

**'Boys, of course, cannot be raped':
Age, Homosexuality and the Redefinition of Sexual Violence in New York City, 1880-1955.**

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'Boys as well as girls may be the victims of sex crime', declared a report on sex offences commissioned by the mayor of New York City in 1937.ⁱ What is striking about this claim is not so much its content as its prominent place, at the very beginning of the discussion of victims. Young males who had been assaulted by older men appeared in American courts from the founding of the colonies. Outside the courtroom, however, they had attracted far less attention than had female victims of sexual violence. Even the New York investigation, the first of several studies of sexual violence instigated by local and state governments in the middle decades of the twentieth century, had been prompted by the sexual assault and murder of young girls. The Committee members alluded to the reason for that relative inattention to boys when they went on to assert that 'boys, of course, cannot be raped, but they may be victims of carnal abuse or of sodomistic [sic] acts. Their morals may also be impaired by other means'.ⁱⁱ Young males subject to sexual assault were seen and treated in very different terms than female minors sexually assaulted by men, given the divergent conceptions of gender and sexuality that prevailed at the time, differences that were also reflected in the statute books. Boys could not be raped because American law defined rape as an act of sexual intercourse with a female.

In not only drawing attention to male victims, but also positioning their victimhood as analogous to that of girls, the New York report signalled how, in the mid-twentieth century, this gendered definition of sexual violence was reconfigured. That transformation resulted from two

related developments. First, age came to the fore in perceptions of the victims of sexual violence. Americans began to see not boys and girls, but a single group, children. That new attention to age came in the midst of a period that saw crimes against young victims dominate prosecutions for sex offences in American courts.ⁱⁱⁱ While historians have given some attention to this new focus on child victims, they have overlooked the transformation that took place in the nature of that attention.^{iv} Even the handful of scholars who examine crimes against boys have done so by contrasting them with offences involving girls, thereby privileging gender in the same way as those writers who exclude male victims from their analyses of sexual violence entirely, on the grounds that they constitute a distinct topic.^v Approached in those terms, the changed treatment of young male victims of sexual violence would appear to reflect the feminisation of those boys. That interpretation ignores crucial aspects of the context in which this change took place, an era of unprecedented interest in children and concern about their well-being. While scholars have explored the new social meaning given to age in this period in diverse phenomena such as age-graded schooling, child labour laws, juvenile courts, medical and psychological specialities, birthday cards and popular music, they have not extended their analyses into the realm of sexuality.^{vi}

I argue that it was the emergence of new ideas about childhood centred on physiological and psychological development that led to the emphasis on age in understandings of victims of sexual violence. Until the 1920s, puberty continued to be regarded as the originating moment for sexuality, ensuring that the focus on bodies and their development kept distinctions based on

gender in the foreground. After 1920, a new emphasis on psychology and psychological development led boys and girls to be seen more in terms of the characteristics they shared as a result of their age rather than in terms of differences based on gender. From the 1930s, boys received more cultural attention as victims of sexual violence, most states adopted gender-blind laws protecting children from sexual assault and the differences in the treatment of boys and girls in practice largely disappeared. The example of sexual violence highlights how the attention to psychological development shaped a modern sexuality that gave age a new importance as a component of identity and a basis on which to categorise behaviour.

Despite the disappearance of gender differences in the treatment of victims of sexual violence in the second quarter of the century, men who assaulted boys continued to be convicted at a higher rate than those who committed sexual acts with girls. Recognising that the treatment of child victims changed in the first half of the twentieth century raises new questions about those divergent conviction rates; they can no longer be explained as the product of a gendered definition of sexual violence focused on victims. The harsher treatment of men who assaulted boys stemmed instead from a new source, the second development that reconfigured gendered understandings of sexual violence. A new conception of homosexuality, which gave primacy to sexual object choice rather than gender persona and constructed a heterosexual / homosexual binary, invested the offender's gender with a new significance. Assaults on victims of the same sex appeared more abnormal, and more harmful to those subject to them, than crimes against the opposite sex. New notions of homosexuality, coupled with new concepts of age and childhood,

thus transformed understandings of sexual violence so that gender did not define sexual violence in the way, or to the degree, that it had at the turn of the century.

In this article, I explore those transformations through a case study of New York City. While not a setting typical of the nation as a whole, New York City provides a particularly revealing example because of the diversity of its population. Moreover, in terms of my concerns, New York's experience is representative. In the late nineteenth century, it saw the establishment of a private child protection agency, the New York Society for the Prevention of Cruelty to Children (NYSPCC). The Society was the nation's first, and unusually influential, but it was not unique, with similar organisations later appearing in several hundred communities across the United States. Legal change in New York also followed a pattern broadly typical of the majority of states.

New York City is distinguished from the rest of the United States by the unusually rich legal sources that survive there, namely the closed case files of the New York County (Manhattan) District Attorney. As a foundation for this study, I examined every rape, sodomy, carnal abuse, abduction, seduction and incest prosecution in every fifth year from 1886 to 1955, a sample of over 1800 cases. Those offences represent all the felonies that encompass sexual violence.^{vii} I subject these records to both quantitative and qualitative analysis; a combination of both approaches is necessary to grasp the changes that took place in this period. A reliance on quantitative evidence of the outcome of prosecutions would fail to capture the shift in the basis on which convictions were won, providing a misleading picture of continuity. An exclusively

qualitative analysis would miss the gendered gap in outcomes that remained after victims began to be seen in gender-neutral terms. Read with attention to the broader context of legal categories, doctrine and institutions that generated them, the case files reveal not only the different understandings that ordinary working-class New Yorkers brought to the courts, but also the impact of those understandings on the outcome of individual cases, on the practices of prosecutors and on law-making itself.

On 17 December 1874, *The New York Times* carried a report of a meeting held the previous day at the city's Association Hall, 'to organize a society for the prevention of cruelty to children'.^{viii} In the remaining decades of the nineteenth century, the NYSPCC became an integral part of the city's legal system, initiating legislation and enforcing criminal law relating to children, and the model for what became an international child protection movement.^{ix} That movement expressed a new concern with children as a distinct group. The understandings of childhood and sexuality on which it relied, however, continued to be marked by a stress on gender differences. As a result, the efforts of early-twentieth-century reformers and legislators to protect children from sexual violence took a gendered form, focused on girls, with limited attention given to boys in both discussions and legal developments.

Late-nineteenth-century Americans' sense that children as a group were distinct from adults was not entirely new; its roots lay in romanticism, in middle-class domestic ideology and

in a diminishing adherence to the doctrine of Original Sin. But a deepening interest in biological development stirred by the Darwinian revolution led many Americans to see children and adults as having a contrasting physiology that made them appear more sharply different. With their gaze shaped by an evolutionary perspective, they saw the child's body in terms of motion, with a physiology directed toward growth and development. The adult body, by contrast, appeared static, its physiology fixed, operating merely to maintain what had already developed. The new attention to bodies and development began to reduce the previously plastic scope of childhood, tying it more closely to bodily immaturity. As physicians refined their theories about children's growth into a formalised conception of stages of development, they employed age as an organising principle, using it to mark when a child would normally reach a stage of growth and at what time specific diseases could be expected to occur. As a result, childhood became more closely tied to chronological age.^x An emphasis on the differences between male and female bodies continued within this framework. Discussions of venereal disease in children, for example, assumed girls were more susceptible to infection than boys because of 'anatomical differences'.^{xi}

After the 1880s, the pioneering work of psychologist G. Stanley Hall spurred the emergence of the child study movement in the United States, and began to extend the focus on development to include cognitive as well as physiological dimensions. But Hall and his followers continued to see sexuality largely in terms of physiology, and cast pre-pubescent children as free of sexual feelings. Hall placed particular emphasis on the teenage years as a

distinct phase of life, initiated by puberty, a physiological change that brought a ‘rapid spurt of growth in body, mind, feelings and a new endowment of energy’, broke up the stable personality of the child and initiated a period of storm and stress which he labelled adolescence. One of the upheavals of adolescence was the appearance of heterosexuality. Hall’s vision of sexual development coupled physiological maturity with psychological immaturity, and posited sexuality as a deep unconscious instinct that the child did not understand, and which must be sublimated in order for an individual to successfully attain civilised adulthood. Within this framework, males and females went through a very different process of development. For girls, adolescence was about developing reproductive capacity and the higher instinct of motherhood; male adolescence, by contrast, was directed toward mental and physical growth, the attainment of reason, rational will and morality. Boys required physical activity to ensure their growth; girls must avoid it at all costs lest they deplete their capacity to bear children.^{xii}

The NYSPCC’s definition of the children about whom they were concerned as those under sixteen years of age also emphasised physiological development, in the process retaining an emphasis on gender difference. In the opinion of physicians, Elbridge Gerry, the Society’s president, reported that those below the age of sixteen lacked the ‘physical strength’ possessed by adults, and, in the case of girls, had not experienced the onset of the ‘female function’, which is to say, menstruation.^{xiii} In conceiving children in this way, the Society’s leaders distinguished themselves from the previous generation of reformers, who, in focusing on orphaned, abandoned and dependent children, had defined the objects of their concern in terms of visibility

and deference to parental authority.^{xiv} The dangers from which the NYSPCC sought to protect children took different forms for boys and girls. ‘Girls of tender years’ who ventured into the city’s streets found themselves, in the accounts of NYSPCC officers, assailed by ‘lewd men’ and initiated ‘into vice and immorality’ by already corrupted girls. In the case of boys, ‘associations with others of vicious character, often their seniors’ taught them ‘profanity and a total disregard of all moral and social duties’ and led to them ‘committing offenses requiring the stringent hand of the reformatory institution’.^{xv} It was the vices of theft and idleness that threatened boys; sex, the primary danger faced by girls, was very much a secondary hazard for boys.

On the rare occasions when reformers and commentators did mention sexual assaults on boys by men, they presented those acts differently than they did sexual violence against girls. The ‘Details of Cases’ provided to illustrate the NYSPCC’s work, for example, included a handful of examples of the ‘brutal and unnatural crime’ against young boys.^{xvi} What is missing from those references is a clear sense that such acts did the same harm to boys as sexual assault did to girls. Both did suffer physical injury. Girls, however, also experienced ‘ruin’ – a loss of respectability and reduced prospects of marriage associated with the loss of virginity – and a corruption of their innocence that could lead them to ‘fall’ into prostitution. The latter fate amounted to a change in a girl’s sexual identity. Commercialised and commodified, a prostitute’s sexuality was detached from reproduction, leaving her alienated from the maternal function that defined female identity and sexualised to a degree that put her outside normal

womanhood. Although the acts to which men subjected boys were frequently described as ‘perversions’, reformers did not suggest that they threatened a boy’s sexual identity or caused him to subsequently have sexual relations with males. Rather than the early experience of such relations, reformers and other New Yorkers explained men’s willingness to submit to sexual acts with other males variously in terms of morality and sin, as an inborn anomaly or as a manifestation of a diseased nervous system.^{xvii}

Not surprisingly given the limited recognition of sexual dangers men posed to boys, and the lack of a sense that boys suffered anything more than physical injury as a result of such assaults, the new concern with children led to the provision of additional legal protection from sexual assault only for girls. The Maiden Tribute scandal in Britain in 1885 intertwined the new concern with children with purity reform, a campaign to end prostitution and impose a single standard of sexual restraint and, in the United States, produced a nationwide campaign that saw the age of consent in the rape statute raised in almost all states by 1920. In the state of New York, in 1895, legislators raised the age of consent from ten years to eighteen years; all girls below that age were treated as being incapable of consenting to sexual intercourse. Consequently, any man who had intercourse with an underage girl, regardless of the circumstances, was guilty of rape. Reformers intended to extend the legal definition of childhood to bring it into line with new ideas, to provide to those aged in the teens the protection offered to younger children. While the increased age of consent did change the terms

in which teenage victims of sexual violence were seen, it applied only to girls and left unchanged the relationship between age and gender.^{xviii}

A group of nine states did pass laws in this period dealing with acts other than intercourse that encompassed both boys and girls, while not applying to adults, and thereby treated children primarily in terms of their age.^{xix} This legislation took two forms. Beginning with California in 1901, five states enacted laws that punished anyone who committed ‘any lewd or lascivious act ... with the body, or any part or member thereof, of a child under the age of fourteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person or such child’.^{xx} A second group of states punished any person who took ‘indecent and improper liberties with the person of a child’ under sixteen years of age.^{xxi} That these laws were adopted in such a form, and in only a handful of states, indicates that while turn-of-the-century articulations of the new ideas of childhood and development could provide the basis for an age-specific view of sexual violence, they did not create a clear, broadly felt imperative to let go of long-held gendered visions of children and sexuality.

In New York, as in most states, it remained the case until the 1920s that the law included only one offence, sodomy, which applied to male victims of sexual violence. Definitions of that crime did change at the turn of the century, but not in ways that took account of age, as the increased age of consent in the rape statute did. Until the late nineteenth century, New York’s sodomy law did not specify the act that it punished. Instead, as was common throughout the United States, it simply prohibited ‘the detestable and abominable crime against nature, with

mankind or with beast’, hinting, in going on to specify that ‘any penetration, however slight, is sufficient to complete the crime’, that the act referred to was anal intercourse. By 1892, as a result of two amendments promoted by the NYSPCC as an aid to its child protection work, New York’s law declared that ‘a person who 1. Carnally knows in any manner any animal or bird; or 2. Carnally knows any male or female person by the anus or by or with the mouth; or 3. Voluntarily submits to such carnal knowledge’ to be guilty of sodomy. Elaborated in this way, the crime of sodomy included acts against females as well as males, and encompassed the oral acts of fellatio and cunnilingus as well as anal intercourse, and consensual as well as coercive acts.^{xxii}

Although New York state law offered boys protection from a narrower range of sexual acts than it did girls – from anal and oral acts, but not from intercourse –its gendered definition of sexual violence did offer them a greater degree of protection than it did girls who had been raped. Those who brought forward an allegation of sodomy were accorded greater credibility than those who accused someone of rape. After 1886, the law held that a female’s testimony was no longer a sufficient basis on which to convict a man of rape, seduction or abduction. Her statement had to be corroborated by other evidence. The legislature did not impose that requirement as the basis for a sodomy prosecution. Later, in 1902, a state Supreme Court decision did impose a corroboration requirement, but in a lesser form. That ruling required corroborative evidence for a conviction only in cases that involved ‘voluntary submission’ by the complainant, which in the court’s view made him or her an accomplice, and even then, less

conclusive evidence was required to meet the requirement than in a rape prosecution.^{xxiii}

Although the sodomy statute declared that any person could commit or submit to sodomy, in practice, and in popular understanding, sodomy was a crime that involved males. All those charged with sodomy in my sample were men; three out of every four victims in sodomy cases were males under eighteen years of age (See Tables 1-6). The association of sodomy with males suggests that gender at least played a role in the greater credibility accorded to those who made a charge of sodomy.

Boys and girls who had been victims of sexual violence received different treatment in the streets and in the legal system of New York City in the period from 1880 to 1930. While a man attracted notice whenever he talked or walked with a young girl, one accompanied by a boy drew attention only when he was in the vicinity of a bathroom, or when he appeared ‘suspicious and a degenerate’, as a park police officer expressed it in 1901.^{xxiv} The limited attention that men and boys attracted in the city’s streets and neighbourhoods likely explains at least some of the gap between the number of men prosecuted for crimes with boys and the number prosecuted for crimes with girls. More men were charged with sodomy with boys than were accused of sodomy with girls. But 50 per cent more were prosecuted for the rape of girls under eleven years of age than were charged with sodomy with boys in that age group, and more than forty times more men were accused of the rape of a teenage girl than were charged with sodomising a teenage boy (See Tables 1 and 2).

In the legal system, NYSPCC agents and Assistant District Attorneys (ADAs) presented sodomy cases involving boys in a different way than they did sex crimes involving girls. In preparing prosecutions for sodomy, they focused on establishing that a child had not voluntarily submitted to the act, a response that made him or her an accomplice and triggered the corroboration requirement. Since prevailing attitudes toward sexual violence required a woman to actively demonstrate her lack of consent, it was a child's resistance that best established that an act had occurred without his or her consent.^{xxv} Yet NYSPCC officers highlighted struggles only in cases involving boys. The attempts of nine-year-old Peter Williams* to prevent forty-three-year-old John Cantor* from performing fellatio on him, for example, occupied a prominent place in the NYSPCC officer's summary of Peter's account of what happened after Cantor pulled him, and his eight-year-old brother Alfred, into his room:

He seized [Peter], put him on the bed, unbuttoned his trousers, took out the boy's penis and sucked it. The boy struggled to get away but the man was too strong for him. When he released the boy the prisoner gave him 5c. He then took hold of [Alfred] and said, 'Come'. [Alfred] said, 'No'. The prisoner said, 'It is very nice; every boy likes it'. He then did the same to [Alfred] as to [Peter].^{xxvi}

This brief is typical both in its attention to the force employed by the man, and to the efforts of the boys to resist.^{xxvii} The NYSPCC officer displayed a particular interest in the boys' struggle,

throwing it into sharp relief by describing, on the one hand, Cantor's actions, and on the other, the boys' efforts to resist them.

When they summarised a girl's statement, however, officers of the NYSPCC often took a different approach. They cast the man's actions as forcible, but as in rape cases, presented the girl as a passive object. Fourteen-year-old Elizabeth Bell*, for example, described a variety of actions she took in an attempt to prevent thirty-four-year-old Arthur James*, a boarder in her home, from performing acts of cunnilingus on her. She first told him to desist, and drove him from her room. When she later awoke to find him performing cunnilingus on her, Elizabeth pushed him away, and fought with him when he took her into his room and laid her on the bed. None of these actions appear in the NYSPCC officer's summary of her statement; in that account, only James was active. He first 'got hold of her and put his mouth to her privates'. Later he 'took her to the bedroom, put her down on the bed and again committed sodomy upon her by placing his mouth on her privates'.^{xxviii}

The NYSPCC's approach reveals that, in addition to responding to the law, the way in which prosecutors presented sodomy cases was shaped by their perception of the pre-eminence of gender in ordinary New Yorkers' understanding of childhood. Awareness of the intrinsic differences between males and females overshadowed attention to their age. The male nature of boys caused them to be regarded as eager and impulsive, aggressive to an almost brutish extent and, as such, instinctively able to "take their own part" and defend themselves from attack' in a way that girls were not.^{xxix} A boy's resistance to a man's attempts to sexually assault him could therefore be seen

as an expression of his masculine nature, and not always as a sign of sexual understanding and lost innocence, as was the case with girls.

Even when New Yorkers did regard a boy's innocence and childhood as compromised, that perception exerted a different impact on how they saw that boy than it did on how they viewed a similarly corrupted girl. When jurors determined that a boy had adult knowledge rather than the innocence of a child, it did not cause them to suspect that he had consented to participate in an act of sodomy. Inverted gender behaviour, effeminacy, rather than sexual understanding, identified those males likely to consent to being penetrated. As a result, jurors still saw the failure of a boy's efforts to resist an assault as the product of a disparity in strength, or of his circumstances, and still saw his resistance as evidence that he had been coerced. The NYSPCC officer handling the case involving Peter Williams* exemplified that attitude when he noted that the resistance of the nine-year-old boy had failed because 'the man was too strong for him'. In the case of a girl, the suspicion of female sexuality was such that almost any failed effort to resist was liable to be deemed as evidence of consent. That distrust extended even to those involved in oral and anal acts, which, although considered 'unnatural', were understood as behaviour to which a female might consent in return for money. In casting girls as passive objects in order to mitigate such suspicions and establish their childishness, rather than highlighting their efforts to resist, NYSPCC officers pursued a strategy that reflected the Catch-22 in which female victims of sodomy found themselves. In a sodomy case, unlike in a child rape case, such passivity could be also interpreted as evidence of voluntary submission, triggering the corroboration requirement and making it more

difficult to secure a conviction. Notwithstanding that additional obstacle, in practice prosecutors were able to persuade juries to treat pre-pubescent girls as children. Helped by the number of cases that involved an eyewitness, they won almost as high a proportion of convictions in the small number of sodomy cases, as well as in rape cases, involving pre-pubescent girls, as they did in sodomy cases involving boys of the same age.

But while prosecutors' approach allowed them to manage the additional obstacles to conviction in cases involving pre-pubescent female victims, they had less success in prosecuting men who committed acts with older girls. In the case of teenage girls, prosecutors faced the additional difficulty of their physiological maturity; a teenage girl appeared, as one newspaper reporter put it in 1886, 'a woman in appearance [although] a child in years'.^{xxx} Jurors saw a girl's physical development as indicating that she possessed the sexual understanding that, in their eyes, distinguished an adult from a child. The increasing visibility of sexually expressive teenage working girls on the city's streets and in its dance halls, amusement parks, theatres and saloons, whose behaviour was difficult to reconcile with the dependence and sheltered ignorance that defined childhood in Victorian understandings, only served to reinforce the perception of teenage girls as distinct from children. As a result, many jurors and judges displayed a suspicion that a teenage girl involved in a sexual act, no matter how passively she behaved, might have expressed a precocious consent rather than been a victim of coercion.^{xxxi}

The potential sexual understanding of physically mature teenage boys, by contrast, did not make them appear any more likely to consent to sodomy than younger boys would be. Only if

he displayed inverted gender behaviour, effeminacy – and none of the boys in my sample did – would a teenage boy trigger the same broad suspicion that a girl did.^{xxxii} Those attitudes help explain why courts more readily treated teenage boys involved in sodomy prosecutions as victims.

Given the additional difficulties prosecutors faced in overcoming the gendered obstacles to presenting pubescent girls as child victims, it is not surprising that it is the fate of men accused of acts with teenage children that offers the most striking quantitative evidence of concern with the gender of the victim. Men accused of sodomy with boys aged between eleven and seventeen years were 50 per cent more likely to be convicted than those accused of the rape of a girl from the same age group, despite the formal advantage provided by the increased age of consent in the rape statute (See Table 2). Once convicted, men who had been indicted for sodomy received different treatment at the hands of judges than did those who had been indicted for rape. Almost all those charged with sodomy and convicted of a misdemeanour received a prison term, whereas judges suspended the sentences of nearly half of the men charged with rape and convicted of misdemeanours. In the case of men convicted of a felony, those who had been charged with sodomising a boy generally went to prison for at least five years, while those who been charged with rape typically received suspended sentences or spent no more than a year in prison.^{xxxiii} Overall, judges established a pattern in which sex crimes against teenage boys were more harshly punished than those committed against teenage girls.

While a new concern with sexual crimes against children became evident in the period from 1880-1930, age continued to take second place to the gender of the victim in understandings of sexual violence. Throughout the United States, it was assaults on girls that dominated press coverage and provoked discussion. In New York City courts, legal categories constructed in terms of gender, rather than age, and prosecutors' perception of the attitudes of ordinary New Yorkers, produced different responses to crimes against girls and crimes against boys. While greater numbers of men were prosecuted for crimes against girls, those men prosecuted for crimes against boys received harsher treatment.

In the period from 1930 to 1960, concern about sex crimes involving children intensified. Child victims were the focus of a series of panics about sex crime in the United States provoked by the threats to sexual order posed by the Depression and World War Two.^{xxxiv} Male victims attracted unprecedented notice. Among the sex murders that became sensational cases were the death of three-year-old Charles Bradley at the hands of Joseph Bortnyak in Chicago in 1947, Theodore Hilles's murder of six-year-old George Counter in Detroit in 1949 and the killing of twelve-year-old Ellis Simons by sixteen-year-old Seymour Levin in Philadelphia that same year.^{xxxv} Photographs of those boys featured as prominently in the nation's tabloids as did those of female victims, replete with the same symbols of innocence that marked the pictures of girls – toys and clothing. The funerals of both the boys and girls were presented as pageants of innocence, with a prominent place given to the children's 'playmates'.^{xxxvi}

But more was occurring than a simple recognition that boys were the targets of sexual assaults by men. By the end of the 1940s, politicians and public officials began to recast the sex crime panic to stress the age of the victims rather than their gender. Two articles that J. Edgar Hoover, director of the Federal Bureau of Investigation (F.B.I.), wrote for *American Magazine* illustrate that shift. The first, published in 1947 and entitled ‘How Safe is Your Daughter?’, instanced several examples of crimes against women and girls to support its call for the psychiatric and medical treatment of offenders. In the second article, published eight years later, and entitled ‘How Safe is Your Youngster?’, one-third of the examples Hoover employed to support the same argument involved male victims. Among them was the case of ‘a 31 year old pervert [who] criminally molested a 12 year old newspaper delivery boy three different times in a suburb of a large Eastern city’.^{xxxvii}

A new concern with psychology played a crucial role in bringing an emphasis on age into understandings of sexual violence. NYSPCC rhetoric had presented the consequences of sex crime in terms of physical wounds, injuries that had consequences for sexual identity only in the case of girls. Mid-century accounts made little reference to such physical injuries, focusing instead on the psychological effects of sex crime. Those discussions took no account of gender; their subject was the child. ‘These things the children survive’, Howard Whitman noted in *Colliers* magazine, ‘but with what trauma? With what long-smarting scars of frightfulness? With what psychological wounds?’^{xxxviii} That psychiatrists could not offer an immediate answer to these questions, because the ‘mental damage’ caused by a sex offence

‘may lay hidden under the surface of conscious mental life’, as the *Report of the Mayor’s Committee* put it, ‘and may take a long time to develop and reveal its disastrous effects’, only deepened concerns.^{xxxix}

Only in the 1920s had the advice provided to parents by physicians and other experts begun to address the child’s emotional health and psychology.^{xl} The concern with the psychological dimensions of childhood also seeped into discussions of a range of other issues. Warnings about the effects on children of paid work, for example, had long centred on physical injuries and the disruption of growth and development. In the 1920s, reformers also began to warn of psychological effects. Dr. C. Floyd Haviland cautioned, in a 1929 pamphlet, that child labour led to ‘the development of malformed child personalities which are the forerunners of ill-balanced, partially integrated and poorly adjusted adult personalities’.^{xli}

Of the experts whose work informed this concern with psychology, it was psychiatrists in the mental hygiene movement who addressed sexuality. Part of the turn-of-century movement of psychiatry out of the asylum, mental hygiene drew its conceptual basis from dynamic theories of mental illness that focused on functional disorders of the mind and emotional maladjustment, rather than on physiological conditions. This was a developmental framework in which personality matured from infancy until it became, in the words of William Alanson White, Superintendent of St Elizabeth’s Hospital in Washington, D.C., ‘firmly established, structuralized’ in adulthood. Mental hygiene repudiated the innocent prepubescent child in favour of Freud’s sexual child. Rather than presenting puberty as the transformation that

introduced sexuality, mental hygienists instead endowed children with manifest, unique forms of sexuality that emerged progressively throughout childhood as preliminaries to sexual maturity.^{xlii}

Where to situate homosexuality within the developmental framework was a particularly contentious issue. Some psychiatrists and writers saw homosexuality as an aberration, a departure from psychosexual development and a distortion of ‘normal’ heterosexuality.^{xliii} Others, like William White, more strongly influenced by psychoanalysis, saw it as an ‘intermediary stage’, one that preceded adolescence.^{xliv} The later position gained in prominence in the post-war period, expressed in a range of government publications. In *A Citizen’s Handbook of Sexual Abnormalities and the Mental Hygiene Approach to Their Prevention*, a pamphlet distributed in 1950 to every household in Michigan, Samuel Hartwell endeavoured to make this concept credible to a lay audience. ‘Many mature adults have difficulty in remembering that they went through such an experience’, Hartwell admitted. But ‘if they can be realistic in remembering their youthful experiences’, he insisted, ‘they will usually find that they, like most young people, had crushes or deep demanding friendships with someone of their own sex’.^{xlv}

Like the shift in emotional culture beginning in the 1920s that has been described by historian Peter Stearns, the new emphasis on psychological development saw the unravelling of the gender distinctions that had marked the turn of the century. In terms of their psychology, to borrow Stearns’s phrasing, ‘parents and advice givers began to view children per se as the

objects of concern without particular reference to the children's gender'. Changes in the contacts between men and women promoted receptivity to departures from the older emotional culture; analogous changes in the contacts between boys and girls facilitated a less gendered view of childhood.^{xlvi} A broad age segmentation of American society diminished many of the differences that had existed in the experience of boys and girls. Increasingly, boys no longer enjoyed the greater independence, freedom of movement and earlier access to the workplace that had distinguished their experience from that of girls. Instead, boys joined their sisters in being restricted to schools and the domestic sphere. Anxiety that the American boy had become a 'sissy', lacking in masculinity as a result of the influence of his mother and of the female teachers who predominated in schools, suggests that the shared experiences of childhood were perceived as eroding gender differences.

In terms of understandings of sexual violence, the key import of these new ideas was that, as a consequence of going through the same process of psychological development, boys and girls now both suffered injury to their sexual identity from sexual assault. In addition, locating the start of the process of sexual development in the years prior to puberty brought a reassessment of the harm that acts such as fondling or touching a child's genitals did to both boys and girls. Since they caused no physical injury, and, in the case of females, did not rupture the hymen and cause a loss of virginity, such acts appeared relatively inconsequential when seen in terms of an 'adult' sexuality centred on intercourse. Framed within a process of development, however, such acts, like intercourse, and oral and anal acts, introduced sexual feelings and

experiences inappropriate to childhood, and thus interfered with an individual's progress toward mature heterosexuality. As a result, as the *Report of the Governor's Study Commission on the Deviated Criminal Sex Offender* from Michigan noted, 'the traumatizing effect of a sex offense which may be considered minor may be as great as that of a sex offense involving physical force or violence'.^{xlvi}

If conceiving the harm caused by sexual assault in psychological terms brought injuries to boys and girls into the same conceptual framework, the new importance given to sexual object choice cast boys as experiencing a greater degree of trauma when assaulted by a man than did girls. In a complex process expertly unpacked by George Chauncey, shifts in middle-class culture and changing medical discourse made the object of an individual's desire, rather than an inversion of gender conventions, the basis on which gay men were distinguished from other men. This emphasis on object choice provided the foundation for the division of individuals into heterosexuals and homosexuals on the basis of the gender of their sexual partners, with exclusive heterosexuality a precondition for 'normality'.^{xlvii} Sexual acts, and an individual's role in an act, assumed a lesser importance in that vision of sexuality. In terms of this concept of homosexuality, sexual assault by a man could arrest a boy's development at the homosexual phase, or permanently redirect his sexual object choice, preventing him from achieving adult heterosexuality. A girl sexually assaulted by a man did not suffer such extensive damage to her sexual development. Although being subjected to an oral or anal act exposed a girl to an 'unnatural' sexuality capable of distorting her development, neither that experience nor having

intercourse involved an ‘abnormal’ sexual object, and thus did not push her outside the bounds of heterosexuality.

The new understanding of homosexuality as detached from gender persona also lessened the emphasis on effeminacy as the sign of homosexuality that had sheltered boys from the suspicion directed at girls. An adolescent boy could have a sexual interest in a man even if he did not display an inverted gender persona, raising the possibility that he might consent to an oral or an anal act. That possibility paralleled the longstanding anxiety that physically mature adolescent girls had the desire and understanding to consent to sexual intercourse.

Mental hygienists’ ideas, and the press and political attention to crimes against children in age-specific terms, were reflected in legislation that lacked the emphasis on gender that had marked New York’s earlier legal response to sexual violence against children. The new offence of carnal abuse, created in 1927, made any male 18 years and older who ‘carnally abuses the body or indulges in any indecent or immoral practices with the sexual parts or organs of a female child 10 years or younger’ guilty of a felony. A 1929 amendment defined the same acts as a lesser crime, a misdemeanour, when committed with a girl between eleven and sixteen years of age. In 1933, the statute was amended again so that both forms of the offence applied to male children as well as female children, and to acts committed by any person.^{xlix} In elaborating the offence of carnal abuse, the Legislature shaped the law around a concept of sexual development. The acts covered by the statute did sufficient harm to warrant punishment as a felony only when committed with a pre-pubescent, sexually immature child. Committed on an

adolescent, an individual at a more advanced stage of sexual development, they did only enough damage to warrant punishment as a misdemeanour. Committed on a sexually mature adult, such acts did not even constitute a sex crime, but rather an assault. In applying this framework to both male and female victims, the carnal abuse statute gave priority to the nature of the harm done by such acts, something common to both boys and girls thanks to the process of psychological development that they shared. That, within the terms of the heterosexual / homosexual binary, a boy suffered more trauma when assaulted by a man than did a girl, went unrecognised by the law.

In creating a gender-blind law, the state of New York was at the forefront of a nationwide wave of legislative action. Nevada, North Dakota and Minnesota had enacted similar laws in the 1920s, and Vermont followed suit in 1937; another twenty-one states generated such legislation between 1948 and 1958, in the midst of the sex crime panic.ⁱ All this legislation also defined the acts to which it applied in more specific terms than had those earlier laws, although only seven states joined New York in using the term ‘indecent and immoral practices’.ⁱⁱ Seven states favoured the ‘lewd and lascivious’ language popular early in the century; another seven combined the two definitions.ⁱⁱⁱ A new, even more explicit, vocabulary of fondling and touching distinguished the laws of the remaining four states.ⁱⁱⁱⁱ

In 1950, in a more path-breaking move, New York legislators also amended the state’s sodomy law so that it used the same language and structure as the law on rape. In place of a definition of sodomy that emphasised the act and made no mention of age, the new law

employed the same age of consent, and gave boys the same protection from violence, as the rape law did in the case of girls. In effect, although boys still did not fall within the scope of the rape statute, and lacked protection from acts of intercourse, the amended law treated and protected boys in the same way that the rape law did girls.^{liv} It would be more than a decade, after this approach had been endorsed by the American Law Institute and incorporated in the Model Penal Code, before other states began to narrow their sodomy laws to apply only to cases that involved violence and children as New York had. It is the de-criminalization of consensual acts between adults in those laws – New York’s law only went as far as reducing such acts to the status of a misdemeanour – that has drawn attention; what they continued to define as criminal, their emphasis on age and their significant impact on definitions of sexual violence have gone unexamined.^{lv} Yet it was in those terms that Governor Thomas Dewey presented the law, explaining it as being intended to address the ‘rigid provisions of the existing definitions’, by introducing ‘distinctions between crimes involving force or the abuse of children and those which do not contain those elements’.^{lvi}

In practice, the legal system’s treatment of sex crimes involving children did not reflect the influence of the concept of psychosexual development to the extent that the law did. Case files from these years reveal that New Yorkers continued to conceive of, and assess, children in terms of the concept of innocence. They also largely nullified efforts to expand the definition of a sexual act and punish more severely men who committed acts other than intercourse.

Nonetheless, after 1930, boys and girls who had been victims of sexual violence were no longer

treated as differently as they had been, suggesting the spread of the new focus on psychology.

This change is evident in the way NYSPCC officers presented cases, in the questions that ADAs and grand jurors asked children who alleged that they had been victims of sexual violence and in the interpretations judges offered of the testimony of those children. Differences did remain in the outcomes of prosecutions, but they stemmed from a new source, the significance that the heterosexual / homosexual binary gave to the gender of the offender.

While NYSPCC agents and ADAs continued to emphasise the passivity of pre-pubescent girls who had been assaulted, just as their colleagues had earlier in the century, they changed their method in cases that involved boys. No longer did they stress a pre-pubescent boy's resistance to a man's efforts to commit an act of sodomy.^{lvii} In the period from 1930 to 1955, the adult understanding connoted by such resistance provoked a suspicion that a boy might have consented. As in the case of girls, his age alone was insufficient to convince jurors that he was a child; they also looked for a lack of understanding, which would be manifest in his passivity and in his language. Over time, ADAs and NYSPCC officers began to portray boys in sodomy cases in the same manner as they did girls, that is, as objects in narratives in which only the defendant acted, and in which, at most, only passing mention was made of force.

In 1955, for example, an ADA showed that concern with a boy's passivity and lack of understanding in his summary of seven-year-old John Messenger's* statement. One afternoon, when Messenger was watching television in the apartment of his building's janitor, he was joined by twenty-six-year-old Frank Johnson*, the building's handyman. 'After a while

[Johnson] asked him to step into the next room', the ADA wrote. 'There the defendant first removed his own trousers and then took off [Messenger's] trousers. Defendant took [Messenger's] penis into his mouth. After completing this act the defendant told him not to tell anything to his mother'.^{lviii} In that summary, the boy is entirely overshadowed by Johnson, his one action, acceding to the handyman's request to go into room, omitted. As in the presentation of cases involving girls, the detail that Messenger did not remove his trousers is highlighted in an effort to emphasise his lack of understanding. Since Johnson committed an oral act, he did not inflict any injury, so the ADA had no scope to highlight Messenger's reaction. Nor did he mention the boy's failure to gain anything from the act, in part because he had received something from Johnson, access to the janitor's television. Both gaps in the portrait of innocence that the ADA painted paralleled those in presentations of female victims of the same age. Prosecutors' presentation of crimes against boys thus revealed the same diminished concern with gender evident in broader discussions of sex crime.^{lix}

The years after 1930 also saw an erosion of the gender differences that had existed in the disposition of men convicted of crimes against young children. Men convicted as a result of sodomy prosecutions no longer received sentences that were more severe than those handed out to men convicted of sexual acts with girls. Whereas only one in five men convicted of sexual acts with young boys in the years before 1930 received a prison sentence of a year or less, in the years from 1931 to 1955, judges showed four in every five men such lenience.^{lx} Even when faced with a defendant convicted of a felony, judges opted to impose a short

sentence. Between 1886 and 1926, judges had sent two-thirds of the fifteen men convicted of a felony to prison for at least five years; in the period 1931 to 1955, not one of the seven men convicted of a felony received a term longer than five years.

Notwithstanding the gender-neutral terms in which prosecutors dealt with victims of sexual violence, a higher proportion of men who assaulted boys were convicted than of those charged with sex crimes against girls (See Table 3). An examination of the cases that produced those figures reveals that some of that gap was produced by factors unrelated to gender, namely the inability of young victims to give sworn testimony, the lack of evidence and the new definition of penetration produced by the need to distinguish acts of carnal abuse and rape. Taking those factors into account, however, does not bring the conviction rates into line.^{lxi} A similar divergence in conviction rates had existed earlier in the century, but the gap at mid-century had a different basis. The gendered treatment of victims that had previously underpinned conviction rates largely disappeared after 1930. Instead, it was the gender of the offender that shaped conviction rates.

In late 1930s, Americans focused attention on the men who committed sex crimes, particularly recidivists. Public officials shaped an image of those men as a particularly dangerous type of offender, a sexual psychopath, who was best dealt with by psychiatrists. To that end, by the 1960s more than thirty states had passed laws allowing for the examination and committal of sex offenders.^{lxii} The new emphasis on sexual object choice in understandings of homosexuality cast men who assaulted boys as doing more harm than those who assaulted girls,

but this gendered understanding of harm did not find a place in the carnal abuse or sodomy statutes. However, the higher conviction rate for assaults on boys reveals that legal officials and juries did recognise it in practice.

By the 1950s, the differences in conviction rates in cases involving prepubescent children were smaller than those in cases involving children aged in their teens, largely because emerging understandings of age cast sexual acts with children, even heterosexual acts, as abnormal. ‘The ordinary citizen can understand fornication or even forcible rape of a woman’, sociologist Edwin Sutherland argued in 1950, ‘but he concludes that a sex attack on an infant or girl must be the act of a fiend or a maniac’.^{lxiii} Acts with women were intelligible in terms of uncontrollable desires because, as adults, women were recognised as arousing desire. But most Americans still saw children as sexually innocent, without sexuality, and therefore unable to provoke sexual desire, let alone uncontrollable desire.^{lxiv}

After the 1930s, mental hygienists re-imagined adolescence in light of the concept of psychosexual development as a period in which boys and girls had to express their heterosexuality in order to complete their development. Although that sexual expression ideally stopped short of sexual intercourse, this concept of adolescence left only a tenuous boundary between adolescent sexual activity and ‘normal’ sexual intercourse. As a result, although the treatment of cases of sexual assault on teenage boys and girls went through the same transformations as did that of assaults on younger children, the divergence in conviction rates

for men who assaulted boys as opposed to those who assaulted girls was even greater than in cases involving younger children.

The way in which cases came into the legal system after 1930 reflected a concern about teenage boys' vulnerability to sexual assault not only closer in degree to that aroused by girls, but also focused on similar behaviours and spaces. For example, a rooming house landlord, becoming suspicious after repeatedly seeing 'a number of boys, apparently under the age of 16 years, enter the room occupied by [a fifty-two-year old Puerto Rican man]', informed a police officer.^{lxv} A new, negative view of gay life, which developed in the 1930s, also produced a heightened surveillance of homosexual activity that encompassed boys. Police concealed in toilets, and in the vicinity of Times Square, caught boys, as well as adult men, engaging in sexual acts.^{lxvi}

In the legal system, where once prosecutors and jurors had given little attention to the possibility that a boy who had been involved in an act of sodomy and was not obviously effeminate might have consented, after 1930, as they did in cases involving girls, they displayed an assumption that teenage boys understood what was happening, and might have willingly submitted. As a result, jurors displayed a new unwillingness to see a boy's failure to resist as the product of a lack of understanding, rather than a sign of consent. In a typical case, when Mitchell Stevens*, a fourteen-year-old runaway, encountered forty-year-old Alex Walker*, an unemployed African American, in the neighbourhood of Broadway and 42nd

Street in 1941, the older man suggested he come to his room and wash up. At Walker's trial, Stevens testified that after he and Walker got to the room,

we were just sitting around and he asked me if I wanted to have some fun. I didn't know what he was talking about. Then he asked me if I ever was sucked off before, and I told him no, and he said, 'Well, I would like to try it', and I told him no, because I never did it before and I would not know what it was. I could say nothing, or yell, because if I did – [at this point the defence attorney objected, and Stevens' statement about being unable to resist was struck out] He said he would show me how, and he got on his knees and took it and put it in his mouth.^{lxvii}

Claims of a lack of homosexual experience, like that offered by Mitchell, echoed prosecutors' concern to establish the virginity, and hence immaturity, of a teenage girl. However, a girl's claim to be a virgin was generally grounded in her body, in medical evidence of a recently ruptured hymen. A boy's previous lack of experience of 'abnormal' sexuality, by contrast, lacked such a physical referent to give it credibility, and did not have the same power to cast him as a child. When a boy testified that he had gone to a man's room, his claims that he had not realised what the man would do provoked questions expressing disbelief from members of the grand jury.^{lxviii}

Judges displayed a similar shift from seeing boys as without the understanding to consent to sodomy to assuming that boys knew what they were doing. Although Mitchell Stevens* said all the things necessary to establish his immaturity, claiming ignorance, a lack of experience and circumstances that prevented him from resisting, he failed to convince Judge Freschi that he had not consented. Instead, as the judge saw it, ‘by persuasion, [Walker] induced him, by talking to him ... the young man submitted voluntarily. He did not resist or refuse. The testimony plainly indicates that he submitted to the proposal of the defendant, and this practice was indulged in’.^{lxix} That reasoning relied on the same narrow conception of force as extensive physical violence that judges employed throughout this period in cases that involved teenage girls; it betrayed no sign of the earlier sense that boys were unlikely to consent to sexual acts with men.

In addition, juries began to pay attention to a boy’s character, displaying the same unwillingness that they had long showed in cases that involved teenage girls to treat those of bad character as victims. At the trial of twenty-seven-year-old Oscar Devereaux* in 1946, for example, fourteen-year-old Frank Hertz* and fifteen-year-old John Weiss* testified that on separate occasions Devereaux had taken them on a shopping trip, to dinner and then back to his room at YMCA. Both told similar stories of falling asleep in Devereaux’s room and awakening to find him kneeling beside the bed with their penis in his mouth. Hertz and Weiss also admitted to boasting of committing burglaries and other crimes, to being truants and runaways, and in Weiss’s case, to being drunk on many occasions prior to meeting Devereaux and to lying about his age. The principal of the boys’ school also testified that their teachers had

characterised them as ‘insolent, indolent, unco-operative and dirty’. In contrast, Devereaux was an Air Force veteran, who claimed ‘that he had always been interested in youth movements’ and ‘was merely interested in the boys who appeared to be underprivileged’. He was also, in the ADA’s opinion, ‘not obviously effeminate in speech or demeanor’. Despite the prosecutor’s assessment of the man’s conduct with the boys as ‘suspicious’, the jury could not agree on a verdict, voting seven to five to acquit Devereaux. ‘Many of the jurors’, the ADA reported with some frustration after interrogating them, ‘seemed more concerned with what was to be done with the boys than with anything the defendant might have done. All of them expressed a reluctance to convict a veteran with a good record on the unsupported testimony of two boys such as these’.^{lxx}

In this case, the defence attorney succeeded in presenting the boys’ claim to have been victims of sexual violence as another expression of their bad, delinquent character, as a logical extension of their previous criminal behaviour. Although this concern with a teenage boy’s nature echoed that displayed by jurors in rape cases involving teenage girls, jurors still understood delinquency in the case of girls in more narrowly sexual terms, as evidenced by previous sexual experience, extensive sexual knowledge or the exchange of sex for some kind of payment. Bad character in boys, by contrast, while sometimes evidenced by ‘provocative’ sexual behaviour and homosexual experiences, was more often based on the non-sexual behaviours displayed by Hertz and Weiss, the petty crime and rejection of authority that remained at the heart of concepts of male juvenile delinquency.

Such traces of a gendered view of victims of sexual violence are insufficient to explain the divergent patterns of outcomes in sodomy and statutory rape cases. Men charged with sodomy with boys were indicted at more than twice the rate of those charged with the rape of a female minor (see Tables 3 and 6). The gap is even greater than in the case of crimes involving younger children because, after 1930, psychologists' argument that sexual expression was a necessary part of adolescence led prosecutors to see girls as mature and knowledgeable enough to consent, and acts involving men and teenage girls as merely 'normal sexual relations'. As such, cases involving teenage girls were routinely excluded from discussions and definitions of sexual violence in the middle decades of the twentieth century. That shift brought the ideas of experts and legal officials in line with those of ordinary New Yorkers, who had made clear in the city's courts since the turn of the century that they did not consider those aged in their teens to be children.^{lxxi} Although this shared perspective accorded teenage boys the same sexual maturity and knowledge as teenage girls, a boy's consent could not render 'normal' an act between two members of the same sex. The heterosexual / homosexual binary that normalised the men's sexual activity with teenage girls cast all same-sex relations as abnormal. As such, a man who committed an act with a boy deserved legal sanction, even when the boy was complicit. But, as the sentences handed out by judges reveal, recognition of a boy's consent was not without meaning, since it typically reduced the severity of the punishment that attended a conviction.

Conclusion

By the late 1950s, the new relationship between gender, age and homosexuality evident in statute books, and in legal practice, was registered in the broader culture. Homosexual men had a prominent place amongst those whom Americans saw as posing a sexual danger. The media had begun to split homosexual offenders away from other sexual psychopaths and to present them as a problem in their own right, a ‘New Moral Menace to Our Youth’, as the title of an article in *Coronet* magazine trumpeted.^{lxxii} Throughout the country, homosexual men were among the most frequent targets of sexual psychopath laws, with even those involved in adult, consensual relations often identified as sufficiently dangerous to warrant committal.^{lxxiii}

The term ‘child molestation’ also began to appear regularly in the American media in the 1950s. An article published in *National Parent-Teacher* in 1957, for example, opened with examples of ‘assaults’ on both girls and boys, and then quickly moved to define the problem as not simply ‘sex murders and brutal assaults’, but as ‘the whole range of sex offenses against children’. The authors labelled that grouping ‘child molestation’.^{lxxiv} Originally employed in the 1930s as a euphemism for sexual assault, the term molestation was used in the immediate post-war period by psychiatrists and sexologists, including Alfred Kinsey, to reflect the diminished harm that they saw resulting from adult men’s sexual activity with children. Philip Jenkins has argued that the appearance of molestation in cultural discourse is evidence of the more liberal and tolerant attitude toward sexual behaviour that came to characterise the 1960s and 1970s.^{lxxv} However, the term that appeared in the popular media was not molestation, but *child* molestation. That phrase grouped crimes against boys and girls into a single age-based category;

its use also signalled the new weight given to age in relation to gender. The gendered language of sexual violence of Victorian America had given way to a more age-specific language that reflected modern sexuality's emphasis on development. More broadly, the new term signalled the importance now given to age in determining the character of an act, both with regard to whether it was sexual, and to whether it constituted sexual violence. It also helped Americans to see boys as well as girls as victims of sexual violence: boys still could not be raped, but all children could be molested.

The two developments that transformed understandings of sexual violence came together in the figure of the homosexual child molester. 'All too often', the Special Assistant Attorney General of California warned the public in 1949, 'we lose sight of the fact that the homosexual is an inveterate seducer of the young of both sexes, and is ever seeking for younger victims'.^{lxxvi} More was at work in the seemingly illogical image of a homosexual whose sexual object was a member of the opposite sex than simply a Cold War-inspired conflation of all forms of sexual nonconformity.^{lxxvii} The new emphasis on heterosexual behaviour as normal did not mesh entirely with the age-based vision of sexuality that conceived of acts with children, even those that remained within the bounds of heterosexuality, as abnormal. Casting the homosexual as a molester of both boys and girls removed any tension between those two concepts, overlaying the abnormality of acts with children on the division of individuals into heterosexuals and homosexuals. If only an abnormal man could commit an act with child, and homosexual behaviour was abnormal, so this line of thought went, then the man who molested a child would

logically also be a homosexual. The homosexual child molester thus not only highlighted what had become central to understandings of sexual violence – not the victim’s gender, but the victim’s age and the gender of his or her assailant – but also the extent to which that new framework made it difficult to conceive of heterosexual violence, of male violence against women. In the middle decades of the twentieth century, even as they began to see boys as victims of sexual violence, Americans in practice, continued to see only a narrow range of sexual assaults on women as constituting rape.^{lxxviii}

APPENDIX

TABLE 1: Outcomes of Sodomy And Rape Prosecutions Involving Children Ten Years of Age & Younger, 1906 –1926*

<i>OUTCOME</i>	<i>CHARGE</i>		
	<i>SODOMY</i>		<i>RAPE</i>
	Boys	Girls	
Total Number	18	5	27
Number Indicted	17	5	26
<i>% of Total Number</i>	<i>94%</i>	<i>100%</i>	<i>96%</i>
Total Convictions	12	3	19
<i>% of Total Number</i>	<i>67%</i>	<i>60%</i>	<i>70%</i>

(Source: District Attorney's Closed Case Files, 1906, 1911, 1916, 1921, 1926)

* This table includes only my sample years after 1906 because the records of cases dismissed by the grand jury do not survive for the earlier years.

TABLE 2: Outcomes of Sodomy And Rape Prosecutions Involving Children Eleven to Seventeen Years of Age, 1906 –1926*

<i>OUTCOME</i>	<i>CHARGE</i>		
	<i>SODOMY</i>		<i>RAPE</i>
	Boys	Girls	
Total Number	12	6	514
Number Transferred	0	0	5
Number Indicted	9	5	345
<i>% of Total Number</i>	<i>75%</i>	<i>83%</i>	<i>67%</i>
Total Convictions	9	4	257
<i>% of Total Number</i>	<i>75%</i>	<i>67%</i>	<i>50%</i>

(Source: District Attorney's Closed Case Files, 1906, 1911, 1916, 1921, 1926)

* This table includes only my sample years after 1906 because the records of cases dismissed by the grand jury do not survive for the earlier years.

TABLE 3: Outcomes of Prosecutions Involving Children Ten Years of Age & Younger, 1931-1946

<i>OUTCOME</i>	<i>CHARGE</i>				
	<i>SODOMY</i>		<i>CARNAL ABUSE</i>		<i>RAPE</i>
	Boys	Girls	Boys	Girls	
Total Number	18	4	8	59	10
Number Transferred	1	1	2	12	5
Number Indicted	14	2	6	33	4
<i>% of Total Number</i>	<i>78%</i>	<i>50%</i>	<i>75%</i>	<i>56%</i>	<i>40%</i>
Total Convictions	14	2	6	27	4
<i>% of Total Number</i>	<i>78%</i>	<i>50%</i>	<i>75%</i>	<i>46%</i>	<i>40%</i>

(Source: District Attorney's Closed Case Files 1931, 1936, 1941, 1946)

TABLE 4: Outcomes of Prosecutions Involving Children Eleven to Seventeen Years of Age, 1931-1946

<i>OUTCOME</i>	<i>CHARGE</i>		
	<i>SODOMY</i>		<i>RAPE</i>
	Boys	Girls	
Total Number	46	8	556
Number Transferred	6	1	13
Number Indicted	33	6	246
<i>% of Total Number</i>	<i>72%</i>	<i>75%</i>	<i>44%</i>
Total Convictions	31	5	204
<i>% of Total Number</i>	<i>67%</i>	<i>62%</i>	<i>37%</i>

(Source: District Attorney's Closed Case Files 1931, 1936, 1941, 1946)

TABLE 5: Outcomes of Prosecutions Involving Children Ten Years of Age & Younger, 1951 & 1955

<i>OUTCOMES</i>	<i>CHARGE</i>				
	<i>SODOMY</i>		<i>CARNAL ABUSE</i>		<i>RAPE</i>
	Boys	Girls	Boys	Girls	
Total Number	7	4	3	12	2
Number Transferred	2	1	1	5	0
Number Indicted	4	1	2	7	1
<i>% of Total Number</i>	<i>57%</i>	<i>25%</i>	<i>66%</i>	<i>58%</i>	<i>50%</i>
Total Convictions	4	1	2	6	1
<i>% of Total Number</i>	<i>57%</i>	<i>25%</i>	<i>66%</i>	<i>50%</i>	<i>50%</i>

(Source: District Attorney's Closed Case Files 1951 and 1955)

TABLE 6: Outcomes of Prosecutions Involving Children Eleven to Seventeen Years of Age, 1951 & 1955

<i>OUTCOME</i>	<i>CHARGE</i>		
	<i>SODOMY</i>		<i>RAPE</i>
	Boys	Girls	
Total Number	22	10	148
Number Transferred	5	3	18
Number Indicted	16	6	47
<i>% of Total Number</i>	<i>73%</i>	<i>60%</i>	<i>32%</i>
Total Convictions	16	6	43
<i>% of Total Number</i>	<i>73%</i>	<i>60%</i>	<i>29%</i>

(Source: District Attorney's Closed Case Files 1951 and 1955)

Earlier versions of this article were presented at the University of Sydney, the University of Newcastle, the University of New South Wales and the University of Illinois at Urbana/Champaign. Thanks to Andrew Fitzmaurice, Nick Doumanis, Tony Ballantyne, and Tamara Matheson for arranging those talks, to Mary Odem and Donna Guy for first urging me to develop this analysis and to Frances Clarke, Clare Corbould, Stephen Garton, Alice Kessler-Harris, Michael McDonnell and Shane White. For Delwyn Elizabeth and Cleo Elizabeth-Robertson.

ⁱ *Report of the Mayor's Committee for the Study of Sex Offenses* (New York: City of New York, 1944), p. 66.

ⁱⁱ *Report of the Mayor's Committee*, p. 66.

ⁱⁱⁱ In New York City, for example, in the years 1790 to 1876, women aged nineteen years or older made up the majority of rape victims, constituting somewhere between 55 per cent and 67 per cent of the total in each decade except 1820-1829; see Timothy Gilfoyle, *City of Eros: New York City, Prostitution and the Commercialization of Sex, 1790-1920* (New York: W. W. Norton, 1992), pp. 69, 349-50. In 1886, the first year of my sample of the New York County District Attorney's Closed Case Files from every fifth year up to 1955, females eighteen years of age and older made up just 26 per cent (N=38) of the complainants in prosecutions for the offences of rape, seduction, abduction, carnal abuse and sodomy. That proportion continued to fall in subsequent decades, with women over eighteen years amounting to as few as 2.6 per

cent (N=39) of the complainants in 1896, and to only 15 per cent (N=2137) in the period 1891-1955.

^{iv} For studies that note the increased concern with children, see Stephen Robertson, *Crimes against Children: Sexual Violence and Legal Culture in New York City, 1880-1960* (Chapel Hill: University of North Carolina Press, 2005), pp. 1-2, 250.

^v For work that contrasts boys and girls, see Karen Dubinsky, *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880-1929* (Chicago: University of Chicago Press, 1993), pp. 54-5; Jill Bavin-Mizzi, *Ravished: Sexual Violence in Victorian Australia* (Sydney: University of New South Wales Press, 1995), pp. 123-45; and Louise Jackson, *Child Sexual Abuse in Victorian England* (London: Routledge, 2000), pp. 4-5, 100-106. For a study that explicitly excludes boys, see Sharon Block, *Rape and Sexual Power in Early America* (Chapel Hill: University of North Carolina Press, forthcoming 2006).

^{vi} Howard Chudacoff, *How Old Are You? Age Consciousness in American Culture* (Princeton: Princeton University Press, 1989); David Macleod, *The Age of the Child: Children in America, 1890-1920* (New York: Twayne, 1998).

^{vii} This study is limited to felonies because the DA's records include only those cases prosecuted in the Court of General Sessions, New York City's felony court.

^{viii} *The New York Times*, 17 December 1874, reproduced in Robert H. Bremner, *Children and Youth in America: A Documentary History*, vol. 1 (Cambridge, MA: Harvard University Press, 1971), p. 190.

^{ix} For the NYSPCC, see Elizabeth Pleck, *Domestic Tyranny: The Making of Social Policy Against Family Violence from Colonial Times to the Present* (New York: Oxford University Press, 1987); and Robertson, *Crimes against Children*, pp. 13-17, 21-31.

^x In addition to the texts cited in note 6, see also James Kincaid, *Child Loving: The Erotic Child in Victorian Culture* (New York: Routledge, 1992).

^{xi} Carol Smart, 'A History of the Ambivalence and Conflict in the Discursive Construction of the "Child Victim" of Sexual Abuse', *Social and Legal Studies* 8 (1999): pp. 391-409, see esp. p. 394.

^{xii} Dorothy Ross, *G. Stanley Hall: The Psychologist as Prophet* (Chicago: University of Chicago Press, 1972), p. 305; G. Stanley Hall, *Adolescence* (New York: D. Appleton, 1904), vol. 1, pp. 314, 326, 370-1; vol. 2, pp. 120-1; Jeffrey Moran, *Teaching Sex: The Shaping of Adolescence in the 20th Century* (Cambridge, MA: Harvard University Press, 2000), pp. 17, 21.

^{xiii} *The Fifth Annual Report of the NYSPCC* [hereafter *ARNYSPCC*] (1880), pp. 79-80; 'Letter from the Hon. Elbridge Gerry', *The Philanthropist* 10/6 (June 1895): p. 5.

^{xiv} The statute that established the NYSPCC as a privately chartered corporation to enforce laws relating to children did not define the boundaries of childhood (See *Laws of New York, 1881*, chapter 130, p. 114). On the previous generation of reformers, see David Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston: Little Brown, 1971), pp. 207-9.

^{xv} *The Second ARNYSPCC* (1877), pp. 40-1; *The Twenty-Seventh ARNYSPCC* (1902), p. 9; *The Twelfth ARNYSPCC* (1887), pp. 6-7; *The Fifteenth ARNYSPCC* (1890), pp. 4-5.

^{xvi} For examples, see *The Tenth ARNYSPCC* (1885), p. 46; and *The Thirty-Seventh ARNYSPCC* (1912), p. 30. The best discussion of reformers' treatment of the sexual dangers faced by boys is Vincent DiGirolamo, 'Crying the News: Children, Street Work and the American Press', (Ph.D. dissertation, Princeton University, 1997), pp. 349-88.

^{xvii} For the explanations of same-sex behaviour circulating at the turn of the century, see Jennifer Terry, *An American Obsession: Science, Medicine and Homosexuality in Modern Society* (Chicago: University of Chicago Press, 1999).

^{xviii} Robertson, *Crimes against Children*, pp. 87-92.

^{xix} I have not included Wisconsin in this group. A law enacted in 1897 did punish masturbation involving boys and girls, but as part of the definition of sodomy rather than as a distinct offence (*Laws of Wisconsin, 1897*, chapter 198, pp. 359-60).

^{xx} Oppenheimer and Eckman, pp. 21 [Arizona, enacted 1913], 23 [California], 33 [Illinois, enacted 1907], 35 [Iowa, enacted 1907], 47 [Montana, enacted 1913]. The original dates of enactment were checked using William Eskridge, *Gaylaw: Challenging the Apartheid of the Closet* (Cambridge, MA: Harvard University Press, 1999) as a starting point; see Appendix A3, pp. 342-51 (which mistakenly records Arizona as passing its law in 1939). An earlier Illinois statute, enacted in 1905, was struck down by the State Supreme Court in 1906, on the grounds that its title was unconstitutionally vague (*Milne v. The People*, 224 Ill 125 [1906]).

^{xxi} Oppenheimer and Eckman, pp. 25 [Colorado, enacted 1905], 38 [Louisiana, enacted 1912], 39 [Maine, enacted 1913].

^{xxii} For the crime against nature statute, see *Laws of New York, 1881*, vol. 3, chapter 676, pp. 74-5. For judicial interpretation of that law, see *Lambertson v. The People*, 5 Parker's C. R. 200 (1861). For the amendments sponsored by the NYSPCC, see *Laws of New York, 1886*, chapter 31, p. 41; and *Laws of New York, 1892*, chapter 325, p. 682. For sodomy laws in the United States generally, see Eskridge, *Gaylaw*.

^{xxiii} *People v Deschessere*, 74 N. Y. S. 761 (1902). For the corroboration requirement in rape, seduction and abduction, see *Laws of New York, 1886*, chapter 663, p. 953.

^{xxiv} District Attorney's Closed Case Files (DACCF) 33633 (1901) (Municipal Archives, New York City). For other examples, see Court of General Sessions Case File (CGSCF), *People v. J. C.* (indicted December 1891) (Municipal Archives, New York City); DACCF 58063 (1906); and DACCF 84767 (1911). In my citation of the Court of General Sessions case files I have retained the defendants' actual initials since these records are filed alphabetically by the defendants name, and thus can only be accessed with this information. Otherwise I have altered the names of all the parties to the cases discussed in this article, retaining only the names of the judges and attorneys. Those names that are pseudonyms are identified with an *.

^{xxv} For an overview of attitudes toward sexual violence in this period, see Robertson, *Crimes against Children*, pp. 32-5.

^{xxvi} DACCF 57807 (1906).

^{xxvii} Ten of the fifteen cases from 1886-1926 that contained information on this issue reveal an emphasis on force.

^{xxviii} DACCF 113366 (1916). Eight of the nine cases from 1886-1926 that contained information on this issue cast the female victim as passive.

^{xxix} Julia Grant, 'A "Real Boy" and not a Sissy: Gender, Childhood and Masculinity, 1890-1940', *Journal of Social History* 37 (2004): pp. 829-51, here pp. 841-2; Anthony Rotundo, *American Manhood: Transformations in Masculinity from the Revolution to the Modern Era* (New York: Basic Books, 1993), pp. 31-55.

^{xxx} *Morning Journal*, 16 July 1886 (District Attorney's Scrapbook, Municipal Archives, New York City).

^{xxxi} Robertson, *Crimes against Children*, pp. 117-35

^{xxxii} George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940* (New York: Basic Books, 1994), p. 66.

^{xxxiii} Of the nine men convicted in sodomy prosecutions, eight were sentenced to at least five years in prison. Of the 193 men convicted in rape prosecutions, 46 per cent received suspended sentences or terms of no more than one year in prison. Only 14 per cent received a prison term of at least five years.

^{xxxiv} For examples, see Howard Whitman, 'Terror in Our Cities: No.1 – Detroit', *Collier's* (19 November 1949), pp. 13-15; 64-6; Charles Harris, 'Sex crimes: Their cause and cure', *Coronet* 20 (1946), pp. 3-9; and 'Pedophilia', *Time* (23 August 1937), p. 44.

^{xxxv} For the Bradley case, see *Chicago Daily News*, 31 July 1947, p. 1; *Chicago Daily News*, 1 August 1947, pp. 1, 6, 7, 30. For the Counter case, see *Detroit Free Press*, 22 April 1949, pp. 1, 2, 3. For the Levin case, see *The Evening Bulletin*, 10 January 1949, pp. 1, 3, 31. Thanks to Craig Robertson for gathering this material.

^{xxxvi} For examples of the treatment of girls, see *New York Daily News*, 1 August 1937, p. 1; *New York Daily News*, 14 August 1937, p. 1; *The New York Times*, 24 March 1937, p. 11; and *The New York Times*, 4 August 1937, p. 42. For examples of the treatment of boys, see *The Evening Bulletin*, 11 January 1949, p. 3; *Chicago Daily News*, 4 August 1947, pp. 6, 32; and *Detroit Free Press*, 24 April 1949, p. 3.

^{xxxvii} J. Edgar Hoover, 'How Safe is Your Daughter?', *American Magazine* (July 1947), pp. 32-3, 102-104; J. Edgar Hoover, 'How Safe is Your Youngster?', *American Magazine* (March 1955), pp. 9, 99-103.

^{xxxviii} Whitman, 'Terror in Our Cities', p. 20.

^{xxxix} *Report of the Mayor's Committee*, p. 67.

^{xli} Sydney Halpern, *American Pediatrics: The Social Dynamics of Professionalism* (Berkeley: University of California Press, 1988), pp. 89-90, 96-7, 106-108; and Julia Grant, *Raising Baby by the Book: The Education of American Mothers* (New Haven: Yale University Press, 1998), p. 10.

^{xlii} Cited in Julie Novkov, 'Historicizing the Figure of the Child in Legal Discourse: The Battle over the Regulation of Child Labor', *American Journal of Legal History* 44 (2000): pp. 369–404, here pp. 396-7.

^{xliii} William A. White, 'Childhood: The Golden Period for Mental Hygiene', *Mental Hygiene* 4 (April 1920): pp. 257-67; William Alanson White, *The Mental Hygiene of Childhood* (Boston, 1925), pp. 113-114, 121. For more on the mental hygiene movement, see Robertson, *Crimes against Children*, pp. 141, 149-54.

^{xliv} Ernest Groves and Gladys Hoagland Groves, *Sex in Childhood* (New York, 1933), pp. 222-3.

^{xlv} White, *The Mental Hygiene of Childhood*, p. 121.

^{xlvi} Samuel Hartwell, *A Citizens' Handbook of Sexual Abnormalities and the Mental Hygiene Approach to Their Prevention* (Lansing: State of Michigan, 1950), pp. 47-8.

^{xlvii} Peter Stearns, 'Girls, Boys, and Emotions: Redefinitions and Historical Change', *Journal of American History* 80 (1993): pp. 36-74, especially pp. 65-6; quotation from p. 54.

^{xlviii} *Report of the Governor's Study Commission on the Deviated Criminal Sex Offender* (Lansing: State of Michigan, 1951), p. 135.

^{xlix} Chauncey, *Gay New York*, p. 124.

^l *Laws of New York 1927*, chapter 383, p. 873; *Laws of New York, 1929*, chapter 684, pp. 1621-2; *Laws of New York 1933*, chapter 423, pp. 964-5. For the key decision interpreting the statute, see *People v. Belcher*, 299 N. Y. 323, 87 N. E. 2d 279 (1949).

ⁱ A decade-long hiatus separates this wave of legislative action from the smaller one earlier in the century, the last of which occurred in 1913. After 1958, this legislative action became absorbed in the response to the Model Penal Code. For the statutes, see Robertson, *Crimes against Children*, pp. 288-9. I have relied primarily on William Eskridge's invaluable tabulation to identify these laws, but I have omitted statutes he included from New Jersey, Oregon and Wyoming, which employ the broad terms associated with juvenile delinquency and do not clearly refer to sexual violence. I have also excluded the law he identified from Nebraska, which deals with intercourse in the context of prostitution. See Eskridge, *Gaylaw*, pp. 342-51.

ⁱⁱ They were Kentucky, Michigan, Minnesota, North Dakota, Ohio, Washington and Wisconsin.

ⁱⁱⁱ The states that employed 'lewd and lascivious' were Delaware, Idaho, Massachusetts, Nevada, South Carolina, South Dakota and Vermont. The states that used both were Alabama, Florida, Georgia, Kansas, Missouri, North Carolina and Oklahoma.

ⁱⁱⁱⁱ *Acts of Texas, 1950*, chapter 12, pp. 52-3. The other states were Arkansas, New Mexico and Virginia.

^{liv} *Laws of New York, 1950*, chapter 525, pp. 1278-9. For the interpretation of this statute, see *People v. Doyle*, 304 N. Y. 120 (1952); and William Nelson, *The Legalist Reformation: Law, Politics and Ideology in New York, 1920-1980* (Chapel Hill: University of North Carolina Press, 2001), pp. 202-5.

^{lv} See, for example, Eskridge, *Gaylaw*, pp. 106-8.

^{lvi} *Papers of Governor Dewey, 1950* (Albany: State of New York, 1950), p. 412.

^{lvii} Although the following discussion focuses on sodomy cases, in order to draw contrasts with the treatment of such cases earlier in the century, the points made also apply also to the treatment of carnal abuse.

^{lviii} DACCF 2490 (1955). Fifteen of the twenty-one cases from 1931-1955 that contained information on this issue reveal an emphasis on passivity.

^{lix} For details of the prosecution of rape cases involving pre-pubescent girls, see Robertson, *Crimes against Children*, pp. 37-56, 161-78.

^{lx} In 1886-1926, the proportion was 20 per cent (N=25); in 1931-1955 it was 85 per cent (N=20).

^{lxi} For discussion of those issues, see Robertson, *Crimes against Children*, pp. 161-78.

^{lxii} Robertson, *Crimes against Children*, pp. 205-32.

^{lxiii} Edwin Sutherland, 'The diffusion of sexual psychopath laws', *American Journal of Sociology* 56 (1950): pp. 142-8, here p. 143.

^{lxiv} David Wittels, 'What can we do about sex crimes?', *Saturday Evening Post*, 11 December 1948, p. 52.

^{lxv} DACCF 185227 (1931).

^{lxvi} See, for example, DACCF 210229 (1936); DACCF 1565 (1946); and DACCF 3363 (1955). For public homosexual activity and its policing in these years, see Chauncey, *Gay New York*, pp. 179-205, 331-54.

^{lxvii} Court of General Sessions Trial Transcript, 17 October 1941, p. 15, DACCF 228808 (1941).

^{lxviii} See, for example, DACCF 187424 (1931); and Transcript, Grand Jury, 2 February 1955, DACCF 278 (1955).

^{lxi} Court of General Sessions Trial Transcript, 17 October 1941, pp. 20-21, DACCF 228808 (1941). In only seven of sixty cases is the teenage male victim treated as having not consented. That figure includes only four of the nine cases that involved claims of coercion; even the testimony of other boys about more dramatic reactions after coerced acts of sodomy – vomiting and hysteria – failed to convince prosecutors that they had not submitted. See DACCF 1333 (1946) and DACCF 3535 (1946).

^{lxx} DACCF 429 (1946). Of the fifty-three cases that involved boys treated as consenting, twenty-six involved boys who were paid for submitting to acts of sodomy. Another ten involved runaways or boys whose behaviour involved other traits associated with a bad character.

^{lxxi} See Robertson, *Crimes against Children*, pp. 139-60, 179-202.

^{lxxii} Ralph Major, 'New Moral Menace to Our Youth', *Coronet* (September 1950), pp. 101-8.

^{lxxiii} Estelle Freedman, 'Uncontrolled Desires': The Response to the Sexual Psychopath, 1920-1960', in Kathy Peiss and Christina Simmons (eds.), *Passion and Power: Sexuality in History* (Philadelphia: Temple University Press, 1989), p. 211; Philip Jenkins, *Moral Panic: Changing Concepts of the Child Molester in Modern America* (New Haven: Yale University Press, 1998), pp. 85-7.

^{lxxiv} Thaddeus Krush and Nancy Dorner, 'Ten-point Protection Against Molesters', *National Parent-Teacher* 52 (October 1957), pp. 7-10, here p 7.

^{lxxv} Jenkins, *Moral Panic*, pp. 72, 98-106.

^{lxxvi} Cited in George Chauncey, 'The Post-War Sex Crime Panic', in William Graebner (ed.), *True Stories from the American Past* (New York: Praeger, 1993), pp. 160-178, here p. 171.

^{lxxvii} Chauncey, 'The Post-War Sex Crime Panic', p. 171.

^{lxxviii} Robertson, *Crimes against Children*, pp. 32-5.