“Detestable Offenses: 
An Examination of Sodomy Laws from Colonial America to the Nineteenth Century”

Taylor Runquist
Western Illinois University
The act of sodomy has a long history of illegality, beginning in England during the reign of Henry VIII in 1533. The view of sodomy as a crime was brought to British America by colonists and was recorded in newspapers and law books alike. Sodomy laws would continue to adapt and change after their initial creation in the colonial era, from a common law offense to a clearly defined criminal act. Sodomy laws were not meant to persecute homosexuals specifically; they were meant to prevent the moral corruption and degradation of society. The definition of homosexuality also continued to adapt and change as the laws changed. Although sodomites had been treated differently in America and England, being a sodomite had the same social effects for the persecuted individual in both countries.

The study of homosexuals throughout history is a fairly young field, but those who attempt to study this topic are often faced with the same issues. There are not many historical accounts from homosexuals themselves. This lack of sources can be attributed to their writings being censored, destroyed, or simply not withstanding the test of time. Another problem faced by historians of homosexuality is that a clear identity for homosexuals did not exist until the early 1900s. There are two approaches to trying to handle this lack of identity: the first is to only treat sodomy as an act and not an identity and the other is to attempt to create a homosexual identity for those convicted of sodomy. Stephen Robertson’s article, “Shifting the Scene of the Crime: Sodomy and the American History of Sexual Violence,” is an example of scholarship that fits into the first category. While given on overview of sodomy and sexual assault laws, Robertson’s article only presents sodomy as an act, sometimes a rather violent act.¹ Neil McKenne’s *Fanny and Stella: The Young Men Who Shocked Victorian England* is similar to Robertson’s article in

that it views the cross-dressing of Stella Boulton and Fanny Park as only an act. Boulton and Parks’ cross-dressing was not just an act, but it was also their identity. They shed their given names and preferred to be seen as women, instead of men, thus making it their identity. 

*Dishonorable Passions: Sodomy Laws in America*, written by William N. Eskridge, attempts to use the modern homosexual experience to explain the identity and culture of sodomites. In this book, Eskridge shows that people who went against what society expected of them, in terms of who they were attracted to and how they chose to live and present themselves, helped craft an early homosexual identity, despite the term not existing for most of the United States’ history. By weaving together modern concepts of homosexuality and historical definitions of what constituted a sodomite, this article attempts to combine both of these camps while comparing Great Britain and the United States’ treatment of sodomites and homosexuals from the colonial era through the nineteenth century.

As each of the original thirteen colonies were establishing themselves, they were also creating laws to govern their societies. The colonists were still considered British subjects and were subject to British law, but the distance between the colonies and Great Britain made it more difficult to govern the colonists than the British subjects who remained in England. There were no uniform laws for the colonies, and each colony had its own ordinances and punishments. Since many of the people who traveled to the colonies were doing so to escape religious persecution, many of their laws would originate from their religions. As such, the crime of sodomy and buggery fulfilled three roles: one was to reinforce the belief that all sexual intercourse needed to be within the marital confines; another was that sexual intercourse should

---

only be done for procreative purposes, not for pleasure; and the third was to protect those who were seen as vulnerable, not just minors but people of lesser stature than the perpetrator.\(^4\) Even though there were specific goals for these laws in restricting behavior, the laws were still vague as to what the specific crime was. English case law would eventually interpret the laws as forbidding “anal intercourse between two men or between a man and a woman (sodomy) and any sexual congress between a man or woman and an animal (beastiality).”\(^5\) Part of the vagueness of sodomy laws was caused by how lust was defined by colonies. Lust was any “fleshly” impulse, which could include personal ambition and drunkenness, not just sexual impulse.\(^6\) The act of sodomy was not just about intercourse, but the lack of the perpetrator’s self-control. Throughout the colonies, the crime of sodomy was punishable with execution, which was in line with the English laws of the time.\(^7\)

In the colonial era, there was a set procedure for how to try sodomy cases that was different from other crimes. The defendant in these cases was unable to speak during the trial and most of what is known about the defendants comes from their memoirs that were published after their trials.\(^8\) The defendants were not considered reliable witnesses and would only sometimes be allowed to testify. If a person had previously been accused of sodomy, he was also considered unreliable witness and was barred from speaking in trials.\(^9\) For a trial to even occur there needed to be at least two witnesses. If there was only one witness, a person could not be charged for the

\(^5\) Eskridge, *Dishonorable Passions*, 17.
\(^7\) Thomas A. Foster, “Antimasonic Satire, Sodomy, and Eighteenth-Century Masculinity in the ‘Boston Evening-Post’,” *The William and Mary Quarterly* 60, no. 1 (January 2003), 175.
\(^9\) Cocks, “Making the Sodomite,” 100.
crime. The evidence that was presented to the court would only be hearsay from witnesses with no physical evidence of the crime. For the court, the consensual behavior of the act was not considered, and sodomy was always tried as a consensual behavior. Thus, both participating parties were considered guilty of sodomy, and the parties were not questioned about consent. The crime of sodomy was considered “unnatural” and “detestable” in both laws and news reports. This detestable offense was also thought of as a crime that only men could commit; women would rarely be found guilty of the offense. Women were still capable of having sodomitical relationships with one another, but it was not regulated by governments of the time. During this time, sodomites were considered to be on the same level as witches, and in some cases, they were as bad as murderers. The status of the sodomite was so low because they were seen as a symbol of the degradation of society. Americans were disgusted by anything that reminded them of their animal instincts, which were any crimes that were concerned with sexuality and gender roles. There was also a fear that the sodomites were going to corrupt their children.

One example of how a sodomy trial would be conducted in Great Britain in the 1740s comes from a volume that was published to record “Genuine Accounts of the Lives, Exploits, Behavior, Confessions and Dying-Speeches of The Most Notorious Convicts, from the Year 1741 to the Present Year, 1764.” The volume records the trial of John Deacon and Thomas

---

12 Louis Crompton, “Homosexuals and the Death Penalty in Colonial America,” *Journal of Homosexuality* 1, no. 3 (1976), 277-293.
13 Eskridge, *Dishonorable Passions*, 2-10.
Blair for “Sodomitical Practices.” Deacon and Blair were caught in the act of sodomy by constables Robert Pert and Peter Line in St. Paul’s Church Yard in Farringdon Without. Pert and Line were on patrol when they heard someone whispering in the churchyard, which they believed to be “a Place which People of this Sort frequent.” Other than the defendants, the constables were the only people to testify during the trial, although Deacon had called for some “People to come to his Character,” but nobody answered the call. Deacon resorted to asking the constables for physical evidence of what he and Blair had been doing, which was something that the constables could not produce, despite going back to the scene of the crime and looking. Since there was no physical evidence, Deacon pleaded with the judge to be reasonable and find him not guilty, but that was to no avail. Both Deacon and Blair were found guilty for sodomy, despite the only evidence presented in court being hearsay. Neither Blair nor Deacon wanted to be identified as sodomites and had tried to prevent that label in both of their defenses. Although the record of this trial was published, it was a way to shame Blair and Deacon for their act and to deter others from doing the same and not as a way to create an identity for sodomites.

In the British North American Colonies, references to sodomy were used as a form of satire, especially on the topic of the Masonic community. The satire would appear as comics or through stories in local papers. The satire shows that sodomy was something to be mocked as if it was both a crime and a laughable matter. In the colonies, sodomy was associated with corruption and foreign influence and the satire would be a direct threat to the Masonic community, as these groups of people were perceived as a threat to colonial society.

15 Select Trials, 67.
16 Select Trials, 67.
17 Select Trials, 68.
18 Select Trials, 67-70.
During the American Revolution, Lieutenant Gotthold Frederick Enslin was the first man known to be dismissed from the United States Military for committing sodomy with John Monhurt, another soldier, at Valley Forge in March 1778. Enslin was court-martialed for breaching the 5th Article, 18th Section of the Articles of War.\textsuperscript{20} Enslin’s punishment was to be dismissed from the army and to be drummed out of the camp.\textsuperscript{21} His dismissal from the army was approved by General George Washington. Enslin had been reported by another soldier who discovered Enslin and Monhurt committing sodomy in the officers’ barracks. The officer who had reported Enslin, Ensign Anthony Maxwell, was court-martialed for “propagating a scandalous report prejudicial to the character” of Enslin.\textsuperscript{22} Maxwell was acquitted of this charge, since he had only followed the requirements of his duty to the military.\textsuperscript{23} The punishment for committing sodomy while in the military was designed to be humiliating and to attract attention to whoever was being dismissed. Although dismissal was not the maximum punishment for sodomy (imprisonment, and in some instances execution), it was still damaging to those convicted.\textsuperscript{24} Having such a public punishment for Enslin’s conduct would represent a deterrent so that the other soldiers would not commit sodomy.\textsuperscript{25}

Sixteen days before Enslin’s court-martialed, the American rebels recruited a general from Prussia who had the same predisposition as Enslin: Baron Frederich Wilhelm Ludolf Gerhard Augustin von Steuben. Baron von Steuben was a prominent military strategist who

\textsuperscript{21} “General Orders,” 171-173.
\textsuperscript{22} “General Orders,” 171-173.
\textsuperscript{23} “General Orders,” 171-173.
\textsuperscript{24} Rany Shilts, \textit{Conduct Unbecoming: Gays and Lesbians in the U.S. Military} (Toronto: Ballantine Books, 1999), 12.
\textsuperscript{25} Shilts, \textit{Conduct Unbecoming}, 11-12.
disciplined the Prussian Army into one of the most feared on the European continent, and who Benjamin Franklin was convinced could turn the American Revolution around for the rebels.\textsuperscript{26} The baron refused the Americans’ first attempt at recruiting him, but on his way to take a different position with a royal family in Baden, von Steuben got word that he would be prosecuted for sodomy as soon as he had established himself. This threat of prosecution forced von Steuben out of Europe and to the United States, where he suggested to the Continental Congress that he only be paid “if he actually helped the Americans win some battles.”\textsuperscript{27} Von Steuben’s rumored sodomy was not widespread on the European continent, despite some newspapers reporting on it.\textsuperscript{28} Although von Steuben was accepted into American ranks, it is unlikely that the Americans knew about any accusations of sodomy that took place while von Steuben was in Europe. Despite Americans’ acceptance of von Steuben and the leniency on Lieutenant Enslin’s punishment, Americans were not accepting of sodomy. The act of sodomy was still a crime that could be punished by execution. The illegality of sodomy prevented a homosexual identity from forming, a person could not be open about his attraction to the same sex without fear of punishment.

While Americans were still fighting for their independence from Great Britain, the colonies were already creating new laws, separate from those of Great Britain. In January 1777, Thomas Jefferson recommended that the crimes of rape, sodomy, and bestiality should all be punished with castration when revising the old laws and methods for establishing new laws in Fredericksburg, Virginia.\textsuperscript{29} The only crimes which, according to Jefferson, that should be

\begin{footnotes}
\item[26] Shilts, \textit{Conduct Unbecoming}, 8.
\item[27] Shilts, \textit{Conduct Unbecoming}, 9.
\item[28] Shilts, \textit{Conduct Unbecoming}, 8.
\end{footnotes}
punished with execution would be treason and murder, all other crimes would be punished less harshly. The Virginian punishment for sodomy thus became less strict than that of Great Britain after it had been agreed to by the Committee of Revisors. In 1779, Thomas Jefferson wrote a bill that proposed the crimes and their proportionate punishments. Jefferson believed that “if the punishment were only proportioned to the injury, men would feel it their inclination as well as their duty to see the laws observed.” Many of the proposed punishments, Jefferson followed the principle of *lex talionis*, or an eye-for-an-eye. For example, if a person committed murder by using poison, that person would be executed using poison. For the crimes of rape, polygamy, or sodomy the punishment would depend on the gender of the perpetrator. If the perpetrator was a man, they were to be castrated, and if the perpetrator was a woman, the punishment was to be “cutting thro’ the cartilage of her nose a hole of one half inch diameter at the least.” Jefferson makes it clear in the introduction of this bill that he is attempting to fix the problems that he believed existed in the English legal system, thus setting the proposed laws apart from Great Britain and creating an automatic comparison between the two.

After the American Revolution, sodomy laws changed, especially in terms of the punishment. One way the colonists separated the new American country from the old country of England was by changing the punishment of sodomy. Prior to the American Revolution, being a convicted sodomite was equal, in the eyes of the law, to being a witch and, in some states, a murderer. Each state was responsible for carrying out punishment and defining what was and

30 Mason, “Plan Agreed Upon,” 325-328.
was not criminal. Pennsylvania was the first to change the punishment; instead of sodomy being a capital offense, convicted sodomites were required to give up all of their land and property. All of the states eventually became more relaxed with their punishment for the crime of sodomy. The last states to change their laws were the Carolinas. Relaxing the punishments gave some space for a homosexual identity to develop; however, the identity still had to be private because the punishment for a sodomy conviction was still hefty. Acting on attraction to the same sex could cost someone all of their property and their livelihood.\textsuperscript{34}

While sodomy laws were becoming more lax in the United States, in England during the 1800s, prosecution for the crime of sodomy was being heavily enforced. Since sodomy was so scandalous, it was reported on thoroughly by the newspapers. As England was undergoing industrialization, perceptions of masculinity were changing because people who had once been craftsmen and farmers had to change how they were making a living. Previously, masculinity had been tied to the laborers’ work, but the onslaught of industrialization caused the laborers’ to be less involved in the work that they were producing and they spent less time with the products of their labor. These factory workers did not earn much, but they had their family, homes, and their religion. The workers had to take pride from what they had; masculinity became tied to their sense of identity.\textsuperscript{35} They were protective of these societal norms, and homosexuality was in conflict with these ideals because homosexuals were seen as a combination of both genders. The discussion of sex and sexual acts were a societal taboo, but ironically, most newspapers contained articles that referred to people’s sex lives. This reporting, usually from trial courts, was a way of public shaming the sodomite. The acts were called “detestable offences” and

\textsuperscript{34} Crompton, “Homesexuals and the Death Penalty,” 277-293.
“unspeakable sexual acts” (terms which would be used for both sodomy and bestiality). Some newspapers would go into great detail about what led to the conviction and described the specific act that occurred. Publishing this news let the public know what a person did and that person’s social life would be destroyed due to people not wanting to associate with him after the trial.36

At the same time, there was also a changing perspective on what an American man should be; the American Revolution solidified the ideal American man as a rugged, tough frontiersman. This ideal was reinforced at the time by short-stories such as “The Legend of Sleepy Hollow,” where the more masculine figure, “Brom Bones” Van Brunt, is able to win the object of his and Ichabod Crane’s desire. This rough-masculinity would be contradicted by other more “effeminate” writers such as Ralph Waldo Emerson and Henry David Thoreau, both of whom would go on to write poems questioning the validity of this masculine image and their own sexualities.37

The reporting of sodomy differed in the United States from England. Although it was still considered a detestable offense, it was reported on as any other crime would be. There was no more description on sodomical activity than there was for a robbery. Cases against sodomy in the United States were not as closely followed by the newspapers as they were in England. One example of the way sodomy was reported on comes from the New York Daily Times in 1854. While reporting on “General and Personal Matters,” the paper included a section on a reverend from Mobile, Alabama. Dr. Hamilton was the Presbyterian reverend for many years until he was convicted of sodomy in 1854. All that was said about the crime was that “when investigation

made his guilt apparent, the indignation of the citizens of Mobile was so great that the reverend
gentleman was compelled to flee from the city or risk the chances of life in the hands of an
infuriated mob” and that he had resigned from the ministry.38

Another way that sodomy had changed from the United States’ original statutes is that a
person could be charged with attempting to commit sodomy. An example of this comes from the
*Maryland Gazette and Political Intelligencer* from 1822. A person had accused another of
attempting to commit sodomy with him. The accusation of sodomy had, allegedly, been used as a
ploy to get money out of the defendant and ruin the defendant’s reputation.39 It is unclear what
the motives were for blackmailing the defendant, but this case shows a common theme for
sodomy allegations for both English and American society. Accusing someone of sodomy was a
way to delegitimize their stance in society. A person could use the accusation of sodomy to
blackmail another person. Sodomy was still a detestable offense in the public’s eyes and an
accusation of sodomy, in both the United States and Britain, could ruin the accused’s reputation.
According to the public, the act of sodomy was still immoral and anyone who could commit the
act of sodomy was lesser than the average citizen who did not commit sodomy.40

Sodomy trials were not reported on in the United States in the same way as they were in
England, but the laws of some states were published in newspapers, including those for sodomy.
In Maryland in 1810, the punishment for sodomy would be at least a year in prison, but no more

---


40 Fradella, *Sex, Sexuality Law*, 186.
than ten years of confinement. There was no definition of sodomy in this law, however, and it was not listed along with other sexual crimes. Sodomy could be used to prove that there was a motive for a crime, though. According to another newspaper from Maryland from the same year, when murder occurred alongside “...rape, sodomy, mayhem, robbery, or burglary,” among other things, the act of murder would “be deemed murder of the first degree.” Again, there was no definition given for what sodomy was. Sodomy laws were vague, and, yet, people were still prosecuted under the law. For trials, the court would often have to decide the case based on common-law meanings of sodomy, which “involved the penetration of a penis inside the rectum of an animal, woman or girl, or another man or a boy.” It was assumed in both England and the United States that all males were heterosexual and would eventually marry a woman, but sodomy was viewed as a blemish within both societies that the laws would attempt to erase.

At the heart of Victorian Era England, the appearance of sodomy laws was prompted by an urge to control sexual deviance and to make society religiously pure and moral. Sodomy was a sin, and sodomy, along with other sexual acts of deviance, was therefore banned. In the nineteenth-century United States, the ban on sodomy was because sodomy was a “crime against nature, committed with mankind or with beast.” Similar to British laws, American laws were supposed to protect the morals of the public and its decency. American legislatures tried to make society pure and to prevent its moral degradation. Even so, the nineteenth-century British

sodomy laws had a less severe punishment than their colonial counterparts. Sodomy was seemingly just another crime, as is shown in the records kept by newspapers. Victorian newspapers were limited in what they could publish, however, as there was also a ban on obscene language during the nineteenth century, again because of expectations of moral purity. The newspapers may have been unable to write or comment on the sodomy trials because of this censorship.

Sodomy laws were still in place as a means of protecting society from becoming immoral, but society had become more reliant on science as a means to explain corruption in the late 1800s. Anti-vice personnel, who consisted of people such as Anthony Comstock, turned to the science of sexology to explain why men and women were cross-dressing. Sexologists determined that those who hated the opposite sex, and thus were attracted to the same-sex, had the brain of the opposite sex. This meant that a woman-loving woman had the brain of a man, and a man-loving man had the brain of a woman -- both would act as the opposing sex in their relationships. This brain-confusion was seen as sexual perversion and caused social-anxiety among the heterosexuals. Such perversions would only lead American society astray and cause the perversion of the younger generations.

Although there were laws to protect the “innocence” of society, some people did not feel as though the police were doing enough to prevent sodomitical acts and corruption. These people formed organizations such as the New York Society for the Suppression of Vice, or the Comstock Society. The society was founded by Anthony Comstock, United States Postal Inspector. This society was responsible for censoring material that was deemed obscene and harmful to society. The materials that were banned included pictures, newspaper advertisements,

---

negatives and printing plates for books, and pictures that hung in saloons. During Comstock’s forty-two years of service, from 1872 until 1915, he confiscated more than “three million pictures and postcards; thirty thousand negative, steel, and copper printing plates for books; seven hundred pictures hung in saloons; 3.5 million circulars, eighty-eight thousand newspapers advertising sexual materials; and twenty thousand ‘figures and images’.”47 In 1897 alone, Comstock reported that he had arrested “1,220 malefactors; seized 872,507 corrupting pictures, 64,973 pounds of obscene books, and 97,132 articles for immoral use; and halting the illegal mailing of 121,913 indecent items.”48 Since he was a United States Postal Inspector and an officer of the Comstock Society, he had federal and state authority to prevent the distribution of immoral materials throughout society. Comstock was able to arrest those who were caught disseminating harmful and obscene material. For this, however, he would be heavily criticized because he would prevent artists from sharing their work with the rest of America. Comstock confiscated the works he believed promoted an immoral society, including literature and artwork which he believed encouraged sodomy.49

Social class occasionally played a role in the reporting of sodomy. In England and the United States, the upper classes were seen as more feminine than their lower classes. The upper classes did not get into physical altercations and were not as loud as the lower classes.50 A sodomy allegation and ensuing trial would ruin an upper class man’s life, but allegations against upper class citizens were less common. When these allegations occurred, they were much more sensationalized and were used to sell newspapers. In the United States conversely, there was no

48 Eskridge, Dishonorable passions, 29
mention of the person’s class when talking about their sodomy allegations because Americans like to claim theirs is a classless society. Although sodomy was still a crime, the impact of a sodomy allegation on an individual does not seem to be clear because those accused of sodomy often did not have a way to make their voice heard. If the claims of sodomy were false, the accused were able to sue in civil court and earn some compensation, but from the limited reports it does not seem as though there was any immediate detriment to the accused’s lives.51

In terms of the number of reports of sodomy, there seemed to be fewer in the United States than there were in England. One reason is that there were simply fewer arrests for sodomy. For example, from 1865 and 1880, there were nine men arrested for sodomy in Boston, “eight in Chicago, one in Cincinnati, eight in Philadelphia, five in St. Louis, and none at all in Cleveland, Nashville, Atlanta, and Richmond (even though a category for sodomy was included in the local police reports).”52 Despite these being large cities, their arrest rates for sodomy were fairly low. In the 1800s, there were still places in the United States that did not have a high population of women, thus there was more sodomy. Sodomy was more likely to occur in areas where there were fewer women because men would turn to one another for sexual comfort. One such place was San Francisco, which during 1880, had a population of 234,000 people. In San Francisco, there was a total of twenty-six male sodomites arrested in 1880, which was lower than the arrests for rape (162), prostitution (almost a thousand women), and male and female cross-dressing (forty-five).53 Although it is hypothesized that there was a significant amount of sodomy occurring in San Francisco, the arrest records do not show that it was a priority for the police.

52 Eskridge, Dishonorable Passions, 22.
53 Eskridge, Dishonorable Passions, 22. San Francisco was also known as “Sodom by the Sea.”
Despite these cases of sodomy, there was no clear homosexual identity. Sodomites did not identify as “homosexual” or “gay,” but they lived in secrecy due to sodomy’s criminalization. When a poet such as Ralph Waldo Emerson would publish a poem openly questioning his own sexuality, he would have to use euphemisms so as to not be caught by censors and the public eye. The ban on sodomy was not a ban on being a homosexual, but it was a ban on homosexual intercourse and non-procreative behavior.54

Sodomy laws helped define gender roles for both societies. Women were to stay at home and look after the children, and men were to be honest and faithful to their wives. Women were incapable of having romantic or sexual feelings for anyone that was not their husband. They were also unable to leave their duties behind long enough to find a sexual partner. Women were completely reliant on the men in their lives. Their fathers supported them financially until they married, then they relied on their husbands to support them, and their sons would support them if their husbands happened to die before they did. Women could rarely afford to have a romantic relationship with another woman because there would not be a real income or ability to buy property. However, men were the ones who were allowed to have a social life outside of the household. Men could form close relationships with other men, and have sexual encounters without their wives knowing. Sodomy laws were necessary only for men in both England and America. Women were unable to have these kinds of relationships or encounters; therefore, they did not need to be regulated. Women could be accused of having lesbian relationships, but these allegations were mostly dismissed because of the woman’s assumed inability to experience these desires.55

---

54 Eskridge, *Dishonorable Passions*, 22.
Some women began to challenge the idea of what a typical woman should look like during the nineteenth-century. Two of these main challengers were Elizabeth Cady Stanton, who lived from November 12, 1815 until October 26, 1902, and Susan B. Anthony, who lived from February 15, 1820 until March 13, 1906. They believed that women should have more influence outside of the family home, especially in terms of voting, serving on juries, working, and education. Confining women to the household to raise children and provide for the husband was an unfulfilling lifestyle. If women were able to have more of a life outside of the household and form their own community, then their lives would be more fulfilling. Anthony even believed that women would prosper and live a productive life in all-female households. Feminists of the time were ridiculed by Anthony Comstock for being too progressive and for needing a “real man” to bring the women back to their place within the home, instead of challenging the traditional societal roles placed on people in America.\textsuperscript{56} Despite the negativity from journalists and people like Anthony Comstock, women such as Elizabeth Cady Stanton and Susan B. Anthony continued to challenge societal ideas of womanhood.

After the Civil War, the Fourteenth Amendment presented a new challenge to sodomy laws. The Fourteenth Amendment states that “No State shall make or enforce any law which shall abridge the privileges or immunities of the United States…”\textsuperscript{57} Although the Constitution does not explicitly state what privileges a citizen of the United States is owed, feminists such as Susan B. Anthony would try to use the Fourteenth Amendment to gain the right to vote, or, in Myra Bradwell’s case, to challenge an Illinois law which prohibited her from practicing law.\textsuperscript{58}

\textsuperscript{56} Eskridge, \textit{Dishonorable Passions}, 31-32.
\textsuperscript{57} US Constitution, amend. 14, sec. 1.
\textsuperscript{58} Eskridge, \textit{Dishonorable Passions}, 37-38.
During the latter half of the 1800s, homosexuals became increasingly more visible, especially within urban areas. Men and women were becoming more open about their relationships, and there are even incidents where women tried to marry. One such example comes from the relationship of Alice Mitchell and Freda Ward. Mitchell and Ward met while at a boarding school, formed a relationship, and made plans to marry by having Mitchell present as a male by cross-dressing. When their parents found out about their plans to marry one another, Mitchell and Ward were separated. Ward would later agree to marry another person after hers and Mitchell’s separation, leaving Mitchell inconsolable. Mitchell would go on to kill Ward by a leeeve with her father’s switchblade. The story would be reported on as though Ward and Mitchell had simply been close friends, although Ward and Mitchell had exchanged passionate and romantic letters while at the boarding house and were apparently lovers. Although their relationship would not be prosecuted as sodomy, it was still illegal for two women to marry. Newspapers would call the crime “very unnatural” because women were believed to be incapable of the kind of anger necessary to kill another human being. It was not in a woman’s nature to be violent; they were only nurturers and caregivers and could not even commit crimes of passion.\(^5^9\)

The 1880s saw the rise of “close friendships” between people of the same sex. Some of these bonds were romantic, leading to many close friendships being a way for heterosexual women and lesbians to express their desires for one another. Women were able to write passionate letters to one another and call each other “wife” and other pet names while having romantic relationships at women-exclusive boarding houses and into their later lives. Queen Victoria of England, when developing legislation that would make homosexual sex acts illegal,\(^5^9\)

\(^{59}\) Eskridge, *Dishonorable Passions*, 40.
even joked that female homosexuality was impossible. Even American and English women experienced these close friendships, but women who had these relationships in the United States were brought under increased suspicion. The relationships were seen as bringing women further into the public sphere and taking them away from their true, womanly duties as a wife and mother, which contradicts the United States’ increasingly puritanical beliefs in the late nineteenth century.

At the same time as the aforementioned friendships, some people were beginning to openly experiment with gender roles through cross dressing, especially for prostitution. Male and female prostitutes were the most common cross-dressers. Male prostitutes formed their own community of cross-dressers and called themselves “fairies.” Men would have quick sexual encounters with other males, usually consisting of oral sex, something that some men sought outside of marriage because their wives would not perform that act. The male prostitutes would exaggerate feminine characteristics, including their voice and dress. The men would also occasionally put on shows at brothels, where they would sing and dance while still exaggerating feminine mannerisms. Women would also cross-dress. These women would dress in suits and sometimes have unusually deep voices. Women who cross-dressed would do it for potential personal gain by getting better paying jobs or to have more liberties than more feminine women. The women would not always be prostitutes. The most infamous female cross-dresser lived a life of crime. Jeanne Bonnet had cropped hair, spoke with a deeper voice than most women, and had a masculine face. She was described as a “man-hater” and would renounce men all together. She

---

62 Eskridge, Dishonorable Passions, 43-44.
ran a gang of prostitutes which used petty theft as a means of supporting themselves. Cross-dressing was a way for some to gain liberties and for others to gain money.

In both the United States and England, there were people who were able to penetrate the public sphere by presenting themselves in the same style of dress as their opposite sex. For example, a person born as a woman would dress and live as a man and a man could do the same as a woman, often times going as far as to change their names. According to one historian, Peter Boag, people would cross-dress for numerous reasons including to escape the law, for safe passage, but most commonly so they could express their transgender identity. Despite transgender being a recently coined term and the societal views on gender being different, there were still those who did not conform to what was expected of them based on their physiological sex and lived in a way that was more similar to the societal expectations of the opposite sex. An example of this from the United States is Joseph Israel Lobdell, born Lucy Ann Lobdell and assigned female at birth in 1829. For the first twenty-four years of his life, Lobdell lived in Long Eddy as a woman going by his given name. Lobdell would leave Long Eddy in 1854 for Bethany, Pennsylvania. Lobdell would leave the daughter she had with her husband George Slater with family. In Bethany, Lobdell began to live as Joseph Israel Lobdell and taught at a school. He would not leave Bethany until someone from Long Eddy identified Joseph as a woman from Long Eddy, forcing Joseph to flee because impersonating a man was a crime. In 1858 in Manannah, Minnesota, Joseph, then going by La-Roi, would be arrested for impersonating a man. Here he would be found not guilty, but he fled back to New York. Joseph

---

63 Eskridge, Dishonorable Passions, 45-46.
64 Peter Boag, “The Trouble with Cross-Dressers: Researching and Writing the History of Sexual and Gender Transgressiveness in the Nineteenth Century American West,” Oregon Historical Quarterly 112, no. 3 (Fall 2011), 324.
would marry Marie Louise Perry in 1861 and lived together until he died in 1912. In this article, Lobdell is presented as having been living as a man as a way to earn money and support himself as a hunter. The article presents the facts of Lobdell’s life, but it does not consider other reasons for why Lobdell would dress as a man or marry a woman.

Another example of people who were presenting as the opposite gender is Stella Boulton and Fany Winifred Park of England. Stella Boulton, born in 1848, was assigned a male gender with the given name of Ernest Boulton. Accounts from her childhood show that she had always dressed in female clothing, and she would go on to live most of her life as a woman. Stella had an acting career in which she would often play female roles. While acting Stella met Fanny Winifred Park. Fanny was born in 1849 as Frederick William Park and, like Stella, had been assigned male at birth. Fanny was aware that she did not fit into English society since she had a male body, but she was always more drawn to women’s company and typically feminine activities, such as sewing and knitting. In Fanny’s twenties, she began dressing as a female after being introduced to burlesque. Fanny and Stella would perform in theatre and in burlesques

---


69 McKenne, Fanny and Stella, chap. 7.
together, as well as attend performances. In April of 1870, Fanny and Stella attended a show at Strand Theatre. While dressed as women and flirting with the men in the audience, Fanny and Stella were arrested and charged with conspiracy to commit sodomy, meaning that the maximum sentence they could receive would be imprisonment. The police discovered that Fanny and Stella were not females after they had been taken into custody and forced to disrobe for inspection.\footnote{“The Trial of Boulton and Park,” Lilly Library, Spring 2007, accessed March 10, 2019, http://www.indiana.edu/~liblilly/offthepedestal/otp10.html.} The trial became a spectacle, with many sketches of the “he-she ladies” being produced at every stages of the trial.\footnote{“The Trial of,” accessed March 10, 2019.} After the trial was presented, it took the jury an hour of deliberation to decide that Stella and Fanny were not guilty of any crime.\footnote{“The Trial of,” accessed March 10, 2019.}

There are obvious differences between the trials of Lobdell and Fanny and Stella, the biggest one being that Fanny and Stella became public spectacles with crowds showing up to watch the trial and that Lobdell had been found not guilty because of sixth-century precedent that described women being allowed to dress as men.\footnote{The Trial of Joseph Israel,” accessed March 4, 2019.} Fanny and Stella were acquitted on the basis that wearing women’s clothing was not a crime; therefore, they had done nothing illegal. However, their case became so public that it would have been impossible for them to go back to their private lives. With Lobdell, the case was not covered as heavily as Fanny and Stella’s, allowing him to return to a quiet life. Fanny and Stella have a legacy, but Lobdell’s story has faded during the test of time. There are also some similarities. All three people were prosecuted for their identities, and, had they been convicted, would have been imprisoned for dressing as the opposite sex. All three people’s identities had been ignored by their communities which allowed them to present themselves as the opposite sex with very little push-back. Those who cross-
dressed or did not conform to societal expectations based on their gender were still at risk for punishment; however, the sentencing was becoming lighter in the late 1800s.

As the country continued to grow, so did American industrial centers. More people moved to the cleaner cities to raise their families. The increase of people in cities led to areas of recreation, namely city parks for families and couples to go. Homosexuals began to use these public parks as cruising locations and areas to continue prostitution. Men and fairies would use the public restrooms and bathhouses for oral sex, and families became appalled with how the parks were being used and asked their legislatures to do something about it. This rise in fellatio in public locations led to sodomy laws identifying what, specifically, the act of sodomy was. The first state to pass an updated sodomy law with a definition of sodomy would be Pennsylvania in 1872, with other states following suit. Sodomy was no longer able to be prosecuted under common law.\(^74\)

Homosexuals began to be seen as a group or class of people because of sexology, not just as individuals who committed an act. However, this group of people would also be seen not just as criminals, but as evil menaces to society. As a way to protect children, male homosexuals were portrayed as child predators who should be kept away from children at all cost. The fear of homosexual men being child predators stems from many homosexual men having much younger partners. This fear of male homosexuals did not prevent young men from working in brothels as prostitutes, though, and many young men would turn to prostitution as a way to earn money.\(^75\)

Male homosexuals were not the only men that children were taught to fear. Lesbians were also believed to be a threat to society, although their portrayal was more fantastical. Lesbians were vampires who were going to steal daughters, wives, and children away from their womanly roles.

\(^{74}\) Eskridge, *Dishonorable Passions*, 50-53.
\(^{75}\) Eskridge, *Dishonorable Passions*, 44-46.
The perspective that produced this hysteria was that of men who were afraid of losing their control over modern women. After all, a woman could not be attracted to another woman and only had mothering instincts, not sexual desires.\textsuperscript{76}

Sodomy laws changed over the course of American history, but one thing remained the same: people are always concerned about the protection of society and their children’s morals. The idea that sodomy laws were meant to protect people would have a lasting impact in the future, especially when social movements sought to repeal sodomy laws and make homosexuality legal in the late twentieth century. Homosexuals were a public enemy and something to fear, especially when they began to threaten the basic family structure. Many things were done to prevent homosexuals from ruining society; however, sodomy would remain a detestable offense and crime against nature until the 1990s when a Supreme Court case declared sodomy laws unconstitutional.\textsuperscript{77} Despite sodomy laws attempting to prevent the act of sodomy, an identity was starting to form as some of the punishments were becoming less severe. Although the act of sodomy had to take place in private, the Fanny and Stella case and others like it shows that queerness was making its way into the public sphere, which differs from the Lieutenant Enslin case where no reporting was done on his court martialing and his story ends after his dismissal from the Continental Army. The homosexuals who were prosecuted during the colonial era planted the seed for a homosexual identity to be able to be a part of the public sphere.

\textsuperscript{76} Eskridge, \textit{Dishonorable Passions}, 43.
\textsuperscript{77} Robertson, “Shifting the Scene,” 223-242.
Bibliography

Primary


Secondary


