

## **‘Imprudent Sluts’ & ‘Sober Gentlemen’: Testimonial Injustice in Rape Trials at the Old Bailey, 1720-1742**

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*This article examines the role of gender in the testimony, character and credibility of the plaintiffs and defendants in rape trials in early modern England. I will argue that the emerging eighteenth-century culture of sensibility did not contribute to increased rulings in favor of women in rape trials as women’s perceived sexual character was used as a proxy for their moral character and was weaponized as evidence against them in rape trials. To do this, I will draw from feminist philosopher Miranda Fricker’s work on testimonial injustice. Testimonial injustice “occurs when a speaker is given less credibility than deserved [...] because of an identity prejudice held by the hearer.” I argue that early modern England rape trials exemplify testimonial injustices as they indicate that women’s testimonies were not afforded equal weight, and suffered less favorable legal outcomes due to the particularly gendered and circumstantial natures of the crime. These trials deserve historiographic attention to attempt to address these historical testimonials injustices and correct – or at least question – what historical documents have preserved as facts.*

In her 2007 book *Epistemic Injustice*, feminist philosopher Miranda Fricker argues that testimonial injustice, a form of epistemic injustice, “occurs when a speaker is given less credibility than deserved [...] because of an identity prejudice held by the hearer.”<sup>1</sup> Thus, the speaker suffers “a credibility deficit.”<sup>2</sup> For example, Fricker explains that if a male judge has a prejudice against women, a woman’s testimony may be less likely to be believed. Moreover, “to suffer a credibility deficit impedes one’s capacity as an epistemic agent, making it both an ethical and an epistemic wrong when one suffers a deficit due to an identity prejudice.”<sup>3</sup> When considering testimonial injustices of the past,

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<sup>1</sup> Heidi Grasswick, "Feminist Social Epistemology," *The Stanford Encyclopedia of Philosophy* (Winter 2016 Edition), Edward N. Zalta (ed.), <<https://plato.stanford.edu/archives/win2016/entries/feminist-social-epistemology/>> (accessed 6 april 2018).

<sup>2</sup> Grasswick, "Feminist Social Epistemology."

<sup>3</sup> Grasswick, "Feminist Social Epistemology."

such as those recorded in trials, it is obvious that these records obscure the truth of history, specifically the history of the marginalized.

In her work, historian Andrea McKenzie explores the relationships between gender, class, character, verdicts, and punishments in early modern England – specifically how the reputation and class of witnesses, the accused, and the victim affected the outcomes of spouse-murder cases. In her article “‘His Barbarous Usages,’ ‘Her Evil Tongue’: Character and Class in Trials for Spouse Murder at the Old Bailey, 1674-1790,”<sup>4</sup> McKenzie argues that positive character witnesses were crucial to the acquittal of those accused of spouse-murder in early modern England, and that lenient charges were often associated with negative character witnesses for the victim. Furthermore, McKenzie, among other scholars in this field, writes that the “emerging eighteenth-century culture of sensibility contributed to a decriminalisation of female passion and sexuality.”<sup>5</sup> This “culture” refers to the new moral and spiritual values and the changing conceptions of gender during this time – including a greater sensitivity to the emotions of others.<sup>6</sup> She maintains that this rising “culture of sensibility” may have contributed to the increasingly lenient court judgements of women accused of spouse-murder.<sup>7</sup> Meanwhile, female defendants benefitted from sympathy only when their victims were poor and working class. She notes a “distinct continuity” in sexist gender ideology as “the dying accusations of female victims and the testimony of their female prosecution witnesses continue[d] to be routinely questioned or discredited as malicious and hence unreliable” in the trials.<sup>8</sup>

Drawing upon McKenzie’s lens of analysis and four volumes of “Select Trials at the Sessions House in the Old Bailey, 1720-1742” hosted on the Eighteenth Century Collections Online database, I ask: what is the role of gender in the testimony, character, and credibility of

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<sup>4</sup> Andrea McKenzie, “‘His Barbarous Usages,’ Her ‘Evil Tongue’: Character and Class in Trials for Spouse Murder at the Old Bailey, 1674-1790” *American Journal of Legal History* (2017), 354-384.

<sup>5</sup> McKenzie, “‘His Barbarous Usages,’ Her ‘Evil Tongue,’ 354.

<sup>6</sup> G.J. Barker-Benfield, *The Culture of Sensibility: Sex and Society in Eighteenth-Century Britain*, (University of Chicago Press, 1996).

<sup>7</sup> McKenzie, “‘His Barbarous Usages,’ Her ‘Evil Tongue,’ 354.

<sup>8</sup> McKenzie, “‘His Barbarous Usages,’ Her ‘Evil Tongue,’ 354, 383.

the plaintiffs and defendants in rape trials in early modern England?<sup>9</sup> Furthermore, did this “emerging culture of sensibility” also contribute to increased rulings in favor of women in rape trials?<sup>10</sup> These trials deserve historiographic attention to attempt to address these historical testimonials injustices and correct – or at least question – what historical documents have preserved as facts. Therefore, I argue that early modern England rape trials exemplify testimonial injustices as they indicate that women suffered significant credibility deficits and less favorable legal outcomes due to the particularly gendered and circumstantial natures of the crime. Moreover, women in rape trials did not benefit from the “emerging eighteenth century culture of sensibility” that may have benefitted women accused of spouse-murder, as their perceived sexual character was used as a proxy for their moral character and was weaponized as evidence against them in rape trials.<sup>11</sup>

Certain characteristics of rape collaborate to put character and credibility at the forefront of legal judgements. Rapes often occur when the victim/survivor is alone with the perpetrator, without witness. The physical results of a rape are oftentimes similar to the results of consensual sex, thus rape was and continues to be a highly difficult (if not impossible) crime to prove with hard evidence due to questions of consent. Unlike other crimes, often the only tool a survivor has to prove a crime occurred is her own testimony. Furthermore, rape is a highly gendered crime, and thus an analysis of rape trials illustrates the crucial role that gender plays in the construction of credibility. Thus, testimony, character, and credibility played more significant roles in trials than perhaps any other crimes at the time. Keeping Fricker’s notion of “testimonial injustice” in mind, one can see how problematic these characteristics of rape can be in a trial setting.

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<sup>9</sup> In this paper, I will use the word ‘rape’ and ‘sexualized violence’ interchangeably. This is to emphasize the fact that rape is not about sex, but about power, control, and violence. It is not violent sex, but sexualized violence. This is an important distinction.

<sup>10</sup> McKenzie, “‘His Barbarous Usages,’ Her ‘Evil Tongue,’ 354.

<sup>11</sup> McKenzie, “‘His Barbarous Usages,’ Her ‘Evil Tongue,’ 354; This analysis is based on a limited sample of rape trials held in London between 1720 and 1742. Given the constraints of time and space, a wide range of additional sources could not also be consulted. Freed of such constraints, I might have, for example, consulted newspaper articles or trials from a larger span of time, which might change the conclusions reached here. I hope however to have provided a faithful and compelling analysis of the sources that I do have at hand.

Before proceeding with an analysis of the trials, it may be useful to clarify the sources of my research. I reviewed four volumes of “The “Select Trials at the Sessions House in the Old Bailey, 1720-1742” hosted on the Eighteenth Century Collections Online database for rape trials in which the accused was acquitted. Though there are numerous trials where the accused was convicted – and an analysis of both acquittals and convictions would certainly be valuable – it is beyond the scope of this paper. The online archive is word-searchable, and contains records of 197,745 criminal trials between 1674 and 1913 from the Old Bailey, which was London’s central criminal court.<sup>12</sup> It is an extremely valuable source because it speaks to the lives of non-elite people, their daily lives and struggles, and the dominant values at the time. The published Proceedings are considered “quasi-official” reports, as they did not include every trial held at the Old Bailey, and only included partial transcripts of the trials.<sup>13</sup> In particular the case of the defence was frequently abridged, including testimony of defence witnesses. According to the Old Bailey official website, this is perhaps because the publisher “deemed them trivial or irrelevant.”<sup>14</sup> Thus, it is useful to keep this in mind when analyzing these cases, as the testimony of numerous unnamed character witnesses are omitted and yet carry significant weight in the court’s decision to acquit or convict.

Throughout the court records examined on the Old Bailey database, the accused’s conviction or acquittal was oftentimes decided through the prosecutor’s testimony, character witnesses, and credibility. In March 1720, Susannah Gilman accused the husband of her mistress (identified as M.L. in the trial transcript) of violently raping her while her mistress was out of the home.<sup>15</sup> Upon the mistress’s return, Susannah

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<sup>12</sup> “Homepage,” The Proceedings of the Old Bailey, 1674-1913, <https://www.oldbaileyonline.org/>

<sup>13</sup> “Homepage,” The Proceedings of the Old Bailey, 1674-1913, <https://www.oldbaileyonline.org/>

<sup>14</sup> “The Value of the Proceedings as an Historical Source,” The Proceedings of the Old Bailey, 1674-1913, <https://www.oldbaileyonline.org/static/Value.jsp#reading>

<sup>15</sup> Select trials at the Sessions-House in the Old-Bailey, for murder, robberies, rapes, sodomy, coining, ... To which are added, genuine accounts of the lives, behaviour, confessions, and dying speeches of the most eminent convicts. ... From the year 1720, to this time. ... Vol. 1, Dublin, 1742, Eighteenth Century Collections Online, Gale, University of Victoria, 24-29,

was warned to not mention the rape by threat of being killed by the man. This subsequent silence was used as evidence of his innocence, the argument being that a genuine rape would have been reported immediately.

A bad character witness of Susannah given by a defence witness, Mrs. Willis, was instrumental in the man's acquittal. Mrs. Willis testified: "I knew the Prosecutor and her Mother, the former of whom had a very indifferent Character: when she was but a Girl, she would have sworn a Rape against a Gentleman, which I hearing of, went to the Mother, and prevail'd with her to send for a midwife, who, upon searching her, declar'd it was no such Thing; and that the daughter was an imprudent Slut."<sup>16</sup> The trial of M.L. and Susannah Gilman is succinctly summed up in Mrs. Willis's testimony: Susannah's narrative is fictitious, given the perception of her imprudence. Her alleged sexual past, and thus her character, is invoked to discredit her testimony, which is an example of testimonial injustice and suggests that Susannah did not benefit from the new culture of sensibility. We can see the accusation of character functioning as a tool in the order in which it is presented – that Susannah was found false by search, was therefore an "imprudent Slut," and not to be given the same credibility as a woman whose search had yielded positive results, and whose social reputation was held in high regard.<sup>17</sup> That we are to believe that Mrs. Willis is a credible witness over the character, and thus the reality of Susannah Gilman's rape, is to suppose that the accuser herself is not credible due to her "indifferent Character" while she was young and her dubious sexual reputation.<sup>18</sup> Thus, in this case, her perceived sexual character was criminalized and her credibility eroded, which contributed to the acquittal of her alleged attacker.

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<http://find.galegroup.com.ezproxy.library.uvic.ca/ecco/infomark.do?&source=gale&prodId=ECCO&userGroupName=uvictoria&tabID=T001&docId=CW3324027681&type=multipage&contentSet=ECCOArticles&version=1.0&docLevel=FASCIMILE>> (accessed 7 April 2018).

<sup>16</sup> "Select Trials at the Sessions-House in the Old-Bailey, Vol. 1, 29.

<sup>17</sup> "Select Trials at the Sessions-House in the Old-Bailey, Vol. 1, 29.

<sup>18</sup> "Select Trials at the Sessions-House in the Old-Bailey, Vol. 1, 29.

In the May 1725 case, Sarah Muns accused John Alloway of raping her on a boat on the River Thames.<sup>19</sup> The Court asks Muns, “Did he use no threats?”<sup>20</sup> Muns replied that he did not. The Court continues, “He did not? And yet now, by the Manner in which you give your Evidence, you seem very willing to pass for a young Woman of extraordinary Modesty.”<sup>21</sup> Alloway was acquitted. What is most remarkable about the court’s accusation in this exchange is the suggestion that Sarah’s case, and necessarily, her testimony, are called into question upon the chance that she is posturing herself as more ‘modest’ than she actually is. This implication calls into question her credibility – if she is passing, which is to say posing, as a woman of “extraordinary Modesty,” it suggests that a woman of immodesty might perhaps be likely to tell falsehoods.<sup>22</sup> The court suggests that Sarah Muns’ evidence was presented as part of her charade, in the image of her false modesty, which is to condemn any further representation of her case as being a falsehood akin to her demeanor. Once again, the emerging culture of sensibility did not benefit Muns as insinuations about her sexual character were used in the favor of the accused.

Early modern England rape trials reveal that gender also informed the credibility of the accused, which in turn informed the verdict. In virtually every case, men were the defendants and it was their positive reputation and character witnesses that resulted in acquittals despite the victims’ or other female witnesses’s testimonies. Robert Lander was indicted for the felony of raping 15 year old Amy Joel, as well as the misdemeanor of assaulting Joel with the intent to ravish in July of 1725.<sup>23</sup> Joel claimed that Lander, a neighbour known to her,

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<sup>19</sup> Select trials at the Sessions-House in the Old-Bailey, for murder, robberies, rapes, sodomy, coining, ... To which are added, genuine accounts of the lives, behaviour, confessions, and dying speeches of the most eminent convicts. ... From the year 1720, to this time. ... Vol. 2, Dublin, 1742, Eighteenth Century Collections Online, Gale, University of Victoria, 194, <<http://find.galegroup.com.ezproxy.library.uvic.ca/ecco/infomark.do?&source=gale&rodId=ECCO&userGroupName=uvictoria&tabID=T001&docId=CW3323628131&type=multipage&contentSet=ECCOArticles&version=1.0&docLevel=FASCIMILE>> (accessed 8 April 2018).

<sup>20</sup> Select trials at the Sessions-House in the Old-Bailey, Vol. 2, 194.

<sup>21</sup> Select trials at the Sessions-House in the Old-Bailey, Vol. 2, 194.

<sup>22</sup> Select trials at the Sessions-House in the Old-Bailey, Vol. 2, 194.

<sup>23</sup> Select trials at the Sessions-House in the Old-Bailey, Vol. 2, 288.

entered her mistress's kitchen and sexually assaulted Joel. Afraid to tell her mistress, Joel told her mistress's sister Ann. Ann testified that she believed Lander was guilty as he had tried to assault Ann before. Ann testified that after kissing her without consent, "he stoops down, pretending to buckle his shoe, and whips his Hand under my Petticoats; and if somebody had not came in, I don't know but he might have got his wicked Will of me, as he had of her."<sup>24</sup> However, the record states that "several gentlemen," having known him several years, testified to his good reputation: "they never knew him guilty of any immodest Actions."<sup>25</sup> Lander was acquitted of the felony and charged with the misdemeanor. In this case, two women from different socioeconomic backgrounds (Amy Joel, a lower class young servant and Ann, a presumably middle class woman) testified against Lander with no obvious ulterior motivations. Yet the unrecorded testimony of several unnamed and unknown men serve to acquit Lander of his actions. This case is thus a prime example of testimonial injustice, as the detailed testimony of both Joel and Ann were discredited by these unknown gentlemen's words. Joel and Ann's gender compromised their credibility as epistemic agents and was therefore the barrier to Joel's search for justice.

The testimony of the defence character witnesses involved in the March 1725 trial of John Simmons, accused of raping Mary Batten, contains several narratives that serve to discredit the crime as recounted by Batten.<sup>26</sup> Margaret Dixon, Mary's employer, recounts how Mary had dutifully shown her her injuries, which serves as evidence of the assault. However, John's mother-in-law assured the courts that such an assault was impossible, given her daughter's beauty and, by implication, the sexual access the accused had to her. In other words, why would he need to satisfy his sexual appetite elsewhere? The account of the trial concludes by summarizing the testimonies of several unnamed witnesses, asserting that John was a "sober industrious Man," before recording his acquittal.<sup>27</sup> Given the obvious weight given to these last testimonies, and that the evidence of Mary and Margaret should be

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<sup>24</sup> Select trials at the Sessions-House in the Old-Bailey, Vol. 2, 288.

<sup>25</sup> Select trials at the Sessions-House in the Old-Bailey, Vol. 2, 288.

<sup>26</sup> Select trials at the Sessions-House in the Old-Bailey, Vol. 2, 318.

<sup>27</sup> Select trials at the Sessions-House in the Old-Bailey, Vol. 2, 321.

evaluated as beneath the moral claims of the mother-in-law and the additional witness reveals a testimonial injustice that favours the assertion of the accused's character over evidence. Given the explicit sexual and gendered nature of this and similar trials, it is revealed that such evident favour is the consequence of systemic injustice that privileges the words and testimonies of men above those of women, and treats men as credible epistemic agents above women. John Simmons is thus acquitted not by any fault of Mary Batten, but rather at the bolstering of public and judicial opinion on Simmons's behalf, rendering the accused untouchable from scrutiny.

In the January 1726 trial, Catharine Southall accused Thomas Coventry, a neighbour to Catharine, of raping her under a bridge.<sup>28</sup> Catharine's employer Mary testified on her behalf, saying that Catharine returned that night "in a vile Pickle, all over Dirt."<sup>29</sup> Mary sent for a midwife to examine her "strictly" who found evidence of intercourse.<sup>30</sup> Upon Catharine's admission that Coventry had raped her, Mary went to the local ale-house and overheard Coventry boasting about having sex with a 16 year old girl. The prisoner denied it, and claimed "the Girl used to come after me to our Cellar, and would always be giving me Apples, or Oranges, or one Thing or another."<sup>31</sup> This statement serves not only as evidence of his innocence, but also to discredit Catharine's sexual and moral character. That the jury found Coventry innocent reflects the social assumption that if a woman gives you one thing - her time, her fruit - that she must also be likely to give you her body. Coventry's mere denial of the rape, despite the testimony of multiple women, is a clear example of testimonial injustice, and demonstrates that in rape cases, ideas about women's sexuality were used to discredit women's

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<sup>28</sup> Select trials at the Sessions-House in the Old-Bailey, for murder, robberies, rapes, sodomy, coining, ... To which are added, genuine accounts of the lives, behaviour, confessions, and dying speeches of the most eminent convicts. ... From the year 1720, to this time. ... Vol. 3, Dublin, 1742, Eighteenth Century Collections Online, Gale, University of Victoria, 64,

<<http://find.galegroup.com.ezproxy.library.uvic.ca/ecco/infomark.do?&source=gale&prodId=ECCO&userGroupName=uvictoria&tabID=T001&docId=CW3324588800&type=multipage&contentSet=ECCOArticles&version=1.0&docLevel=FASCIMILE>> (accessed 8 April 2018).

<sup>29</sup> Select trials at the Sessions-House in the Old-Bailey, Vol. 3, 64.

<sup>30</sup> Select trials at the Sessions-House in the Old-Bailey, Vol. 3, 65.

<sup>31</sup> Select trials at the Sessions-House in the Old-Bailey, Vol. 3, 65.

testimonies and thus women did not benefit from the emerging “culture of sensibility” that supposedly decriminalized “female passion and sexuality.”<sup>32</sup>

As we have seen in the cases mentioned above, the tales that surround the men in these trials, if favourable towards his character, render the accused untouchable. Women’s detailed and witnessed accounts of the crime they suffered competed with nebulous assertions from neighbours and coworkers. We see a pattern of lauding the male character to the discredit of the female. The trials reveal that if a woman was shown, even by suggestion or rumour, to have acted licentiously, her credibility was called into question. It is as though the imagination of a woman is so volatile, so malleable with the suggestion of sexuality, that her claim cannot hold a candle in the eyes of the law. The reputation of the female prosecution was so vulnerable to charges of promiscuity, that her claims often fell to the ground. Contrastingly, in the same world, the same courts, the imagination of a man is so amenable to compliment, so infallible that the testimony of many women against him could not guarantee a conviction. And these are only the records of those who reported their sexual assaults.

Many people did not report sexualized violence for a variety of reasons. In general, violent offenses were massively underreported, and settled in informal ways.<sup>33</sup> The Old Bailey website indicates that “[w]omen account for a higher proportion of the victims who used less formal legal procedures such as summary jurisdiction and informal arbitration to prosecute crimes,” meaning that likely a number of women did report rapes but did not bring their cases to the criminal court at the Old Bailey.<sup>34</sup> Historian J.M. Beattie writes that reporting a rape was often discouraged and thus quite rare: “[t]hose who complained to a magistrate and went forward to trial opened themselves inevitably to publicity and to the embarrassment and pain of having to prove in court that an attack had taken place and that it was indeed a rape, that the accused had had carnal knowledge of her ‘forcibly and against her

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<sup>32</sup> McKenzie, “‘His Barbarous Usages,’ Her ‘Evil Tongue,’” 354.

<sup>33</sup> J.M. Beattie, *Crime and the Courts in England, 1660-1800*, (Princeton, N.J: Princeton University Press, 1986), 124-25.

<sup>34</sup> “Gender and Crime,” The Proceedings of the Old Bailey, 1674-1913, <https://www.oldbaileyonline.org/static/Gender.jsp>

will.”<sup>35</sup> Beattie notes that the courts were particularly concerned about false accusations and convictions in cases of sexualized violence, “and the result was that a women bringing a charge and giving evidence in court opened herself to an investigation into her life for if the defense could show that she was not of good character, doubt might be thrown on the accusation.”<sup>36</sup> Doubt was also cast on her testimony if she did not tell someone report the assault immediately to the authorities, or cry out for help.<sup>37</sup> This, despite the fact that, as we have seen, some of the survivors’ lives were warned by their attackers – on the threat of death – not to report. Additionally, many women lived alone in urban parishes near London and “without encouragement and support and the indignation of relatives, women were perhaps more anxious to press prosecution of rape.”<sup>38</sup>

Those who did report their rapes rarely received the justice they deserved. Despite the difficulty and rarity of reporting a rape and bringing it to criminal court, between 1720 and 1742, 85.48% of defendants in rape trials were found not guilty at the Old Bailey – nine defendants were convicted, while 53 were acquitted.<sup>39</sup> In most of the trials in which the defendant was convicted, the victim was under the age of 15. These statistical percentages remain fairly consistent for the next 100 years. It was not until the 1840s when convictions began to outpace acquittals for rape cases at the Old Bailey.<sup>40</sup> It was also around

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<sup>35</sup> Beattie, *Crime and the Courts in England*, 124-25.

<sup>36</sup> Beattie, *Crime and the Courts in England*, 125-26.

<sup>37</sup> Beattie, *Crime and the Courts in England*, 126.

<sup>38</sup> Beattie, *Crime and the Courts in England*, 130.

<sup>39</sup> “Statistics: Tabulating verdict category where offence category is rape, between 1720 and 1742. Counting by verdict,” *The Proceedings of the Old Bailey, 1674-1913*, [https://www.oldbaileyonline.org/stats.jsp?y=verdictCategory&x=&countBy= verdicts &render=pic& offences offenceCategory offenceSubcategory=sexual rape& verdict s verdictCategory verdictSubcategory=& punishments punishmentCategory punishmentSubcategory=& defendantNames defendantGender=&defendantAgeFrom=&defendantAgeTo=& victimNames victimGender=&victimAgeFrom=&victimAgeTo=&divs\\_fulltext=&kwparse=and&fromMonth=&fromYear=1720&toMonth=&toYear=1742](https://www.oldbaileyonline.org/stats.jsp?y=verdictCategory&x=&countBy= verdicts &render=pic& offences offenceCategory offenceSubcategory=sexual rape& verdict s verdictCategory verdictSubcategory=& punishments punishmentCategory punishmentSubcategory=& defendantNames defendantGender=&defendantAgeFrom=&defendantAgeTo=& victimNames victimGender=&victimAgeFrom=&victimAgeTo=&divs_fulltext=&kwparse=and&fromMonth=&fromYear=1720&toMonth=&toYear=1742)

<sup>40</sup> “Statistics: Tabulating decade against verdict category where offence category is rape. Counting by verdict,” *The Proceedings of the Old Bailey, 1674-1913*, <https://www.oldbaileyonline.org/stats.jsp?y=decade&x=verdictCategory&countBy= verdicts &render=pic& offences offenceCategory offenceSubcategory=sexual rape& verdicts verdictCategory verdictSubcategory=& punishments punishmentCategory>

this time that there was a significant uptick in rape trials. Though McKenzie observes an increasing sense of lenience in favor of women accused of spouse-murder in the courts from 1674-1790, this does not seem to be the case for women reporting sexualized violence in the same time period. It appears as though the “emerging culture of sensibility” did not influence the verdicts of rape trials at the Old Bailey until the 1840s. Though the increase in rapes taken to trial are in part due to an increase in population, it was also due to “an increased willingness to come forward,” according to Beattie.<sup>41</sup> He argues that women’s willingness to report may have come from a new perception of the court as “slightly more sympathetic to their plight, slightly more willing to consider women as victims than earlier views of women as sensuous and morally dangerous beings.”<sup>42</sup>

To conclude, the difficulty of proving rape leaves her with the least social power to prove her innocence not through evidence, but through testimony, character, and credibility. As Fricker argues, credibility is contingent on social location; those with the most marginalized social identities often suffer the greatest credibility deficits and thus the least favorable outcomes in legal proceedings.<sup>43</sup> In many of these cases at the Old Bailey, female rape prosecutors were in effect ‘the accused,’ with their lives and character on trial, rather than the other way around. Evidently, survivors of rape between 1720 and 1742 did not benefit from the “emergent eighteenth-century culture of sensibility” as did women who committed spouse murder in the same era.<sup>44</sup> The rape trials at the Old Bailey, like the trials analyzed by McKenzie, also exemplify a “distinct continuity” in sexist gender ideology well into the nineteenth-century.<sup>45</sup> The examples provided here of rape trials provide historical evidence for this argument – that time and again trial outcomes were informed by credibility, which in turn was informed by socio-economic identity and circumstances.

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<sup>41</sup> Beattie, *Crime and the Courts in England*, 130.

<sup>42</sup> Beattie, *Crime and the Courts in England*, 132.

<sup>43</sup> Grasswick, "Feminist Social Epistemology."

<sup>44</sup> McKenzie, "'His Barbarous Usages,' Her 'Evil Tongue,'" 354.

<sup>45</sup> McKenzie, "'His Barbarous Usages,' Her 'Evil Tongue,'" 354, 383.

This attitude towards sexualized violence, however, is far from a purely historical phenomenon and a few statistics illustrate this: in Canada, approximately one in three women will experience sexual assault in their adult life; “a higher risk of sexual assault was noted among those who were women, young, Aboriginal, single, and homosexual or bisexual, and those who had poorer mental health”; and “sexual offences are less likely than other types of violent crime to result in a finding of guilt.”<sup>46</sup> These statistics reflect Fricker’s argument; as the axes of oppression intersect, credibility deficits grow exponentially. That the hierarchies of social power that influenced early modern England rape trial convictions persist in today’s society is cause to carefully examine the ways character and credibility are used to inform outcomes of modern legal proceedings of sexualized violence. Ultimately, the rape trials in the Old Bailey are all too familiar to us, and reveal the ways, in the words of historian John Tosh, “the past becomes us.”<sup>47</sup> Though this is difficult history to research, it is important that we bear witness to it – not only to understand the history’s implications for our lives today, but also to acknowledge the experiences of these women and girls, who so rarely were offered the benefit of the doubt in their lifetimes.

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<sup>46</sup> Statistics Canada, 2006, “Measuring Violence Against Women: Statistical Trends 2006,” Ottawa, ON: Minister of Industry, 24, [http://www5.statcan.gc.ca/access\\_acces/alternative\\_alternatif.action?l=eng&loc=http://www.statcan.gc.ca/pub/85-570-x/85-570-x2006001-eng.pdf&t=Measuring%20Violence%20Against%20Women:%20Statistical%20Trends](http://www5.statcan.gc.ca/access_acces/alternative_alternatif.action?l=eng&loc=http://www.statcan.gc.ca/pub/85-570-x/85-570-x2006001-eng.pdf&t=Measuring%20Violence%20Against%20Women:%20Statistical%20Trends) (accessed 12 April 2018); Statistics Canada, 2017, “Self-Reported Sexual Assault in Canada, 2014,” Ottawa, ON: Minister of Industry, 3, <https://www.statcan.gc.ca/pub/85-002-x/2017001/article/14842-eng.htm> (accessed 12 April 2018); Statistics Canada, 2008, “Sexual Assault in Canada, 2004 and 2007,” Ottawa, ON: Canadian Centre for Justice Statistics, 10, <http://www.statcan.gc.ca/pub/85f0033m/85f0033m2008019-eng.pdf> (accessed 12 April 2018).

<sup>47</sup> John Tosh, *Why History Matters*, Palgrave Macmillan, 2008.

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