S. (ed.) (2000) *Everyday Violence in Britain, 1850-1950: Gender and Class*, Harlow: Longman-Pearson Education.
- Edwards, S. (1981) *Female Sexuality and the Law*, Oxford: Martin Robertson.
- Peelo, M. (2006) ‘Framing homicide narratives in newspapers: Mediated witness and the construction of virtual victimhood’, *Crime, Media and Culture*, 2(2) 159-175.
- Peelo, M., Francis, B., Soothill, K., Pearson, J. and Ackerley, E. (2004) ‘Newspaper reporting and the public construction of homicide’, *British Journal of Criminology*, 44(2) 256-275.
- Peelo, M. and Soothill, K. (2000) ‘The place of public narratives in reproducing social order’, *Theoretical Criminology*, 4(2) 131-148.
- Peelo, M. and Soothill, K. (forthcoming) ‘Questioning homicide and the media: Analysis of content or content analysis?’ in D. Gadd, S. Karstedt and S. Messner (eds.) *The SAGE Handbook of Criminological Research Methods*, London: Sage.
- Rowbotham, J. and Stevenson, K. (2003) *Behaving Badly: Social Panic and Moral Outrage - Victorian and Modern Parallels*, Aldershot: Ashgate.

Rowbotham, J. and Stevenson, K. (2005) *Criminal Conversations: Victorians Behaving Badly*, Ohio: Ohio State University Press.

Schlink, B. (2008) *The Reader*, London: Phoenix.

Smith, J. and Hogan, B. (1988) *Criminal Law*, Sixth Edition, London: Butterworths.

Soothill, K. (2003) 'Serious sexual assault: Using history and statistics', in A. Matravers (ed.) *Managing Sex Offences in the Community: Context, Responses and Challenges*, Cullompton: Willan Press.

Soothill, K. (2006) 'Sex crime and recidivism in a little English city (1860-1979)', in F. Briegel and M. Porret (eds) *Le Criminel endurci. Récidive et récidivistes au Moyen âge au 20e siècle*, Geneva: Droz.

Soothill, K. (2009) 'Changing perceptions of non-consensual sex crime: The mediation of a local newspaper', *Howard Journal of Criminal Justice*, 48(5) 446-460.

Soothill, K., Bagguley, P. and Walby, S. (1990) 'Judges, the media and rape', *Journal of Law and Society*, Vol. 17, (Summer) 211-233.

Soothill, K., Peelo, M., Francis, B., Pearson, J. and Ackerley, E. (2002) 'Homicide and the media: Identifying the top cases in *The Times*', *Howard Journal of Criminal Justice*, 41(5) 401-421.

Soothill, K., Peelo, M., Pearson, J. and Francis, B. (2004) 'The reporting trajectories of top homicide cases in the media: A case study of *The Times*', *Howard Journal of Criminal Justice* 43(1) 1-14.

Soothill, K. and Soothill, D. (1993) 'Prosecuting the victim? A study of the reporting of barristers' comments in rape cases', *Howard Journal of Criminal Justice*, 32(1) 12-24.

Soothill, K. and Walby, S. (1991) *Sex Crime in the News*, London: Routledge.

White, A. (ed.) (1993) *A History of Lancaster, 1193-1993*, Keele: Ryburn.

---

**KEITH SOOTHILL** is Emeritus Professor of Social Research in the Department of Applied Social Science, Lancaster University and now works in the Centre for Applied Statistics, Lancaster University. He taught criminology for over 30 years with well over 200 publications. Recently he has co-edited (with Moira Peelo) the book, *Questioning Crime and Criminology* (Willan Publishing, 2005) and *Handbook on Forensic Mental Health* (with Paul Rogers and Mairead Dolan, 2008). With Claire Fitzpatrick and Brian Francis, he has just published *Understanding Criminal Careers* (Willan Publishing, 2009).