

The criminal prosecution of inter-male sex
1850-1970: A Lancashire case study.

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A Lancashire quantitative & qualitative case study into the indictable criminal prosecution of inter-male sex interpreted through the attitudes and behaviours of four key constituent parties within the Criminal Justice System: Prosecution, Defence, Adjudication & Presiding Judiciary 1850-1970.

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Abstract

The thesis addresses two related issues. Firstly, the lack of an accurate longitudinal reading of the incidence of indictable prosecutions predicated on the criminalisation of sexualised behaviours between males for the period 1850-1970; that is, consensual conducts (including 'victimless' behaviour discriminately criminalised) together with coercive behaviours. The results of the enumerative part of this investigation demonstrate significant variations in the frequency of prosecutions during what was a seminal period of criminalisation of such conduct. The rarity of cases of the later nineteenth century, followed by a slow, and sometimes erratic, increase during the inter-war years (1919-1939) preceded a more energetic period of prosecutions in the two decades about the publication of the government commissioned 'Wolfenden' Report (1957).

The primary sources used to produce this accurate longitudinal count of the criminal prosecutions and, in particular, the *Calendars* also provided the evidential basis for the second task of this investigation. To date, there has been no in-depth longitudinal reading of the treatment of such cases by the four main constituent 'players' within the Criminal Justice System that were charged with the practical realisation of Parliament's abstract criminalisation.

This thesis provides both a quantitative and qualitative reading of the sometime consistent and divergent attitudinal relationship between these four 'players' in the prosecution of sexualised conduct between males: the prosecution, defence, adjudication and presiding judiciary.

The practical criminalisation of inter-male sex 1850-1970: A Lancashire case study.

These two complimentary readings are contextualised within a number of contingent realities of the period that suggest the criminalisation of sexualised behaviours was not a major policing priority for much of the period. Further, that when such cases did come to trial the success rate and, therein further prosecutions, was heavily reliant on the role of the defendant cooperating with their own conviction.

Finally, the choice of these investigatory goals was in large part addressed by a reading of the specialised historiography within this relatively new field of study and thereby in part an attempt to light-up previously unexplored territory.

This thesis is 88, 818 words.

Dedication

For my parents and Dan

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Chapter One – Introduction

This study has had a very long gestation. The framing of the longitudinal enumerative and quantitative questions was first formulated several decades ago. In the 1980s as a part-time volunteer editor of the books page for the Northern Lesbian Gay Bisexual and Trans magazine 'Scene Out,' a small but significant number of publications landed on my desk historicising past attitudes towards sex and gender and specifically 'Gay' history. These histories often proved revelatory among readers and an interest shared by workmates on various Manchester building sites was provoked when reading review copies of these histories during breaks and lunchtimes. Only later, did I begin to more fully appreciate the difficult path that many of the pioneering scholars who researched, wrote and publicised these histories had travelled. ²

Many of these books had common themes including the laws that criminalised sex between males and the role of the police and courts. Sometimes the focus was even more specific: selecting out and historicising atypical London criminal trials such as that of Oscar Wilde (1898) appeared to hold a particular fascination. However quantitative information, not least on how many men and lads were actually

² Weeks notes this arresting of historical enquiry by the history profession as recently as the late twentieth century, 'A generation ago the question would have been absurd. It was taken for granted that the truths of sex were timeless' [Weeks, J. (2000) *Making Sexual History*. Cambridge: Polity Press, p. 1.] More recently, Dabhoiwala notes: 'The subject is immense, yet it is never studied – worse still, its existence is barely acknowledged.' [Dabhoiwala, F. (2013) *The Origins of Sex: A history of the First Sexual Revolution*. London: Penguin, p. 5.] However, only twenty years ago that progress was assessed as 'fragile' by a leading scholar of the subject. Indeed, the perceived weakness of the historiography, together with the related practical problems, have from the start informed and shaped the parameters of this investigation, especially the paucity and bias of the specialised historiography. Eve Sedgwick in 1990 could still refer to the study of past attitudes towards sex within the academy as being: '...fragile, under extreme threat from both within and outside academic institutions...' [Sedgwick, E. (1990) *Epistemology of the Closet*. Berkley, Los Angeles; London: University of California Press, p.16].

prosecuted for such behaviours, both consensual and coercive, was strangely absent. How was the significance of such criminalisation to be understood without an understanding of the incidence of arrests and prosecutions such laws occasioned? Beyond references to the deeply flawed government crime figures, there appeared to be little accurate enumeration of the numerical impact of criminalisation. Among the exceptions was Gilbert's history of the military prosecution of buggery during the Napoleonic Wars.³ He had sought out and used the primary material that evidenced prosecution of such behaviour. This approach, a return to the original documents detailing individual prosecutions, was twenty years later used by this investigation to seek out and use the primary evidence on which the findings of this study are largely based.

Another feature that the early histories appeared to avoid was the impact of and reaction to the criminalisation of sex between males with respect to the vast majority of the male population; those from the working and pauper classes. The focus was also largely on Southern England, that for the resolutely Northern publication for which I volunteered was particularly irritating. Edward Carpenter whom we first learned of through these publications whilst born a Southerner and retreated back to Reading to die, for much of his life lived and worked in Sheffield provided a 'hint' to a Northern 'gay' past.

³ Gilbert, A. (1976) 'Buggery and the British navy, 1700-1861'. *Journal of Social History*, 10(1) pp. 72-98.& Gilbert, A. (1977) 'Sexual Deviance and Disaster during the Napoleonic Wars.' *Albion: A Quarterly Journal Concerned with British Studies*, 9 (1), Spring, pp. 98-113.

Finally the question of how such prosecutions fared within the Criminal Justice System remained an unanswered question. The outcomes of only a handful of these atypical trials was transparent such as the guilt of Oscar Wilde (1895), the escape and suicide of the principle suspect in the Cleveland Street Scandal (1889) and the failure of the gender transgressive case of Boulton and Park.⁴ Also in Manchester the Local Studies Library had highlighted the unprecedented police raid on a Fancy Dress Ball in September 1880. However, the case ended in the spectacular failure of the police to obtain even one conviction of the forty-seven men arrested for the preferred charge of 'buggery'.⁵ These examples strongly suggest the failure and not success of prosecuting behaviours. Such laws and prosecutions may have had unintended consequences but in obtaining the stated goal of punishing those engaging in sex between males, their practical effects appear less clear. Indeed, the question posed is how successful, if at all, was the criminalisation of sex between males, the definition of such behaviours having been widened by the enactment of the 1885 Criminal Law Amendment Act. This would appear to be an important question in any assessment of the impact of such criminalisation. The only means of answering such a central question is by access to an accurate and detailed, comprehensive, longitudinal reading of such prosecutions.

⁴ Hyde, H. (1976) *The Cleveland street scandal*. London: Allen. & McKenna, N. (2013) *Fanny and Stella : the young men who shocked Victorian England*. London: Faber and Faber.

⁵ Manchester City Council Local Studies Library and Archive Service continue to highlight such past events for example their 'LGBT Source Guide' available [Online] http://www.manchester.gov.uk/info/448/archives_and_local_history/520/lgbt_source_guide/4 Also noted in Cocks, H. (2003) *Nameless Offences: Homosexual Desire in the 19th Century*. London; New York: I.B. Tauris.pp.70-71.

My time reviewing early publications played a large part in finding my way onto a part-time undergraduate history course at the local university. However, I avoided dedicating the final dissertation for my first degree to the topic area of 'Gay' History and again when I had to choose a topic for my Master's course some years later. I felt my role as a life-long volunteer, political activist and commentator disqualified me from such enquiry. Perhaps I would not be able to detach myself from the current political reading and contingent debates implicit in political endeavour.

However, when my teaching career was temporarily halted between 2006 and 2008, I had the leisure to read and reflect on the latest publications being produced by a new generation of scholars working in the field. Clearly a lot of remarkable investigatory work had occurred and the insights gained offered a much more nuanced reading of past attitudes towards sex. But and perhaps not surprisingly there still remained a large *terra incognita* of subject matter and topics to be explored. Most especially it soon became apparent, that the enumerative and quantitative queries that I'd posed several decades before, were still largely unanswered. For example, with the exception of Cocks very few of those histories sought to address the longitudinal question of how many prosecutions actually happened and how successful had they been.⁶

⁶ Cocks, H. (2003) *Nameless Offences: Homosexual Desire in the 19th Century*. London; New York: I.B. Tauris.

Moreover, by the first decades of the twenty-first century the focus of the Gay/Human Rights agenda was clearly on legal change: equal age of consent and civil partnerships and adoption rights. The wider cultural environment had radically changed and LGBT activists were being invited by Prime Ministers for drinks parties at Number 10, to celebrate their work. Not a week went by without news of another celebrity 'coming-out' or supporting the LGBT agenda. Among this increased media coverage was the demand for the pardoning of Alan Turing for his uncontested 1952 conviction for gross indecency. Indeed, this retrospective demand which was later extended to include a call for a general pardon for all such past prosecutions became part of mainstream media coverage.

It was this particular question of 'pardoning' that again highlighted the gaps in our knowledge and understanding of the past criminalisation of sex between males. This demand, regardless of its merits, again raised the question of how many males had been subject to such past convictions and not least, who were they and what their names were. If you are suggesting retrospective pardoning it is perhaps important to have the names of the individuals in question. The demand for wholesale pardoning also ignored the question of whether significant number of past prosecutions of sexualised behaviours between males may have been, or were, coercive.

It was perhaps the combination of factors, long-standing questions about what was missing from 'Gay' history, recent and rather ignorant debates about retrospective pardoning and the fact that no-one appeared to be providing or actively seeking

answers, that promoted the project. My concerns about my own political bias I answered in two ways. Firstly, I reasoned that in the less hostile environment of the early twenty-first century perhaps a more objective approach was much easier to adopt which together with the experience gained from my professional teaching career might have weakened the hard shell that political activism gifts. Secondly, advancing years have a tendency to mellow one's reading of the world. It was also my march towards decrepitude that also posed the question, 'if not now, then when?' The answer is evidenced by this thesis whose goal has been to seek an answer to the questions asked nearly three decades ago.

The Contextual Environment

Historical enquiry often used the well know phrase attributed to Leslie Hartley, 'The past is a foreign country: they do things differently there' to suggest the many problems inherent in the task of investigating and then providing a reliable reading of the past that is intelligible to the present.⁷ That 'foreign land' analogy is indeed an apt and succinct means of suggesting the many common obstacles, theoretical and practical, highlighted in any historical enquiry. This is especially relevant when historicising the recent past that is populated with so many seemingly familiar faces, ideas and terms that on closer examination often prove to be nothing more than 'false friends'.⁸ These falsehoods, like sirens' voices, seek to thwart the project, waylay the traveller and encourage highly misleading readings of the past. It was

⁷ L. P. Hartley, Leslie P. (1953) *The Go-Between*. Hamilton; London, p.1.

⁸ False Friends: A word or expression that has a similar form to one in a person's native language, but a different meaning. *OED*

into this 'foreign land' that this study was required to trespass. The endeavour was further complicated by the contingency of the topics central to this investigation; sex and crime. Both of these concepts are heavily reliant on time and place. Indeed in part, this enquiry can be read as an exercise in the defining of past generations' shifting definitions of what constituted sex crime. This introductory chapter identifies and discusses the main obstacles that had the potential to compromise the objectivity and reliability of this study's findings and how this investigation sought to address or circumvent such distractions. A major problem shared by many investigations into this general area of enquiry is that the topic sits, in the twenty-first century at the centre of fierce and polarising global controversy. This investigation was conducted in a society that has only in the last few years dismantled most of its discriminatory criminalisation of same sex sexualised acts. Only a generation ago British police and courts were still arresting and prosecuting hundreds of men a year for the crime of covert, adult consensual sexual behaviours. The associated cultural and social taboos that supported past criminalisation, often today unhelpfully stereotyped as 'homophobia', are still part of these post-reform societies. For example, in many parts of the world many forms of private consensual sex acts between adults, together with related behaviours, are still heavily proscribed and stigmatised within the sex and gender regimes of the major global religion.⁹ This is reflected in the criminal codes of many secular states still strongly influenced by supernatural arguments.¹⁰ Indeed, during the period of this

⁹ For example *Catechism of the Roman Catholic Church* section headed 'Chastity and homosexuality' para. 2357 & 2358. The Islamic religion also rejects the legitimacy of private consensual adult sexual behaviours between males with reference to *Quran* (26:165-166); *Quran* (4:16); *Quran* (56:17); *Quran* (52:24); *Quran* (76:19) and the *Hadith*. *Abu Dawud* (4462); *Abu Dawud* (4448); *Bukhari* (72:774).

¹⁰ UN Rapporteur on Right to Health. (2011) *Several Aspects of Sexual, Reproductive Health, Providing Information, Using Contraception, Abortion Should Be 'Decriminalized'*, Briefing to the Third

study such deterministic supernatural dogma was used to justify the English laws outlawing sex between males. For example, the language and related concepts of ancient Jewish theological origin such as: 'If a man lies with a male as he lies with a woman, both of them have committed an abomination' and 'Neither shalt thou lie with any beast to defile thyself therewith ...'¹¹ The provenance of such theology and usage can be seen in section sixty-one of the 1861 Offences Against the Person Act para 61, 'Whosoever shall be convicted of the abominable Crime of Buggery, committed either with Mankind or with any Animal, shall be liable....'

Although religious dogma, by definition, lies largely beyond the scope of objective rational discourse and indeed is often blatantly counterfactual, this does not mitigate its pervasive power and impact. However, it is the secular and ultimately successful utilitarian challenge of the later nineteenth and twentieth centuries, as discussed below, that furnished the important intellectual dynamic that contributed to the dismantling from the 1960s of the discriminatory laws outlawing sex between males.

Problematic terminology - Inter-male Sex

Committee of the Sixty-sixth General Assembly of the United Nations 29th & 30th Meetings: United Nations. (GA/SHC/4018). Over half of the approximately eighty states that criminalise sexualised behaviours between consenting adults of the same gender, thirty-nine, endorse near identical legislation to that of the British state during the period of this study for one simple reason. They are former colonies of the British Empire whose legal codes were written by British administrators and/or strongly influenced by the British criminal code. See Braun, T. (2013) 'The Tenacity of British Colonial Laws in the Lives of Sexual Minorities in the Commonwealth.' *The Barrister*, 57, pp. 24-27 & Greber, P. (2014) 'Living a Life of Crime: The Ongoing Criminalisation of Homosexuality within the Commonwealth.' *Alternative Law Journal*, 39 (2) pp. 78-82.

¹¹ *New King James Bible Leviticus* (1611 reprinted 1996) Cambridge: Proquest, Ch. 20 verse 13 & 22.

Perhaps one of the most obstructive features to the investigation of past attitudes towards sex in general and between males in particular, are linguistic. That is a hostile legacy made up of a heady mix including, hostile ancient theological readings, secular ideological hostility such as eugenics and closely related attempts by clinicians to pathologise and even categorise the 'sexual'.¹² These hostile reactions to the reality of sexual diversity are today combined with a terminology generated and adopted by more recent political campaigns, producing an extensive range of words and phrases to propagate those largely divergent viewpoints. The evolution of a vocabulary of ambiguous, highly derogatory terms and phrases, together with stereotypes and overly political sloganising has resulted in the generation of what are commonly considered some of the most offensive remarks that can be uttered in Western society.¹³

¹² The creation and later propagandisation in 1869 of the term 'Homosexualität' by Karl-Maria Kertbeny as an assertive legitimating means of reading sexual desire (i.e. seeking a replacement for the pejorative terms such as 'bugger' 'sodomite' and 'pederast') was adopted and perverted not least by clinicians who used the term as a diagnose of mental illness well into the twentieth-century. For example the World Health Organisation listed 'homosexuality' as a mental illness until the forty-third World Health Assembly on 17 May 1990 when it was formally removed at the tenth revision of the *International Statistical Classification of Diseases and Related Health Problems*. World Health Organisation (1990) *International Statistical Classification of Diseases and Related Health Problems* [Online] [Accessed 12th December 2015] <http://www.who.int/classifications/icd/en/>. The academy have not been removed from generating and encouraging such ambiguity the generic term 'LGBT' History to define the field of study is ahistorical and the inter-changeable usage of divergent terms is a feature of refereed articles and publications. For example see Matt Holbrooke's opening commentary of his book *Queer London* whereby the reader is invited to project whatever reading they wish onto the 'queer' subject matter of the study [Source: Houlbrook, M. (2005) *Queer London: perils and pleasures in the sexual metropolis 1918-1957*. London & Chicago: The University of Chicago Press, p.xiii.] Also see the inter-changeable usage of the terms 'homosexual' and 'gay' in Crouthamel, J. (2011) "'Comradeship" and "Friendship": Masculinity and Militarisation in Germany's Homosexual Emancipation Movement after the First World War.' *Gender & History*, 23 (1) pp. 111–129.

¹³ For example some of the words deemed to be among the most offensive terms of abuse in twenty-first century Britain concern parts of the body or acts relating to sexualised behaviours: e.g. 'Wanker', 'Dick-head', 'Slag', 'Queer' and 'Fuck-off'. During the final year of this study, 1970, Germaine Greer in her seminal text 'The Female Eunuch' notes in her Chapter entitled 'Sex' that, 'The worst name anyone can be called is 'cunt' ". Greer, G. (1972) *The Female Eunuch*. London: Paladin, p.32.

Perhaps conflation and ambiguity laced with deeply judgemental assessment of certain feelings, acts and body parts were and are the intended consequence of such usage. However intriguing that etymological insight might be, the primary task of this study was to circumvent such ambiguity and obtain a degree of expositional clarity. That is to identify and employ an accurate and reliable vocabulary by which the findings of this investigation could be most clearly conveyed to the reader. The question of what language to use was all the more pressing given the contingent topics, such as sex and crime, that this investigation sought to historicise.¹⁴ Thus developing an accurate vocabulary was essential to help guarantee a more reliable exposition of the findings of this study. However it was not sufficient to simply propose another new term such as Kertbeny had done in the mid-nineteenth century. A major consideration when seeking to translate past reading of sex with present day understandings is the inconsistency of much of the language currently employed that invites many ahistorical errors that Katz condemns as 'retro-labelling'.¹⁵ Indeed to para-phrase Vickers writing of interpreting inter-male sex behaviours in terms of today's fashion:

...it would simply be too reductionist to pin a modern queer identity on men and women who lived and loved ...To do so would not only legitimise the imposition of a modern-day lens (which favours one of two binary categories of sexual identity) on a multitude of acts and identities but would also

¹⁴ The academy has not been removed from generating and encouraging such ambiguity, the generic term 'LGBT' History to define the field of study is ahistorical and the inter-changeable usage of divergent terms is a feature of refereed articles and publications. For example see Matt Houlbrook's opening commentary of his book *Queer London* whereby the reader is invited to project whatever reading they wish onto the 'queer' subject matter of the study [Source: Houlbrook, M. (2005) *Queer London: perils and pleasures in the sexual metropolis 1918-1957*. London & Chicago: The University of Chicago Press, p.xiii.] Also see the inter-changeable usage of the terms 'homosexual' and 'gay' in Crouthamel, J. (2011) "'Comradeship' and 'Friendship': Masculinity and Militarisation in Germany's Homosexual Emancipation Movement after the First World War." *Gender & History*, 23 (1) pp. 111–129.

¹⁵ Katz, J. (2001) *Love Stories: sex between men before homosexuality*. London: University of Chicago Press.

presuppose a level of sexual and emotional consciousness and reflection which many [if not all] did not possess.¹⁶

That is, behaviours defined by past generations as sex, i.e. sexualised, cannot be uncritically defined and accepted as matching current terminology or understandings. Moreover, attempting to do so is not simply problematic but literally dismissive of those past lives and readings.

This realisation and search for a more accurate terminology by which to define and interpret past behaviour and desires can be seen in the appearance of more neutral definitions such as John Howards' 'Homosex', Helen Smith's 'Men who desired other men' and Emma Vickers' 'Same-Sex Desire' together with more general terms such as 'sex between males'.¹⁷ However, although seeking to make a clear break from past ambiguous usage, these newer terms were rejected as inappropriate for this study for a number of reasons.

The etymology of 'Homosexual' is, as noted, fraught with problems and therefore even variants thereof were viewed as being too close to be of real value because of the problems and contradictions implied, most obviously perhaps as a pathologisation and the related politically-charged reading therein. Therefore 'homosex' was discounted for use in this study on those terms. Any phrase including

¹⁶ Vickers, E. (2013) *Queen and country: same-sex desire in the British Armed Forces, 1939-45*. Manchester: Manchester University Press, p.16.

¹⁷ Howard, J. (1999) *Men like that: a southern queer history*. Chicago: University of Chicago Press. Houlbrook, M. (2005) *Queer London: perils and pleasures in the sexual metropolis 1918-1957*, London & Chicago: The University of Chicago Press. Smith, Helen. *A Study of Working-Class Men who desired Other Men in the North of England c.1895-1957*. PhD Thesis. 2012. University of Sheffield. Vickers, E. (2013) *Queen and country: same-sex desire in the British Armed Forces, 1939-45*. Manchester: Manchester University Press.

the term 'men' was definitely incompatible in that a significant number of under sixteen year-olds were prosecuted for sexualised behaviours between males. The term 'boys' could have been added to that phrase to make it more accurate but then given the current hysteria around paedophilia, that usage might have conjured up further misleading assumptions about subject matter. Any reference to sexual desire was again considered problematic, given that this study is ostensibly about action (i.e. allegations of criminal acts) and while desire was no doubt part of some of the acts, it is not the subject being historicised. Finally, because this study also included cases of the rape of males by other males, the usage of the term 'desire' appears inaccurate and somehow improper. In that it suggests a mutuality that is clearly absent in coercive sex related behaviours such as the rape of one male by another male.

The generic term introduced by this study to describe the behaviour being prosecuted is that of 'inter-male sex'. It is deliberately used here to specifically encompass the myriad of behaviours between males that might be considered during the period covered by this study as being 'sexual' in nature. The phrase 'inter-male sex' is therefore here defined as an expansive placeholder, one that includes a range of actions and contemporaneous understandings of such behaviour. For example, it is used to define all criminal prosecutions related to sexual offences of that period, including consensual and coercive cases, together with those involving defendants whose age would define them as minors in the twenty-first century. The

related task when using 'inter-male sex' is to ensure that more contemporary (i.e. post 1970) and thereby ahistorical readings of such a term are not adopted.

By the same process the term used to define the general area of enquiry has included the largely meaningless term of 'Gay History'. This was rejected in favour of 'past attitudes towards sex' as a more natural and accurate description of this general area of enquiry. More specifically, 'past attitudes towards sex between males', is used to define the specific subject area into which this enquiry trespasses.

What about sex?

However, it must be understood that the word 'sex' within the term 'inter-male sex' is contingent; it is a movable feast. 'Sex' in this case is whatever behaviour, be it an innocent kiss between two men, a 'wink' between males in a public toilet or violent rape (i.e. penetrative anal sex of one male by another) that contemporaries viewed as sex and sexualised. The fluidity of those past definitions of what did or did not constitute sex is in part mapped out in this study by dint of the very prosecutions that constitute the primary evidence of this investigation. This study is predicated on the past readings of what was viewed as criminalised sex. It is those past definitions of what is and what is not 'sex' and not any present day definitions that are privileged by this investigation. Past prosecutions of alleged inter-male sex behaviours recorded by this study are contemporaneous judgments, at least by the prosecution, that inter-male sex had occurred or was being planned. Therefore the

definition of 'sex' used is grounded and evidenced in the criminal records of the past decades and generically bound within the place holder 'inter-male sex.' What constituted and did not constitute 'inter-male sex' is answered by those past agencies seeking to define, prosecute such behaviours.

However when dealing with the subject of 'sex' it is not simply a linguistic conundrum that requires acknowledgment. The common embarrassed silence and inarticulate means by which past and present day generations seek to address the issue provides an invaluable insight into the historical context of such prosecutions the legacy of which Lancastrians still, at least in part, rephrase and pass-on to the next generation.

If spoken of at all the use of euphemism or medical terminology is not uncommon. For example Walvin accounts for this 'hesitation to speak or write about sexual matters' as being part of 'a long tradition of delicacy about behaviour which was and is highly personal'. Walvin suggests that this quieter and less judgmental reading of sex provides an important corrective to readings of the past:

Any attempt, in retrospect, to suggest that Victorians can readily be herded into one moral camp is to do a gross injustice to the remarkable diversity of outlook, the conflict of opinions, the continuing arguments about moral issues, which permeated Victoria's reign.¹⁸

The philosopher Alain de Botton highlights the extent of the irrationality about the topic, noting that sex is 'universally deviant',¹⁹ while Davenport-Hines argues that

¹⁸ Walvin, J.(1988) *Victorian Values*. London: Cardinal, pp. 135-6.

¹⁹ De Botton, A. (2012) *How to Think More about Sex*, Basingstoke & Oxford: Macmillan, pp. 5-6. Therefore any attempt to subject sexual behaviour to detailed categorisation (i.e. a major function of language and imagination) must be a highly problematic exercise. More emphatically and

the potential power of sex, together with commonly related emotions, occasion profound readings of the human condition:

Love and Hate, Eros and Death, are adversaries which battle for supremacy over the Human mind. The idea of death arising from sexual rapture holds both a hideous thrill for those who are guilty of or anxious about sexual expression.²⁰

Therefore while the substantive focus of this study is not sex, a topic which cannot be historicised (i.e. it is beyond history)²¹, this is not to suggest that sexual and other erotic desires have not arrested and informed much thought and action. Indeed world literature and the arts more generally are heavily reliant on such experiences.²² However, the ambitions for this study were far more narrow and tangible; the past attitudes and behaviours towards the criminal prosecution of sex between males within one English county 1850-1970. That is not to ignore the powerful undercurrent, despite the poverty of language that provides the highly

enigmatically Camille Paglia has stated that, '*Sex cannot be understood because nature cannot be understood*'. Paglia, C. (1990) *Sexual personae: Art and decadence from Nefertiti to Emily Dickinson* New Haven: Yale University Press. As demonstrated by Kinsey in abandoning any attempt to apply binary reading to the first large-scale scientific empirical enquiry into such behaviours. [Kinsey et. Al. (1948) *Sexual behavior in the human male*, Philadelphia: W.B. Saunders Co].

²⁰ This remarkable campaign of state censorship included academic enquiry. Learned scholarly text and handbooks providing informed readings of sex from the nineteenth through to the first half of the twentieth century were banned in the UK. In the immediate post war period such was the wretched state that scholarship had fallen in UK, including historical enquiry of sexuality, it was highlighted and bemoaned by the Wolfenden Committee: '*...they admitted that they were handicapped by the fact that no enquiries had been recently made in Britain.*' [Hyde, M. (1970) *The Love that Dared Not Speak Its Name: A Candid History of Homosexuality in Britain*. Boston: Little, Brown, p. xvi].

²¹ By dint of that universalism 'sex' is beyond the realm of history...'a natural act, grounded in the functioning of the body...lies outside of history and culture', therefore 'Sex has no history'. Halperin, D. (1989) 'Is There a History of Sexuality?' *History and Theory*, 28 (3), pp. 257.

²² For example world literature from the *Epic of Gilgamesh* through to Shakespeare and to today's Bollywood, Hollywood and 'pornography' is dominated by such sexualised scripts. However, the ambitions of this study were far more narrow, the past attitudes and behaviours towards the criminal prosecution of sex between males within one English county 1850-1970. [*Epic of Gilgamesh* is an epic poem from ancient Mesopotamia dating from the Third Dynasty of Ur (circa 2100 BCE) a story of a 'close friendship between two males Gilgamesh, king of Uruk, and the 'wild' man Enkidu.] Kovacs, M. (1989) *The epic of Gilgamesh*. Stanford, Calif. : Stanford University Press.

complex context into which the English criminal law sought to intrude and even to regulate.

Therefore, the complexity and problems related to seeking out past attitudes towards sex were addressed in this study by privileging the definitions and judgment of those involved in the criminal prosecution of such behaviours during this period 1850-1970. Thus the exploration and interpretation of criminal records not only provides a wealth of evidence but also provides an accurate contemporaneous reading of what past generations considered inter-male sex related behaviours.

Evidencing past attitudes to the criminalisation of sex between males

Having more clearly defined the subject matter and identified terminology by which to accurately define contingent behaviour, the question turned to the main task of providing an accurate reading of the incidence of criminalisation of inter-male sex. This demanded nothing less than rendering an alternative reading to the government crime figures and specifically the series produced annually by the Home Office since 1857 (i.e. for the year 1856). Hobsbawm has noted, 'Research, as always, finds it hard to break down bedroom doors and even harder to quantify what goes on behind them.'²³ While this might be true of inter-personal relations untouched by the arm of the law English criminal prosecution requires tangible evidence that has proven a boon for historical enquiry. The wealth of material

²³ Hobsbawm, E. (2013) *Fractured Times: Culture and Society in the Twentieth Century*. London: Little, Brown, p. 105.

relating to criminalised sex is no doubt a contributory factor behind so many studies about this topic that draw on legal evidence as one of the few ready sources that shed light on private behaviour.²⁴ However, although this study draws on criminal records as the main source of evidence, it must be emphasised that this was not by default. Rather, given that the creation of an accurate enumeration of the incidence of indictable prosecution was an explicit goal of this investigation, the criminal records were the inevitable evidential source for this enquiry.

An alternative to the deeply flawed government crime figures

The search for an alternative evidential source by which to obtain an accurate measure of the criminal prosecution of inter-male sex was predicated on recognition of the fatally flawed nature of the Home Office annual crime figures. Therefore the first task of this investigation was to provide the first longitudinal alternative to the government Home Office crime figures, albeit only for one county and only for indictable prosecutions. Recognition of the weakness of official contemporaneously composited data on levels of crime has its own history. The profound weakness of the Home Office crime figures were demonstrated and exemplified in Lancashire by means of a public scandal in 1868 i.e. in the early years of the publication.

Correspondence from a Lancashire Stipendiary Magistrate, Mr Alfred Aspland J.P of Dukinfield, was printed in the *Manchester Guardian* highlighting anxiety about the accuracy of the Home Office material:

²⁴ Indeed, a Swedish scholar Fia Sundevall (Ekonomisk-historiska institutionen, Stockholms universitet' Stockholm) was heard to bemoan the evidential loss resulting from the decriminalisation of discriminatory laws regarding consensual sex between males in her country from the early twentieth century. [Discussion by the author with at the 3rd *What is & How to Do LGBT History Conference*. (2016) University of Manchester, Manchester, 27th February].

On inquiry I found that in many crimes in accordance with instructions from the Home Office, a considerable amount of latitude was allowed to the police in the various districts in the preparation of the returns, and that apparently in no two places was it exercised alike.²⁵

Mr. Aspland in his letter to the *Guardian* and further publications highlighted the significant discrepancy between the Home Office crime figures for Manchester compared with other English cities, posing the question: 'What explanation can be given of this frightful state of things?' However, while noting a number of the irregularities in methodology, Aspland offered a far more politically contentious conclusion, 'There is in truth no explanation possible but that the force is inefficient.'²⁶ What is of particular interest in this case is the seriousness with which local government took this well-founded suggestion about the inaccuracy of recorded crime. The management committee of the City of Manchester Police Force (known as the Watch Committee and a statutory committee of Manchester City Council) quickly took-up the charge. At its 13 February 1868 meeting, the Audit Sub-Committee met with requests to enquire and report on the veracity of the allegations made by Alfred Aspland.²⁷

The report subsequently produced by the Audit Sub-Committee concluded that the higher crime figures for Manchester were the result of a discrepancy between different police forces' methodologies for counting crime (i.e. not comparing like with like), and '...that any allegations of inefficiency, based on the statistics, made against

²⁵ *Manchester Guardian*. 12th February 1868.

²⁶ Aspland, A. (1868) *Crime in Manchester and police administration*. London: Longmans Green, pp.14-15.

²⁷ *Watch Committee Minute Book* (a) Meeting February 13th 1868 Volume 7 [Source Ref# Manchester Archive/M901/Watch Committee/ Vol, 7/ 14812/7 June 1860-28 January 1869] p. 184.

the Manchester Police are without foundation'.²⁸ The Report accepted by both the Watch Committee and Manchester City Council, and all local magistrates also included confirmation of the failure of the Home Office crime statistics.²⁹ Of specific interest is the fact that despite the explicit finding of this Committee and the condemnatory articles of the Royal Statistical Society and others, the meaningless national crime figures continued to be produced annually and were quoted authoritatively in Parliament and beyond. It is of particular interest that despite the consistent detailed criticism of the crime figures, contemporaries and historians alike have afforded these Home Office numbers some measure of statistical authority. This is all the more surprising given the longstanding empirical evidence against such a view. J.J. Tobias highlighted the long succession of the disapproval of police figures from when the state began to enumerate crime during the nineteenth century. For example, he notes that the then recently founded Statistical Society of London included in its journal articles that were highly critical of the accuracy of the crime figures: 'Many contemporaries were no more inclined to pay heed to official returns, and throughout the [nineteenth] century there was a vigorous chorus of critics of the statistics of crime.'³⁰

The consistently inaccurate reporting of crime to Parliament and local police committees nationwide must have had a powerful and persuasive political agenda to motivate, maintain and deny the counter-factual nature of such official reports. What

²⁸ *Watch Committee Minute Book*, Meeting 18th June 1868 Volume 7 pp. 215(a)-216(b) [Source Ref# Manchester Archive/M901/Watch Committee/ Vol, 7/ 14812/7 June 1860-28 January 1869].

²⁹ *Watch Committee Minute Book*, Meeting 18th June 1868 Volume 7 pp. 215(b) [Source Ref# Manchester Archive/M901/Watch Committee/ Vol, 7/ 14812/7 June 1860-28 January 1869] .

³⁰ Tobias, J. (1967) *Crime and industrial society in the 19th century*. London: Batsford, p. 15.

those agendas might have been beyond the bounds of the project, but are nonetheless interesting to highlight and pose.

This study chose to dig deeper behind the official figures of the police and Home Office annual crime figures with their obvious weaknesses and to exploit the extensive range and wealth of the material produced by the Criminal Justice System. The intention was not simply to exploit this large corpus of material but to seek out a singular primary source to provide a consistent stream of evidence relating to the criminal prosecution of inter-male sex. That is, seeking out evidence that could address the first test of statistical utility: comparing like with like.

Harry Cocks, in his pioneering 2003 *Nameless Offences*, sought to avoid the official crime figures using a range of evidential sources including newspaper reports. In this way, he provided perhaps the first independently verifiable, longitudinal reading of the extent to which sex between males was prosecuted in the nineteenth century. Though he notes the inconsistencies of his sources (i.e. a London bias of his enumeration), his seminal work represents the first systematic attempt to measure the extent of criminalisation. The quantitative measure of incidence is important to any investigation, offering an important counter to the flawed official figures.

The argument advanced here, although apparently a non-sequitur, requires rehearsal given the continued use of the official 'crime figures' in works of 'history'.³¹ Cocks' avoidance of the tainted official Home Office figures marked a path in part followed by this study. Cocks bypassed the flawed crime figures associated with the Home Office by creating his own alternate and unique database. Early pioneers of this topic such as Weeks already demonstrated and avoided official figures no-doubt aware of the related problems.³² The scholars that followed including Cocks, developed alternate quantitative means based on parliamentary papers and court documents to demonstrate the frequency of unnatural assault and attempted-sodomy prosecutions throughout the nineteenth century'.³³ Upchurch does not simply welcome this development as providing a more authoritative reading of the scale and frequency of prosecutions but suggests that such exhaustive methodology involving the reading of court documents, helps to correct '...one of the most persistent and distorting misinterpretations in the secondary literature over the frequency of prosecutions of sex between men'.³⁴ Therefore, taking a lead from

³¹ The most glaring and recent example of the dangers of the dangers of reading crime figures as having any accuracy is provided in Robb, G. (2004) *Strangers: Homosexual Love in the Nineteenth Century*. London: Picador. In Appendix I Robb presents a graph under 'Criminal Statistics' which has no indication of the source used. From the heading it is assumed to be the government statistics. The value of such material other than endorsing the picture that the Home Office wished parliament to project is unknown other than to further mislead. Among the graphs is the first that purports to have broken down the category of buggery into its competent acts without source material or further advice as to how this figure was obtained.

³² Weeks, J. (1977) *Coming out: homosexual politics in Britain from the nineteenth century to the present*. London: Quartet Books.

³³ Upchurch, C. (2009) *Before Wilde: Sex between Men in Britain's Age of Reform*. Berkeley: California University Press, p.7.

³⁴ Upchurch, C. (2009) *Before Wilde: Sex between Men in Britain's Age of Reform*. Berkeley: California University Press, p.7. However, despite the highly misleading feature of national measures of crime these figures have still been employed to provide readings of past criminalisation. For example: Cocks in the same pioneering enumeration and analysis of such prosecutions in the nineteenth century chose to employ a range of primary sources including the annual crime figures produced by the Home Office. See Cocks, H. G. (2003) *Nameless Offences: Homosexual Desire in 19th Century England*. London: Penguin & I.B.Tauris, p. 23, Fig. 1, 'Committals for Sodomy and Related Misdemeanors per 100,000 population 1860-1900'.

Cocks' example and Upchurch's subsequent endorsement, this investigation sought to measure the incidence and nuances related to the criminal prosecution of inter-male sex based on primary material.

The Calendars of Prisoners

There is a wealth of often very detailed criminal evidence but not everything is accessible. Voluminous records are closed off to scholars although the rules are not consistent between archives and rules of access can even be contradictory.³⁵ The Calendar of Prisoners was the very court document selected out to provide the main evidential backbone for this study. The Calendars provide the major longitudinal source of primary evidence informing the findings and conclusions of this research. The review and collection of the Calendar evidence involved a full-time three and an half year long qualitative and quantitative extraction process, discussed in detail in Chapter Two. The methodology used required the exhaustive examination of hundreds of thousands of individual records relating to criminal cases that included personal and procedural details. To date, there is no other secure means by which to locate and definitively categorise a crime as relating to inter-male sex.³⁶ The great

³⁵ For example the later Calendar of Prisoners from the 1920s are closed to scholars at the National Archive's but the indictments are open with the key details of most cases from this period being publicly available in the newspaper court reports of the day.

³⁶ The methodology of that review of primary material is discussed in detail in Chapter Two. This includes a description of the three large electronic databases created by this study and populated by evidence from the Calendars of Prisoners, on which the longitudinal quantitative and a number of qualitative findings are based. That is an exhaustive review that included the inspection of over 665 Calendar of Prisoners that list over 280,000 individual records of those prosecuted in the senior criminal courts of Lancashire: the Assize, County and Borough Quarter Sessions. It is primarily the data from the court calendars that has been used to populate this investigation's three databases: Database One [DB1] that includes approximately 248,897 data fields and is an exhaustive record by court of each Calendar consulted together with enumeration of total crimes and selected other cases including: buggery, crimes relating to sex between males and sampled reading of male-female sex

advantage of this evidential source and methodology is that it provides an unrivalled source of independently verifiable procedural and personal evidence by which past attitudes towards the criminalisation of sex between males might be more reliably interpreted. It makes possible the creation of a Gazette of names, dates and courts in which trial relating to sex between males occurred. This material can act as a gateway to further evidence most obviously for example, newspaper coverage of such trials, thus offering a relatively easy means by which such cases can be independently verified through cross-referencing cases with newspaper reports of the day.³⁷

Calendar of Prisoners evidence and a nuanced reading of the crime of Buggery

The Calendar evidence also provides an important subsidiary benefit in providing the means by which the generic charge of 'buggery', often associated with inter-male sex, could be broken down into its constituent sex behaviours. The Home Office and many local police reports combined all divergent non-reproductive sex crime into one charge: 'buggery'.³⁸ This conflation of reporting practice was still

crimes. Database Two [DB2] includes approximately 177,023 data fields sets out by court of transcriptions from the Calendars of the individual details of each prosecution relating to the generic crime of Buggery and attempted buggery together with more specific sex between Database Three [DB3] includes approximately 190,253 fields and is a compilation and detailed statistical analysis of all prosecutions related to sex between males during the period.

³⁷ Indeed it is this consistent reliability of Calendar listing of cases and their reporting of such cases in the pages of the local media that provided the evidential basis for Smith's thesis. Smith, H. (2012) *A Study of Working-Class Men who desired Other Men in the North of England c.1895-1957*. Ph.D. Thesis. University of Sheffield.

³⁸ Sodomy (i.e. anal sex between males or male and female) and bestiality (i.e. sex between a male and usually a domestic animal, aka 'zoophilia') were conflated for reporting purposes as one crime 'buggery'. For example, the crime returns presented by Edward Willis (Chief Constable of the Borough of Manchester) presented to the Watch Committee 15 April 1852, lists all offences in a table under six heading or 'classes' of crime. Under heading number one 'Substantive Offences Against the Person' is

evident over a hundred years later.³⁹ Regrettably, the reporting of the generic crimes of buggery within the official records has been read as a singular reporting of inter-male sex crime. The methodology used for this study directly addressed and in large part solved, the confusion evident as a consequence of this. The *Calendars of Prisoners* provide the information by which to breakdown the divergent acts. Following on from this, a methodology was developed by which those different acts could be accounted for separately. This then allowed an accurate reading of all crimes relating to sex between males. For example, Table 1.1 offers a sample breakdown of Lancashire prosecutions for 'Buggery' and 'Attempted Buggery' 1850-1870. This example does not simply illustrate the general point regarding conflation of diverse acts but also suggests that the crime of buggery was primarily used against zoophilic sex during this period. This breakdown of the generic crime of buggery is applied for the first time to all the years covered by this study to illustrate the shifts in the types of sex crime the police chose to prosecute by use of this most serious of charges.

Table 1.1 Sample breakdowns of Lancashire prosecutions for 'Buggery' and 'Attempted Buggery' 1850-1870 categorised by gender and species of participants.⁴⁰

Offence	'Buggery' Bestiality (aka Zoophilia) [Cat. 1]	'Attempted Buggery' Bestiality (aka Zoophilia) [Cat. 1.5]	'Buggery' unspecified [Cat. 2]	'Buggery' Attempted 'unspecified' [Cat. 2.5]	'Buggery' inter-male sex [Cat. 3]	Attempted Buggery' inter-male sex [Cat. 3.2]
Incidence	18	8	8	5	3	6

listed the generic criminal acts 'Sodomy & Bestiality'. [See *Criminal & Miscellaneous Statistical Returns* (1852) Manchester Police. Manchester City Archive Ref# 352 2 Mi/ catalogued by year].

³⁹ In the Table entitled 'Indictable offences' the various sex acts criminalised by the generic 'buggery' law are still conflated under one heading within the report (listed 10th) 'Buggery: (24) Known (24) Cleared-up' and (listed 11th) 'Attempts to commit buggery : (69) Known (68) 'Cleared-up' Manchester & Salford Police Chief Constable's Report for the year 1969,' p.72. [Manchester City Archive Ref# 352 2 Mi/ catalogued by year].

⁴⁰ Source Lancashire Database Three [BD3].

This Lancashire analysis would appear to suggest the dangers inherent in seeking simply to read any generic reporting of the incidence of buggery cases as relating wholly, or even largely, to inter-male sex. It is by means of the methodology employed in this project that a more accurate and singular reading of inter-male sex buggery prosecutions can be obtained and thereby provide a much improved contextual reading of the criminal prosecution of inter-male sex during the period of study.

It is against the problematic reading of past and current context that this study proceeded. The first task was to produce a reliable reading of the incidence of the prosecution of sex between males. The importance of this question is obvious: how can the historian begin to accurately gauge the impact of any aspect of a legal code without knowing how many, if any, prosecutions resulted? That is, just because something is criminalised does not mean that society at large, or even a significant section of the elites who make and implement those laws, share any such hostile reading of the acts that are outlawed.⁴¹ This capricious reading of how legal codes are implemented within any given period or place provides a helpful insight in

⁴¹ For example and directly pertinent to this study anal sex (Buggery) between a husband and wife was a serious criminal activity yet a study produced approximate at the half-way point of this longitudinal study suggested significant numbers of married couples were practicing such sex acts; yet no prosecution of such behaviours has been found in the one-hundred and twenty-one year study of such cases. The 30% incidence of anal sex between Manchester husbands and wives in this period was simply a means of birth control, in part a product of the returning soldier's better understanding of the reproductive process, personal taste or a reflection of longstanding contraceptive practice cannot be known. [Source; Chessers, E. *Survey of Manchester wives in 1930's Manchester* cited by Davenport-Hines, R. (1990) *Sex, death, and punishment: attitudes to sex and sexuality in Britain since the Renaissance*. London: Collins, p. 323.]

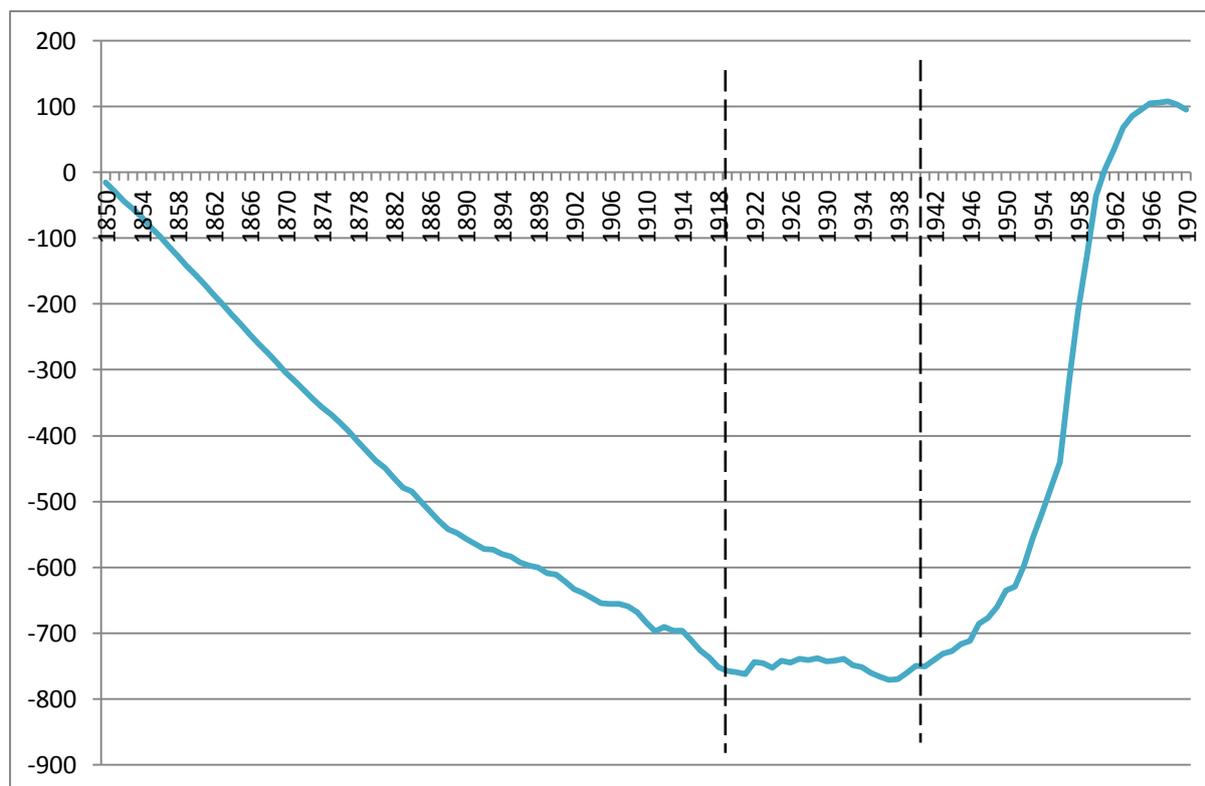
understanding the findings of this longitudinal study.⁴² The significant variations in the criminal prosecution of sexualised behaviours between males result from serial rather than singular factors. The road from enactment to implementation is invariably not simple or straightforward. Therefore, this first accurate longitudinal reading of the incidence of sexual crimes between males is not simply a mathematical exercise but also provides a remarkable insight into the specific and more general attitudes and treatment by the Criminal Justice System towards crime.

Calendar of Prisoners evidence and the identification of wider committal trends of inter-male sex

A further advantage of this more accurate reading of the incidence of committals is that it allowed an accurate longitudinal mapping of such criminalisation by which to furnish an empirically sound grouping or periodisation of such incidence. This was obtained by use of the cusum analysis method by which underlying trends in incidence are demonstrated, see Table 1.2.

⁴² Parliament and the Criminal Justice System despite its claims and signifiers of tradition (e.g. the dress of a High Court Judge in England, long robe, a full hood etc., dates back to the reign of Edward III; 1327-77) they are still human endeavours susceptible to all the frailties and caprice that the human condition is wont to suffer and enjoy.

*Table 1.2. Cusum Analysis of incidence of indictable inter-male sex prosecutions 1850-1919.*⁴³



The findings of that cusum analysis informed the identification of three distinct underlying periods in the indictable prosecution of sex between males and was then used to provide an empirically based chronological division and arrangement of the finding into the following chapters: Chapter Three 1850-1918, Chapter Four 1919-1939 and Chapter Five 1940-1970.

Moreover by dint of the details they recorded and in particular the accurate and consistent identification of the attitudes of the four key players within the Criminal Justice System: police and prosecution, defence, adjudication and the jury. The Calendars offered evidence beyond the obvious. This evidence enabled a sophisticated reading of the attitudes and roles of these four important players

⁴³ Lancashire Committals of inter-male sex (1850-1970) Database.

within the process of committing, trying, conviction and punishment, of inter-male sex cases thus providing a comparative framework for this study. The discussion of the findings follows the same sequential arrangement in each of Chapters Three to Five. Firstly, the findings related to the prosecution are set out, followed by those of the defence, then the jury and finally the presenting judiciary. By this arrangement the attitudes of each of these four consistent parts of the criminal justice system towards inter-male sex cases can be compared across different periods, highlighting continuities and change over time. For example although the harsh Parliamentary criminalisation of sexual behaviours between males, licensed a maximum punishment of life imprisonment, the sentencing evidence recorded in the Calendars shows it became progressively more lenient; very few other investigations could highlight such important shifts over this important period in the discriminatory criminalisation of sex between males.

Finally, it should be noted that the Calendars only record the most serious type of crime that requires a written document or indictment to be drawn up listing the charges. These cases were first presented to a local magistrate and if they agreed there was a case to answer, the accused were committed to trial before a jury at the senior criminal courts of the county (hereafter referred to in this study as the 'senior courts'). These senior county courts only met occasionally during much of the period covered by this study. The most senior of these jury courts were the Assize of which Lancashire was unusual in having three by the 1860s convening in Lancaster, Liverpool and Manchester. This reflected the vast increase in the population of

Lancashire during the nineteenth century especially in the south of the county. The other senior courts, with more limited sentencing powers, were the Quarter Session, which as the name suggests in theory met four times a year, convening and serving the various parts or Hundreds of the county. That is the northern Hundreds, were served by the Lancaster Quarter Session, the midland Hundreds at the Preston Quarter Session, the populous Hundred of West Derby near Liverpool convened in the township of the same name as did the Salford Quarter Session. All Lancashire Boroughs had the right to have their own Quarter Sessions and as the number of such Borough increased in number, so too did the number of such Borough Quarter Sessions.

Lancashire the sampled county

The extensive and expanding court system described above, hints at the very remarkable changes that occurred within Lancashire during the nineteenth century. Lancashire is one of the largest English counties approximately one hundred miles north to south and fifty miles west to east at the widest points. Its location in the North of England close to Scotland, far from southern based monarchy, played an important part in the counties establishment during the medieval period as a palatine that was quickly absorbed by the crown. For much of the early modern period Lancashire remained a backwater notable for large parishes, characterised by absentee rectors and local aristocracy. The county is bordered in the North by the Lakeland Mountains, in the east by the Pennine Hills, its West limits marked by the

Irish Sea and its southern border by the Derbyshire hills together with the large stretches of bog (e.g. Chat and Carrington Moss) and the river Mersey.

Lancashire has a distinct history removed from its southern neighbours with a strong non-conformist political tradition in both religious and secular politics. Nineteenth century demands for political and economic reform (e.g. Chartism and Free Trade) all enjoyed strong support in Lancashire as did the trade union movement; Manchester hosted the first meeting of the TUC in 1868. During the first half of the nineteenth century the population of the county rose rapidly in response to the demand for factory labour particularly in the rapidly expanding textile mills of the period. Labour also migrated in response to related demand for mine workers to exploit the large coal measures that fed the steam engines powering the mills. The county's population rose from just over half a million in the 1801 census (i.e. 655,322) to nearly two and a half million by 1861. Manchester, 'Cottonopolis',⁴⁴ emerged as the world's first industrial city surrounded by numerous, industrial satellite towns and villages which together with the city port of Liverpool, marked the county out as one of the wonders of the new urbanised manufacturing world. During this period, the region provided a subject for Marx and his colleague, the Manchester cotton manufacturer, Engels. Commenting on the social implications of the new system of economic production, they remarked that it:

...cannot exist without constantly revolutionising the instruments of production, and thereby the relations of production and with them the whole relations of society... Constant revolutionising of production, uninterrupted

⁴⁴ Morris, W. (1888) "In and About Cottonopolis" *Commonweal*. 4 (153) p.396. Mingay, G. E. (1986) *The Transformation of Britain, 1830-1939*. London: Routledge, p. 25.

disturbance of all social conditions, everlasting uncertainty and agitation distinguish the bourgeois epoch from all earlier ones...⁴⁵

It is within the larger context of the rapid disturbance of economic and social relations that this study focuses on the shifting attitudes towards a specific aspect of personal behaviour, sex between males.

However, what is also of particular note is that Lancashire also enjoyed a large rural population amid this urban development. The rich farmland of Amounderness, Lonsdale and Furness together with the sparsely populated areas of Lakeland and the Pennine villages provide a stark contrast to the slums and commercial districts of Manchester and Liverpool. Lancashire has and continues to enjoy a wide diversity of people all drawn to the county with the promise of work and later push-pull fashioned immigration.

The dramatic expansion in wealth in the nineteenth century was ultimately overtaken by the economic structural decline of the traditional industries during the twentieth century common to many regions that had pioneered early industrialisation. Although decline was arrested by the demands of two world wars, the dominant feature of the later period is of limited renaissance but largely of decline and redundancy.⁴⁶ The choice of the county of Lancashire to serve as the sample for this investigation was not arbitrary but linked to the questions posed in the 1980s and discussed in the opening remarks. Indeed the contribution of this

⁴⁵ Marx, K. & Engels, F. (1848 reprinted 1963) *The Communist Manifesto of Karl Marx and Frederick Engels*. London: Russell and Russell.

⁴⁶ Walton, J. (1987) *Lancashire : a social history, 1558-1939*. Manchester: Manchester University Press. Timmins, G. (1998) *Made in Lancashire: a history of regional industrialisation*. Manchester: Manchester University Press.

investigation was to directly address a number of the blank spaces in the historiography of this topic, the history of past attitudes towards sex between males.

Historiography

As with any relatively new area of study much basic ground work is required still to be undertaken. For example within the last couple of years the research of Upchurch seeking to ante-date the earliest attempts to reform the buggery laws from the 1950s to the 1820s is suggestive of the many major insights still to be uncovered. A feature of any emergent topic of history is the absence of a well-established and comprehensive body of historical research or historiography to help guide and light the way ahead. However, there is no lack of primary evidence of criminal prosecution of inter-male sex. Even a cursory glance at the official crime records provides a quick appreciation of why those historians who have ventured into this field of enquiry, have sought to exploit such a wealth of evidential material, including a large measure of personal details. The arrest and prosecution of males on charges relating to inter-male sex, represents one of the most valuable insights into an otherwise largely anonymous and unrecorded feature of common human behaviour. However, the problem with the crime records, as with all raw material from the past, is that its original meaning and context can easily be misinterpreted, further obscuring such evidence. For example, the formal criminalisation of inter-male sex by Parliamentary enactment is largely abstract until its practical impact can be measured and thereby contextualised.⁴⁷ There is a real and potential gap between

⁴⁷ For example private sexual intercourse between two consenting pubescent teenagers under the age of sixteen is a criminal act but is not prosecuted unless the parents seek to pursue the prosecution of their child. It is largely a redundant law of little effect on people's lives. It is an offence for anyone to have any sexual activity with a person under the age of 16. However, HM

abstract laws and practice that was noted and highlighted by Boswell in the 1970s: 'Simply noting that something is illegal may be grossly misleading if one does not also comment on the extent to which such laws are honoured, supported or generally approved.'⁴⁸

The historiography that is emerging demonstrates keenness towards particular themes and time periods. Historiographical weaknesses have been concisely defined by Upchurch. He offers a three-fold critique of this relatively new field of historical enquiry, emphasising geography, a focus on atypical court cases together with the skewed focus on the late-nineteenth century.⁴⁹ The abundance of published material about criminal trials relating to the powerful or celebrities in late-nineteenth century London is even more remarkable when compared to the dearth of studies outside that narrow focus.⁵⁰ The most obvious problem caused by such focused readings of

Home Office guidance is clear that there is no intention to prosecute teenagers under the age of 16 where both mutually agree and where they are of a similar age.[see Home Office Communications Directorate (2004) *Home Office, Children and Families: Safer from Sexual Crime – The Sexual Offences Act 2003*. [Online] [Accessed 12th December 2015 <http://www.fpa.org.uk/factsheets/law-on-sex#uCGpZubiZXgD5ISz.99>].

⁴⁸ Boswell, J. (1980) *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from Western Europe from the Beginning of the Christian Era to the Fourteenth Century*. Chicago: The University of Chicago Press, p.22.

⁴⁹ Upchurch, C. (2010) 'Liberal Exclusions and Sex between Men in the Modern Era: Speculations on a Framework.' *Journal of the History of Sexuality*, 19(3) pp. 409-431.

⁵⁰ The histories and reading of three trials; Boulton & Park (1871) George Veck & Henry, (aka The Cleveland Street Scandal of 1898), and perhaps, most famous of all, the three trials of Oscar Wilde (1895) have been the subject of almost non-stop curiosity since the period. For example see; Montgomery Hyde, H. (1976) *The Cleveland Street Scandal*. New York: Coward-McCann and Geoghegan. Montgomery Hyde, H. (1956) *The Three Trials of Oscar Wilde*. New York: University Books. Anonymous. (1895) *The life, trial and verdict of Oscar Wilde*. London: Published for the proprietors. Hyde, M. (1973) *The trials of Oscar Wilde by Oscar Wilde*. New York: Dover Publications; Knox, M. (1994) *Oscar Wilde: a long and lovely suicide*. New Haven: Yale University Press; Ellmann, R. (1996) *The trial of Oscar Wilde*. London: Penguin; Foldy, M. S. (1997) *The trials of Oscar Wilde: deviance, morality, and late-Victorian society*. New Haven: Yale University Press; Kaufman, M. (1998) *Gross indecency: the three trials of Oscar Wilde*. New York: Vintage Books; Hoare, P. (1998) *Oscar Wilde's last stand: decadence, conspiracy, and the most outrageous trial of the century*. New York: Arcade Pub; Taylor, M. (1997) *Oscar Wilde: trial and punishment 1895-1897*. Great Britain. Public

one of the most dramatic reactions towards sex criminalisation is the exclusion of the overwhelming majority of prosecutions of males for such behaviours throughout the rest of Britain. That near silence further privileges the history of a handful of atypical criminal trials as being representative of the history of British attitudes towards inter-male sex. As has been amply demonstrated in work from Arthur Gilbert to Harry Cocks, there is no lack of non-metropolitan evidence of such cases.⁵¹ The nation's collection of criminal records and related material represent a source of largely untapped primary evidence detailing the particulars of thousands of such cases nationwide all awaiting historical researchers. To the list of historiographical weaknesses another potentially distortive feature can be added, the appreciation that sexual behaviour between males had and has the potential to be both consensual and coercive. Although the limits of the Calendars evidence makes difficult the exact division of committals into binary categories of 'consensual' and 'coercive', enough clues remain to provide useful insights.

Crime: another contingent concept?

Record Office; Holland, M. (2003) *Irish peacock & scarlet marquis: the real trial of Oscar Wilde*. London & New York: Fourth Estate; McKenna, N. (2003) *The secret life of Oscar Wilde*. London: Century; Nunokawa, J. and Sickels, A. (2005) *Oscar Wilde*. Philadelphia: Chelsea House Publishers; and Cook, M. (2003) *London and the culture of homosexuality 1885-1914*. Cambridge: Cambridge University Press.

To this more singular approach of atypical criminalisation of Boulton & Park (1870), Oscar Wilde (1895), and 'The Cleveland Street Scandal' (1898). This bias of highlighting atypical trials has to a lesser extent be extended by popular culture's coverage of two trials in the twentieth century those of Lord Montagu, Pitt-Rivers and Peter Wildeblood (1954) and Alan Turing (1952). See: Whitmore, H. and Hodges, A. (1986) *Breaking the Code*. Garden City, N.Y.: Fireside Theatre and McEwan, I. (1981) *The Imitation Game*. London: Cape; a play later made into the film see *The Imitation Game*. (2014) Directed by M. Tyldum. [Film] USA: Black Bear Pictures. See also *A Very British Sex Scandal*. (2007) Directed by P. Reams. [Television] Channel 4, 21st July 2007.

⁵¹ Gilbert, A. (1976) 'Buggery and the British navy, 1700-1861'. *Journal of Social History*, 10(1) pp. 72-98; Cocks, H. G. (2003) *Nameless Offences: Homosexual Desire in 19th Century England*. London: Penguin & I.B.Tauris; Cocks, H. G. (2006) 'Safeguarding Civility: Sodomy, Class and Moral Reform in Early Nineteenth-Century England.' *Past & Present*, 190(1) pp. 121-146.

A further highly contingent, subject matter encompassed by this study is that of crime. Similar to the concept of 'sex', 'crime' is a moveable feast. What can better exemplify this contingency than this study of criminal behaviours, many of which in the twenty-first century are not only no longer crimes, but are the subject of state-endorsed marriages? Readers need to divest themselves of any suggestion that reported crime, the indictable prosecutions, represent anything more than a fraction and not always a representative fraction, of the total behaviour theatrically defined as criminal. Crime at best provides a reading of the interests of those who bring criminal cases to the courts and those who manage and underwrite such agency.

The scale of this apparent collective delusion about levels of crime was increasingly brought into sharp focus during the period covered by this study. From the 1930s, with the establishment of Criminology as a discipline within the academy, pioneering scholars, including Thorsten Sellin in the USA and Leon Radzinowicz in Cambridge, wrote extensively on the gap between reported crime and the actual incidence of criminal behaviour. This is known as the 'Dark Figure', an unquantifiable figure made-up of a crime not report to or registered by the police.⁵² In the preface of Volume Six of his ground-breaking Cambridge Criminology series published in 1957

⁵² All crime recording starts with the data generated by local police forces using various methodological systems of enumeration. The problem was that the Home Office ignored such fatal collecting flaws when collating and presenting to parliament annually and then quarterly, the outcome of that unsound methodology that is the national crime statistics. The national enumeration and categorisation of indictable crime by government had begun in 1805, a system deemed primitive if compared to the yellow books published by the French government. However, in 1866 the British government commenced a new series of crime reporting originally called the 'Judicial Statistics'. The inaccuracy of the Home Office crime figures was widely known of and made public from the onset. The Royal Statistical Society weighed in from the beginning of the new Home Office Judicial Statistics highlighting their transparent lack of authority with serial articles, of which Hammick's article enjoyed a Lancastrian focus. See Hammick, J. (1867) 'Defects in the Judicial Statistics of England and Wales: The State of Crime in Manchester.' *Journal of the Statistical Society of London*, 30(3) pp. 375-426.

entitled *Sexual Offences*, Radzinowicz provides an estimate of the under-reporting of 'Sex Crimes', excluding female rape but including sex between males: '...it may be doubted whether the amount of illegal sexual misconduct which is revealed can represent more than five percent of the actual crime committed.'⁵³ This finding by Radzinowicz reinforces the findings of this study with regard to the low incidence of such indictable prosecutions for much of the period considered.

Howard Taylor has pointed-out the apparent capricious counter-intuitive reporting of the levels of crime in the nineteenth century highlighting the hand of politicians in such crime report: 'In the first half of the nineteenth century, Parliament passed a series of measures to encourage prosecutors. Between 1805 and 1842 the number of trials in higher courts rose seven-fold, while the population increased only by half. Yet, after this, growth ceased and the statistics remained remarkably constant until about 1925.'⁵⁴

To insulate this investigation from the flawed crime figures available for the period researched, this study sought to construct its own enumeration of criminal prosecutions, as noted above. This was achieved by exhaustive use of the 665 court documents known as the *Calendar of Prisoners* (that constitutes a majority of all such court sessions of the senior criminal courts of Lancashire 1850-1970). These documents consistently listed all criminal prosecutions tried at each senior criminal court sitting in Lancashire throughout the period.

⁵³ Radzinowicz, L. (1957) *Sexual Offences: A report of the Cambridge Department of Criminal Science*. London: Macmillan, p. xv.

⁵⁴ Taylor, H. (1988) 'Rationing Crime: The Political Economy of Criminal Statistics Since the 1850s.' *The Economic History Review*, 51 (3) p. 569.

This exhaustive review and collection exercise undertaken for this study also facilitated a further useful analysis of the relationships between census population and the total number of committals in Lancashire over the 121 years of this longitudinal investigation.⁵⁵ That is another means of testing the contention that the crime figures were not the product of the impartial and systematic policing, of all or even a majority of crime, but rather a reflection of a partially managed and highly restrained reading and application of the English Criminal Code.

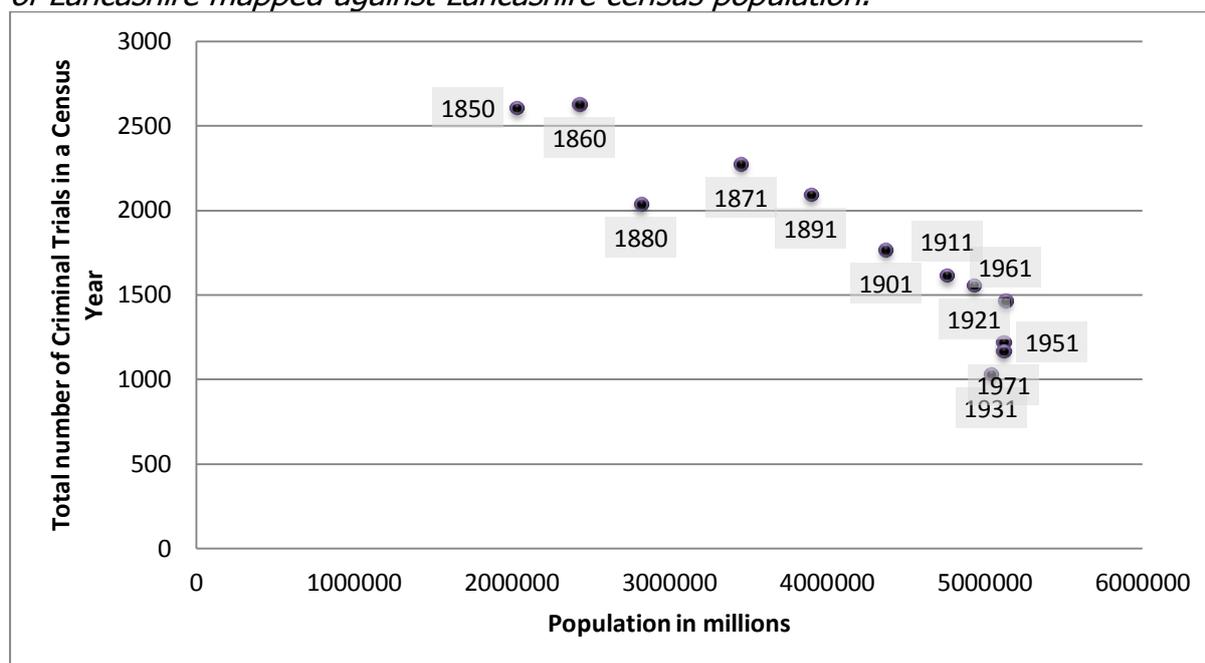
Howard Taylor has argued that this mismatch is deliberate; that the 'rationing' of crime detection and prosecution results from financial constraints.⁵⁶ The existence of this mismatch between actual and reported crime is suggested and supported as a recurring feature within the county of Lancashire during this period.

If Taylor's thesis is correct and that population size had little effect on policing and criminal prosecutions. When the total number of Lancashire prosecutions, as recorded by these Calendars, is compared to census population for the period the mismatch between population and prosecution levels is revealed. That is prosecutions rates might be expected to rise as the size of the Lancashire population shows significant increases. As shown in Table 1.3., that is not the case and would appear to support Taylor's contention.

⁵⁵ Population of Lancashire (PL) as reported in the census data together with the annual total of criminal committals (LC) sent for trial at the Lancashire senior criminal courts in that census year. Source; Lancashire Committals of inter-male sex (1850-1970) Data Base Three: Census year 1851; PL : 2031236 & LC : 2,606 Census year 1861; PL 242,9440 & LC 2,630 Census year 1871; PL : 281,9495 & LC : 2,037 Census year 1881; PL : 345,4441 & LC : 2,273 Census year 1891; PL : 389,6554 & LC : 2,0911901; PL : 4,372,688 & LC : 1,769 Census year 1911; PL : 4,761,534 & LC : 1,616 Census year 1921; PL : 4,932,951 & LC : 1,555 Census year 1931; PL : 5,039,455 & LC : 1,032, Census year 1951; PL : 5,117,853 & LC : 1,221 Census year 1961; PL : 5,129,416 & LC : 1,467 Census year 1971; PL : 5,118,423 & LC : 1,168.

⁵⁶ Taylor, H. (1998) 'Rationing Crime: the political economy of criminal statistics since the 1850s.' *The Economic History Review*, 51(3) pp. 569-90]; Taylor, H. (1998); 'The Politics of the Rising Crime Statistics of England and Wales, 1914-1960.' *Crime, Histoire & Sociétés / Crime, History & Societies*, 2, (1) pp. 5-28.

Table 1.3. Total of all criminal prosecutions (Census Years) in senior criminal courts of Lancashire mapped against Lancashire census population.⁵⁷



The mismatch between size of population and number of criminal prosecutions is simply another weakness in reading official crime figures as reflecting a systematic application of the criminal law. As Williamson notes, a serious error of perception that still remains part of the deeply flawed information about the incidence of crime, '...nearly three-quarters of all crime experienced by those surveyed never entered the criminal statistics'.⁵⁸

This converse relationship between population and criminal prosecution further supports the contention that reported crime is a highly managed and selective process. This wider contextual reading of official crime figures suggests that the apparent rarity of inter-male sex prosecutions from 1850 to the 1940s and then the significant rise in such cases in the 1950s and 1960s was a highly manufactured phenomenon.

⁵⁷ Lancashire Database One [DB1].

⁵⁸ Williamson, T. (2003) 'Policing a Myth, Managing an Illusion: Victorian and Contemporary Crime Reporting.' In Rowbotham, J. & Stevenson, K. (eds.) *Behaving badly: social panic and moral outrage-Victorian and modern parallels*. Aldershot and Burlington: Ashgate, (pp. 47-62) p.48.

It is the contention of this investigation, as detailed above, that the crime figures, while statistically meaningless, do have an important utility in measuring the attitudes of the agency that increasingly monopolised the arrested and prosecuted crime.⁵⁹ Indeed, the link between the new police forces and national and local government and the politicians who directed those systems is both formal and causal. The establishment, financing and governance of the police were all in the hands of national or locally elected politicians or, in the case of the early county constabularies, the JPs. The novel, direct establishment of the Manchester and Bolton police forces directly by bespoke Parliamentary Acts in 1840 was seen as a response by local powerful interests to the success of the Chartist Movement in both of those towns.

Taylor argues that the dominant priority of policing over the first half of the period of this study was to maintain tight control on finance and a projected picture of rectitude. Therefore, the findings of this study are presented as providing a contingent and continuous reading of the attitudes of the police management and their governing bodies towards sexual behaviours between males. It is certainly a contention that provides a more reliable explanation of the mechanisms by which the rapid increase of indictable prosecutions related to inter-male sex, suggested by the cusum analysis above, was realised in the post-World War II period of this

⁵⁹ The reading of recorded crime as a political measure, rather than the statistical measure that they are clearly not, was pioneered by Howard Taylor in the late 1990s. Taylor, H. (1999) 'Forging the Job: A Crisis of 'Modernisation' or Redundancy for the Police in England and Wales 1900-1939.' *British Journal of Criminology*, 39(1) pp.113-36. Taylor, H. (1998) 'Rationing Crime: the political economy of criminal statistics since the 1850s.' *The Economic History Review, New Series*, 51(3) pp. 569-90. Taylor, H. (1998) 'The Politics of the Rising Crime Statistics of England and Wales, 1914-1960.' *Crime, Histoire & Sociétés / Crime, History & Societies*, 2(1) pp. 5-28.

study. The inaccuracy of the crime figures also served as a corrective to any suggestion that reported levels of crime relating to sex between males had any bearing on actual rates of such behaviour. That is, the concept of the 'dark figures' helps to account for the very low incidence of indictable prosecutions of crime relating to sex between males throughout most of this longitudinal study.

The focus of this and any study on past criminalisation tends by definition to avoid the more profound question of in whose interests did a particular law work and how much purchase did such prohibition have on the general public. Clearly, the ruling classes considered the criminalising of inter-male sex important enough to pass specific laws against such behaviour and again in 1921, a number thought it fit to at least try and criminalise sex between women. Cocks has suggested nineteenth century evangelical zeal as one of the possible motives.⁶⁰ However, such direct and consistent criminalisation was the exception among European states during the period.⁶¹

⁶⁰ Cocks, H. (2006) 'Religion and Spirituality' in Cocks, H. G. and Houlbrook, M. *The Modern History of Sexuality*. Basingstoke and New York: Palgrave Macmillan, pp. 157-179.

⁶¹ E.g. while sometimes an inexact pursuit, in that laws relating to sexual consent are amended, overturned and reinstated. However, the formal removal of discriminatory discrimination concerning covert mutual adult consensual sexual behaviours first occurred in the following countries with dates: France (1791), Italy (1890), Netherlands (1811), Denmark (1933), Iceland (1940), Sweden (1944), Greece (1951). ILGA; the International Lesbian, Gay, Bisexual, Trans and Intersex Association (2016) *State-Sponsored Homophobia a World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*. [Online] (accessed October 2016) http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf

Taylor's supply-led reading of policing also chimes with the remarkable parsimony of the British State over much of the period.⁶² Trentmann and Vernon highlight the 'on-the-cheap' nature of British governance and this is certainly reflected time and again in the reading of any parliamentary papers of the time where cost appears to be the ultimate argument used. It is against this background of a penny-pinching state that any speculation regarding systematic, large-scale, arrests and costly prosecutions of any crime and especially victimless inter-male sex must be considered.

The role of the local community

The question of how successfully the legislators were in convincing the general public of the criminality of, especially, consensual inter-male sex is an important one to more fully contextualise the incidence of such prosecutions. That is, the role of any modern state in the policing of sexual behaviours relies heavily on the self-regulation of the population through the process of socialisation by which children are instructed in the norms of a given society. Indeed, by this reading the role of the state can be seen as marginal to the policing of sex. The work of the early twentieth century anthropologists and subsequent research has provided a fascinating insight into the global diversity of these sexual protocols. Robert Roberts provides a remarkable insight into such community policing in a small urban Salford slum in the early twentieth century, 'Over our community the matriarchs stood guardians...Misdeeds of men, cruel or dissolute neighbours were mulled over and

⁶² For example Trentmann, F. (2009) *Trade Nation: Commerce, Consumption, and Civil Society in Modern Britain*. Oxford: Oxford University Press. Vernon, J. (2014) *Distant Strangers: How Britain Became Modern*. Berkeley: University of California Press.

penalties unconsciously fixed. These could range from the matronly snub to the smashing of the guilty parties' windows, or even a public beating.'⁶³

The 'ultimate [sexual] disgrace' in this representative urban Lancashire slum of the period was apparently not inter-male sex (carrying a maximum life sentence in the criminal courts) but incest.⁶⁴ What is of interest in this example is that the 'ultimate [sexual] disgrace' (i.e. that was only from 1908 a criminal offence) was not reported to the police – the poor policed their own community without the need for outside intervention from the state.⁶⁵ Indeed for the males of this world the major danger from such community policing relates to gender not sexual transgression. Masculine performance was strictly policed and considered compromised by doing 'women's work', or showing physical frailty also an interest in dress, reading or culture in general.⁶⁶ Drinking soda water was also suspect and threatened a male's masculine status, " 'This was a drink for 'women and kids' no 'real' man would touch any of the stuff." ⁶⁷ As Roberts notes, references to Oscar Wilde's trial after 1895 were added to the taunts of gender transgressive males; the term 'homosexuality' was unknown. Unlike the criminal law the community protocols governing the lives of the Lancashire masses appeared more focused on policing masculinity as locally

⁶³ Roberts, R. (1971) *The Classic Slum: Salford Life in the first quarter of the century*. Suffolk: Penguin, p.42.

⁶⁴ Roberts, R. (1971) *The Classic Slum: Salford Life in the first quarter of the century*. Suffolk: Penguin, pp.43-44. Of note is that incest was not criminalised by Parliament until 1908 [Punishment of Incest Act 1908 c. 45] which suggests that working-and pauper communities held divergent views on sexual behaviours to those of the governing classes.

⁶⁵ Roberts, R. (1971) *The Classic Slum: Salford Life in the first quarter of the century*. Suffolk: Penguin, pp.43-44.

⁶⁶ Roberts, R. (1971) *The Classic Slum: Salford Life in the first quarter of the century*. Suffolk: Penguin, pp. 54.

⁶⁷ Roberts, R. (1971) *The Classic Slum: Salford Life in the first quarter of the century*. Suffolk: Penguin, pp. 120.

constructed rather than any consensual sexual behaviour between males. This reading is echoed for example by Smith, in her study of Northern working-class attitudes towards sex between males. These examples suggest the existence of sexual codes at significant variance to the official criminalisation of such behaviour during the period.⁶⁸ Perhaps the speed of shifts in public opinion of behaviour during the immediate post-World War Two period towards reform is rooted in the lack of explicit rules and common community based codes of policing or not policing, sex between males. This apparent and rather casual attitude towards inter-male sex is reflected in the reactions of many of the testimonies of males arrested during this later period and discussed further in Chapter Five.

Crucially, it would be wrong to view, even among the small ruling elite of the country, an unchallenged and singular attitude towards sex between males. J.S. Mill Utilitarian politician and leading philosopher in his *On Nature*, published in 1853 offers a clear rebuttal of any such singular reading. Building on the earlier unpublished late-eighteenth century argument by Bentham, he argued that laws should be predicated not on the supernatural but on empirical readings of the world (i.e. the greatest happiness to the greatest number of people). This debate about the moral function of the law is one of the prevailing features of the debate about the legitimacy or otherwise towards victimless sexual behaviours throughout the period of this study and beyond.⁶⁹ Indeed, it was a debate that was to have a very

⁶⁸ Smith, H. (2012) *A Study of Working-Class Men who desired Other Men in the North of England c.1895-1957*. Ph.D. University of Sheffield.

⁶⁹ By the promulgation of the 1861 Offences Against the Person Act and in enacting the crime of gross indecency as part of the Criminal Amendments Act 1885 the English parliament again endorsed and promoted the dual function of the English legal system during this period 1850-1970. It was a clear rejection of Mill's Utilitarian argument advanced in his *On Liberty* (1853). But the argument was not settled in 1873, a leading jurist, Sir James Stephen (1829-1894), published *Liberty, Equality,*

profound effect on the criminalisation of sex between males towards the end of this study. The deliberations of the Wolfenden recommendations of 1957, which led to the qualified decriminalisation of sex between males in 1967, has been credited directly by Weeks as a success of that eighteenth and nineteenth century Utilitarian challenge:

The philosopher of utilitarianism, Jeremy Bentham had classed homosexuality as an 'imaginary offence' dependent on changing concepts of taste and morality. The greatest of his successors, John Stuart Mill, had argued in *On Liberty* that the only justification for legal intervention in private life was to prevent harm to others. Wolfenden took up these arguments and agreed that the purpose of criminal law was to preserve public order and decency, and to protect the weak from exploitation. It was not to impose a particular moral view on individuals.⁷⁰

Therefore, the criminalisation of sex between males of this period would appear to be a measure that did not occasion universal support. Moreover, there is much evidence to suggest that its implementation was beset with a number of significant problems from the more casual and traditional reading of sexual legitimacy or otherwise, of non-reproductive sex acts held by working-class communities to the strident and articulate opposition to the inclusion of theocratic morality enshrined in the secular criminal code. The Criminal Justice System sought to implement the

Fraternity, in which he rejected Mill's argument about the limits of the law with regard to personal private consensual behaviour: 'there are acts of wickedness so gross and outrageous that, self-protection apart, they must be prevented as far as possible at any cost to the offender, and punished, if they occur, with exemplary severity.' [Fitzjames-Stephen, J. (1873 reprinted 1991) *Liberty, equality, fraternity, and three brief essays*. Chicago: University of Chicago Press, p. 151]. Saunders notes the on-going legal debate during the twentieth century in particular between Lord Patrick Devlin (Queens Bench) and the Oxford University legal philosopher Herbert Lionel Adolphus Hart (1907 –1992). [Saunders, K. (1998) 'The Role of Freedoms: Introduction to the Symposium.' *The Drake Law Review*, 47, pp. vii-viii. [Online] [Accessed 24th July 2012]

<http://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1437&context=facpubs>] As discussed below many contemporary commentators and subsequent scholars have credited the Wolfenden Committee recommendations to reform the crime of homosexuality as a victory of Mill's Utilitarian argument regarding the limits of the state in personal affairs.

⁷⁰ Weeks, J. (2007) 'Wolfenden and beyond: the remaking of homosexual history.' *History & Policy*, February, p.1 [Online][Accessed 3rd March 2014] <http://www.historyandpolicy.org/policy-papers/papers/wolfenden-and-beyond-the-remaking-of-homosexual-history>].

criminalisation of sex between males, and did so within an intellectual environment of competing and complex readings of what constituted legitimate and illegitimate sex, all submerged within a common inarticulate discourse about the topic actually being prosecuted.

As noted by Walvin, 'puritanical' is often the term applied to this political agenda about sex during this period. Weeks refers to it in the nineteenth century as that 'harsh and repressive sexual puritanism'⁷¹ that McKibben writes of in the early twentieth century, 'English attitudes to sexual morality were reinforced by what contemporaries still called puritanism – a word used to describe a specifically English culture where 'Christian' and certain social injunctions were combined to restrain sexuality within highly 'ritualistic' mores.'⁷² Any attempt to locate and measure the influence of these different readings of what constituted legitimate and illegitimate sexual practice, between the puritanical, the Utilitarian and more community based understandings within the operation of the Criminal Justice System, is highly problematic. However, that does not mean that such considerations did not inform the conceptual background in which the prosecutions undertaken during this period were read, predicated, defended, judged and punished.

There is, then, perhaps need of a health warning in that this investigation can only comment on issues evidenced by the source material. How those being prosecuted

⁷¹ Weeks, J. (1989) *Sex, Politics and Society: the Regulation of Sexuality since 1800*. 2nd ed., New York: Longman, p.19.

⁷² McKibbin, R. (2000) *Classes and Cultures: England 1918 –1951*. Oxford: Oxford University Press, p327.

understood their behaviour and others read such acts, beyond the police decision to define them as criminal and worthy of prosecution, is not discussed for the majority of the years covered by this investigation. Only in the later decades of this study was limited official primary evidence available with which to provide more systematic first-hand insights into how those contemporaries directly involved in such prosecutions understood inter-male sex behaviour.

The recent work of Helen Smith on Northern working-class attitudes towards sex between males certainly suggests that the hostility towards and criminalisation of consensual inter-male sex was predominantly an elitist preoccupation. As will be shown in Chapter Five (1940-1970), the evidence from the court depositions also supports this reading. The impression gained of working-class attitudes is of one of ignorance and of being much less censorious of sexual diversity than the formal positions adopted by Parliament. Indeed, Dr Eustace Chesser's 1930s' survey of sex within working-class marriages in Manchester indicated that nineteen percent of couples had practiced anal sex. This evidence of widespread sexual criminality (i.e. thousands of Lancashire working-class couples 'committed' the serious crime 'buggery') as part of their sex lives does suggest another significant disconnect between the laws seeking to regulate sex and the choices of large numbers within the majority of the population.⁷³

⁷³ Davenport-Hines, R. (1990) *Sex, death, and punishment: attitudes to sex and sexuality in Britain since the Renaissance*. London: Collins, p. 55.

The rarity of prosecutions of inter-male sex cases within the senior criminal courts suggests that for most of the period of this study this was not a priority for the police charged with implementing such laws. As already noted, the lack of uniformity of sentencing policy set out in the findings detailed below, suggests a significant divergence of opinion amongst the judiciary presiding at trials related to inter-male sex. However, that divergence can also be seen among the most senior legal authorities during the period. Perhaps what is most revealing is the apparent lack of any significant levels of pathologisation of inter-male sex by the courts. As the period progressed, it would appear that the courts viewed inter-male sex as yet another form of anti-social behaviour to be punished when the occasion arose but not too harshly by the standards of the day.

The strategies set-out in this chapter by which the factors that sought to underline the objectivity of this investigation were rehearsed and addressed are clearly temporary and particular to the context in which this study was conducted. However, a number of the points about privileging primary evidence of past attitudes and actions over present day politicised readings of that past perhaps have a longer shelf life. Hope must remain that the apparent increasing acceptance of legitimacy of sexual diversity might encourage others to commence enquires into this heavily tabooed but fascinating area of past human experience.

The findings of this study are set out in three chronologically ordered chapters, Three, Four and Five. The periods covered by each chapter were identified using the

cusum mathematical formula applied to the total incidence of committals evidenced each year by the *Calendars* . Chapter Three for the period 1850 to 1918 demonstrates the rarity of such prosecutions. Chapter Four covers the short inter-war period 1919 to 1939 and is characterised by a slow but erratic increase in cases. Chapter Five, 1940 to 1970, includes the vast majority of Lancashire committals for inter-male sex related cases recorded for the whole twelve decades of this investigation. Each of these three chapters sets out the findings in similar fashion, detailing the attitudes and behaviours, in turn, of the four main agents or players within the Criminal Justice System; prosecution, defence, adjudication and finally the attitudes of the presiding judiciary.

The following chapter, Chapter Two, provides the reader with an explanation of the sources and methods employed to provide reliable readings of the primary evidence used to generate the findings of this investigation.

Chapter Two – Methodology

A key aim of this investigation was to provide a reliable means by which to obtain an accurate exhaustive longitudinal survey of all prosecutions relating to sex between males for the period 1850-1970. As discussed, given the serious problems associated with the official crime figures an alternative reliable source of quantitative and qualitative evidence was sought. A number of primary sources were identified and used that systematically detailed all crimes these included: the *Calendars of Prisoners*, Lancashire Constabulary occurrence books, assize & quarter session court depositional records, Lancashire police forces' annual reports, magistrates' court records, prison records and Lancashire juvenile reformatory records. Together, these primary sources listed well in excess of half-a-million alleged and actual crimes. What follows provides an insight into that review process and the arguments that recommended the choice of the primary evidence used by this investigations. In so doing, what is offered highlights the wealth of largely undisturbed source material that provides unrivalled access to the past.

From the initial review of the readily available criminal evidence generated by the Criminal Justice System, for reasons set out below, a locally generated publication called the *Calendars of Prisoners* was selected out as the principle source of evidence. However, none of the different types of primary evidence provided any shortcuts to the easy location of particular types of criminal behaviour. The only reliable means of seeking out and identifying inter-male sex related prosecutions from that corpus of material was by undertaking an exhaustive review of each of the hundreds of thousands of cases reported; a full-time task that took

approximately three and a half years to complete. This approach uncovered a few thousand cases with the expected range of unproven and proven crimes: coercive and consensual acts involving males of various ages from teenaged 'lads' to septuagenarians.

An essential part of the methodology developed for this investigation depended on reliably determining which cases constituted and did not constitute criminal 'sex acts' between males. As suggested in Chapter One, this question was answered by privileging the contemporary definition of such behaviour. Therefore, it is those behaviours between males, viewed at any one time being 'sexual' by the prosecution agency, that are the evidential focus of this methodology. The term 'inter-male sex' is used as a generic category or placeholder for all those male behaviours viewed as criminal acts.

The only previous investigation seeking to provide a longitudinal insight of criminal and not relying wholly on the flawed official crime figures was that undertaken by Harry Cocks.⁷⁴ What is of interest is that Cocks also undertook a similar exhaustive review of primary evidence to provide the first qualitative reading of '*...information on 750 cases ...some of the cases are trials, other are indictments, threatening letters, extortion cases proceedings and Home Office paper.*'⁷⁵

⁷⁴ Cocks, H. (2003) *Nameless Offences: Homosexual Desire in Nineteenth Century England*. London: Penguin & I. B.Tauris, p. 21.

⁷⁵ Cocks, H. (2003) *Nameless Offences: Homosexual Desire in Nineteenth Century England*. London: Penguin & I. B.Tauris, p. 21.

However, need for a reliable reading of the actual overall incidence of such criminal prosecutions is also underlined in that same study. To contextualise his findings, Cocks cites a total figure for the nineteenth century of inter-male sex related committals for the nineteenth century as being '...8,000 or so committals'.⁷⁶ How this figure was obtained is not stated but Cocks did make use of the deeply flawed Home Office figures elsewhere in the study; for example in the first graph of the same chapter entitled *Committals for Sodomy and Related Misdemeanours*.⁷⁷ In the absence of advice to the contrary, it would appear reasonable to suggest that the given total figure of 8,000 committals was in some way connected to the only known nationwide count: the aforementioned figures generated by the Home Office. This usage highlights the need for an accurate quantitative longitudinal reading of the actual incidence of prosecution of inter-male sex, not least to better contextualised qualitative studies.

By its provision of reliable evidence of the incidence of committals and convictions, the finding of this study makes possible the first comparative analysis and highlights the inaccuracy of the Home Office 'criminal statistics'. Charles Upchurch does not

⁷⁶ Cocks, H. (2003) *Nameless Offences: Homosexual Desire in Nineteenth Century England*. London: Penguin & I. B.Tauris, p. 21.

⁷⁷ Cocks, H. (2003) *Nameless Offences: Homosexual Desire in Nineteenth Century England*. London: Penguin & I. B.Tauris, p. 23. See: Figure 1. 'Committals for Sodomy and Related Misdemeanour per 100,000 populations 1806-1900', Footnote 10 cites the source as the 'Parliamentary Papers, Judicial Statistics, various volumes'.

That the Judicial Statistics only record committals chimes with the figure of 8,000 quoted referring only to 'committals' and not all prosecutions (i.e. including summary cases). However, the specific problem with citing the Judicial Statistics as a source for the whole of the nineteenth century is that the series did not commence until 1857 and therefore could only possibly have listed the last forty four years of that century (i.e. always referring to the previous year). Also the only known means of extracting an accurate reading of the incidence of inter-male sex related cases from these Judicial Statistics is by a method similar to the one adopted by this investigation; exhaustive case by case examination. In that it took this investigation over three years to count such cases in one county, a nationwide enumeration would take considerably longer and is therefore unlikely.

simply welcome the development of the provision of more authoritative reading of the scale and frequency of prosecutions. Upchurch goes further suggesting that such enumerations based on the exhaustive reading of court documents are important correctives to the historiography, helping to correct '*...one of the most persistent and distorting misinterpretations in the secondary literature over the frequency of prosecutions of sex between men.*'⁷⁸ One of the main goals of this investigation was to identify accurate primary evidence and design a methodology to exploit such sources that provide a less adulterated reading of the actual incidence of criminal prosecutions between males. That is to constructively answer the unrelenting and learned condemnation of the deeply flawed official Home Office crime figures presented annually to parliament.

A great boon to this endeavour was the growth of the recordkeeping within the Criminal Justice System, which resulted from criminal reforms established by the mid- nineteenth century. Unlike Cocks, whose investigation commenced in the early- nineteenth century, and thus with a much more limited bureaucratic infrastructure enjoyed by the Criminal Justice System, this study was able to exploit the greater range and wealth of official, systematically consistent material. The sought outcome for this enumerative project was the identification of a single primary source that provided a systematic recorded, evidentially consistent, stream of evidence; thereby addressing the first test of statistical utility: comparing like with like.

⁷⁸ Upchurch, C. (2009) *Before Wilde - Sex Between Men in Britain's Age*. Berkeley: California Univ Press, p.7. However, despite the highly misleading feature of national measures of crime these figures have still been employed to provide readings of past criminalisation.

Cocks makes reference to a document entitled the *Calendars of Prisoners*. The Calendars provide not simply a wealth of personal and procedural detail of each committal, but they also enjoyed a consistency of utility and format for at least one-hundred and twenty years. Helen Smith, in her recent pioneering study of working-class attitudes towards sex between males, made extensive use of this invaluable, but apparently neglected, primary source.⁷⁹ The added advantage of the court calendar documents is that the evidence therein can be relatively easy to independently verify and add details to many of these cases by cross-referencing cases with newspaper reports of the day.⁸⁰ A further commendation of the authority of this methodology and the database generated, is that most if not all, of over three-thousand cases included in this Lancashire sample can be readily and independently verified.

In this regard, the *Calendar* evidence greatly assisted the search for quantitatively rich sources of evidence regarding individual cases held in the further court document, known as *Depositions* by providing the names and dates of inter-male sex prosecutions. Consequently, the findings of this study can be also read as a gazette of such prosecutions facilitating further in-depth historical enquiry.⁸¹

⁷⁹ For example Helen Smith used the Calendars to locate inter-male sex committals as a means of targeting newspaper coverage of such trials that provided the evidence basis of her PhD. Smith, H. (2012) *A Study of Working-Class Men who desired Other Men in the North of England c.1895-1957*. Ph.D. University of Sheffield.

⁸⁰ Indeed it is the provision of extensive procedural details (e.g. name of court, date of trial and name of the 'prisoner') that greatly assists the identification of further primary evidence such as indictment documents and the reporting of these cases in the local media. For example Smith, H. (2012) *A Study of Working-Class Men who desired Other Men in the North of England c.1895-1957*. Ph.D. University of Sheffield rests on such frequent incidence of reporting.

⁸¹ However, the fate of such invaluable depositional papers appears to have been put in doubt with the taking over of the former responsibilities of the Museums, Libraries and Archives Council in May 2012. The Secretary of State for Culture, Olympics, Media and Sport, abolished the Museums, Libraries and Archives Council (MLA) in May 2012 and its responsibilities were passed to the National

The practical evidential strength of the *Calendars* is not simply their comprehensive and consistent reporting of personal and procedural details of each person sent for trial but also their often exhaustive summary of the criminal charge. It was by means of this advice that the type of inter-male sex crime could be categorised. The Lancashire *Calendars* list 175,309 criminal prosecutions; that is, those crimes considered by the magistrates' courts as requiring trial at the more senior county criminal courts of Quarter Session and Assize.⁸²

The format of the *Calendars* changed very little over the whole period of this study, thereby providing a consistent setting out of details between the *Calendars* of different courts over the one-hundred and twenty-one years of this study. The

Archives. One of the early recommendations of the National Archives to regional archives was to securely destroy their unique collections of court depositions papers that would help to reduce financial demands of new stack space.

⁸² During this period no senior criminal court outside of the metropolis was in constant session. The Assize Court, the most senior of county criminal courts, dealt with those crimes that if found guilty might include the most severe punishments available to the courts including the death penalty and life imprisonment. The Assize Courts sessions lasted as long as there were prisoners to try and were held as part of a series or circuit of county Assizes presided over in turn by the visiting High Court Judges. The next tier of criminal courts were the Quarter Sessions that dealt with less serious matters but included prosecutions that carried potential sentences exceeding the limited range of tariffs available to magistrates. The Quarter Sessions Court system was divided into two branches the County and Borough Sessions. The County Sessions were of medieval origin and also had an itinerant format, at least in theory. The County Session officially commenced four times a year at the county town of Lancashire, Lancaster including all cases in the administrative district or Hundred of Longsdale). Having tried all cases at Lancaster, the Session moved onto Preston trying all cases occurring in the Lancashire Hundreds of Amounderness, Blackburnshire & Leyland. Then continuing on to Salford for criminal cases occurring in the Salford Hundred and finally to West Derby, near Liverpool, for the cases awaiting trial from the West Derby Hundred. At the start of the period the Lancashire Boroughs of Manchester, Liverpool and Wigan had been afforded the jurisdiction to hold their own Quarter Sessions. That is committals originating from such Lancashire Boroughs that would have previously been processed through the County Quarter Sessions could now be tried in those newer Borough Quarter Sessions, with the more serious charges regardless of origin being still reserved for the Assize Courts. As the population of Lancashire grew and the towns rapidly developed, more towns were granted Borough status and thereby some elected to establish their own Borough Quarter Sessions. The piloting of the Crown Courts in the Salford and West Derby Hundreds of Lancashire from 1956 amalgamated the various Borough and Assize courts into the new Crown Court system. The success of the Lancashire Crown Court pilot proved so apposite that it was maintained in South Lancashire and rolled out nationally as part of local government reform in 1974.

provenance of the *Calendars* as an agenda document for the senior courts has not been fully researched, but certainly by the mid-nineteenth century, a standardisation had occurred. This national standardisation of the *Calendars* is well demonstrated in the Home Office national collection of nineteenth and twentieth century *Calendars* now held at the National Archives.⁸³ Two versions of the *Calendars* are found within the archives highlighting their specific function: pre- and post-trial versions. The pre-trial *Calendars* were bespoke documents or court gazette that set-out in a sequential, paginated listing all the persons referred to by magistrates and scheduled for a trial at each senior criminal session; the personal details given are; 'Name', 'Age', and 'Occupation' and increasingly after the 1880s, details of 'Previous Convictions'.⁸⁴ This pre-trial document included personal and procedural advice on each 'prisoner' (defendant) and the criminal offence or offences with which they were to be tried. The *Calendars* consistently presented this information using the same tabular format for over a hundred years.⁸⁵

⁸³ Correspondence with the Ministry of Justice for this investigation confirmed that the *Calendars* ceased to be produced in the former format when the Assize and Quarter Sessions were replaced by the Crown Court System in the 1970s. Email exchange between 14th July and 3rd September 2012.

⁸⁴ The establishment of the Criminal Records Office in 1871 by the government through the Metropolitan Police Service might account for the more systematic inclusion of information under the 'Previous Convictions' heading from the later nineteenth century.

⁸⁵ It would appear that the production of court *Calendars* ended when the Assize Courts and Quarter Session courts were abolished in the early 1970's to be replaced by the Crown Court System on 1st January, 1972 by the Courts Act 1971. Interestingly the Crown Court System was piloted in the North West cities of Manchester and Liverpool from 1956 and did generate *Calendars* in the early years of that project. See Manchester Crown Court *Calendars* held at GMC: GR127 M545/1: (1956-1958) & GR127 M545/2: (1959-1960).

*Table 2.1 Extract of the first column headings of the Calendars – defendants personal information.*⁸⁶

Calendar column	2	3	4	5
Column Heading ⁸⁷	<i>Name</i>	<i>Age</i>	<i>Occupation</i>	<i>Previous Convictions</i>

The personal details are followed by procedural details, which commence with a ‘*Case No.*’, a reference number usually exclusive to that person, but on occasion used serially to categorise a number of defendants jointly charged with the same offences or offences. The procedural advice within the *Calendars* includes: the name of those magistrates who sent or committed the case to a more senior court; by the later nineteenth century, the names of those lower courts; and whether the prisoner was remanded or bailed. Columns are also included by which to note if the defendant was bailed, when they were to surrender, and, if remanded, includes further details of that custody.

*Table 2.2 Extract of the Calendar column headings– procedural information.*⁸⁸

Calendar column ⁸⁹	1	6	7	8	9	10	11	12	13	14	
Column Heading	<i>Case No.</i>	<i>From Committed</i>	<i>Received in prison</i>	<i>Bailed @ Court</i>	<i>Surrendered</i>	<i>Particulars of the Offence</i>	<i>before</i>	<i>Tried</i>	<i>Plea</i>	<i>Verdict</i>	<i>Order of the Court</i>

An important feature of the post-trial *Calendars* is that they record the results of grand jury process.⁹⁰ The function of the grand jury, still an important feature of the

⁸⁶ Lancashire Committals of inter-male sex (1850-1970) Data Bases.

⁸⁷ NB: The terminology used for the Calendar column heading changes in some instances over time but the function remains the same. The terms used in Fig. 2.1 are direct transcriptions of the headings or in cases where the terminology changes slightly, they represent a functional definition of the information listed under that heading. One column heading has been omitted, that of providing an assessment of a prisoner standard of literacy. The reason for this being discounted is that it is abandoned in the nineteenth century and therefore is the only Calendar heading without a longitudinal consistency – the focus of this current project.

⁸⁸ Lancashire Committals of inter-male sex (1850-1970) Data Bases.

⁸⁹ The numbering of the Calendar headings is sequential and is used here to identify and differentiate between the Calendar headings to assist the subsequent analysis of the data.

Criminal Justice System in the USA, was to undertake a preliminary vetting of each case to decide if there was a case to answer. The *Calendars* record, usually under column thirteen entitled 'Verdict', the phrase 'No Bill Found', thus denoting those cases judged by the Grand Jury non-*prima facie*, and therefore dismissed. For those cases considered unworthy of trial, the prisoner was discharged, and the case disappears from the *Calendars*.⁹¹

The post-trial *Calendars* fill in the blanks left in the original version. The name of the presiding judge and the date or dates of the trial are detailed. The next column records the prisoners' plea of 'Guilty' or 'Not-guilty'. However, the plea is not always recorded and only thorough examination of subsequent columns entries can the plea be knowable.⁹² The verdict of the jury when called on to adjudicate is included

⁹⁰ In all cases the second version, or 'post-trial', *Calendars*, generated following the trial were used. Again, they were compiled by court and prison officials. The post-trial versions enjoy an identical tabulated format to the pre-trial *Calendars*, duplicating much of the information, but adding the results of the trials. It is these post-trial *Calendars* that were drawn on for the evidential basis of the study.

The function pre- and post-trial *Calendars* differ subtly but significantly. A copy of a page of entries from an original Post-Trial Lancashire Calendar can be found in Appendix 1. This provides important information pertinent to the processing of a criminal trial (pre-trial *Calendars*) into an easily accessible document of record (post-trial *Calendars*). Many of the *Calendars* served as reference guides held, and in some cases kept, current by local agencies. NB: The Calendar of Prisoner collection held by the Lancashire Archive include inked annotations, corrections and even letters and other papers added to certain pages by means of updating the advice held in the record: e.g. see GR55 QJC/09: (1857), GR55 QJC/10: (1861), GR55 QJC/12: (1838-1873), GR55 QJC/15- 24: (1891-1900). The British Government Home Office kept a complete national series of all *Calendars* from every county. This collection is now held by the National Archives and referenced under the HO 140 series.

⁹¹ As the decades passed the function of the Grand Jury became increasingly redundant in the Criminal Justice System suggesting at least in part that sounder prosecutions were being committed. See Bentley, D. (1998) *English criminal justice in the nineteenth century*. London: Hambledon Press.

⁹² For example, for an entry of 'Guilty' under the column heading 'Verdict', it can be safely assumed that the defendant's plea was 'not-guilty'. Indeed, it was and is a 'Not-guilty' plea that required the prosecution to present evidence to the court with the intention of seeking to prove to the twelve members of the jury beyond reasonable doubt the soundness of the charge or charges. The outcome of such full trials is given in Calendar column thirteen, entitled 'Verdict'. The voice of the Prisoner, Jury and Presiding Judge are limited to these final *Calendars* columns and strictly limited to processual matters. However, the information provided is highly relevant and advantageous to further analysis of the attitudes towards inter-male sex crime of these different players within the Criminal Justice System.

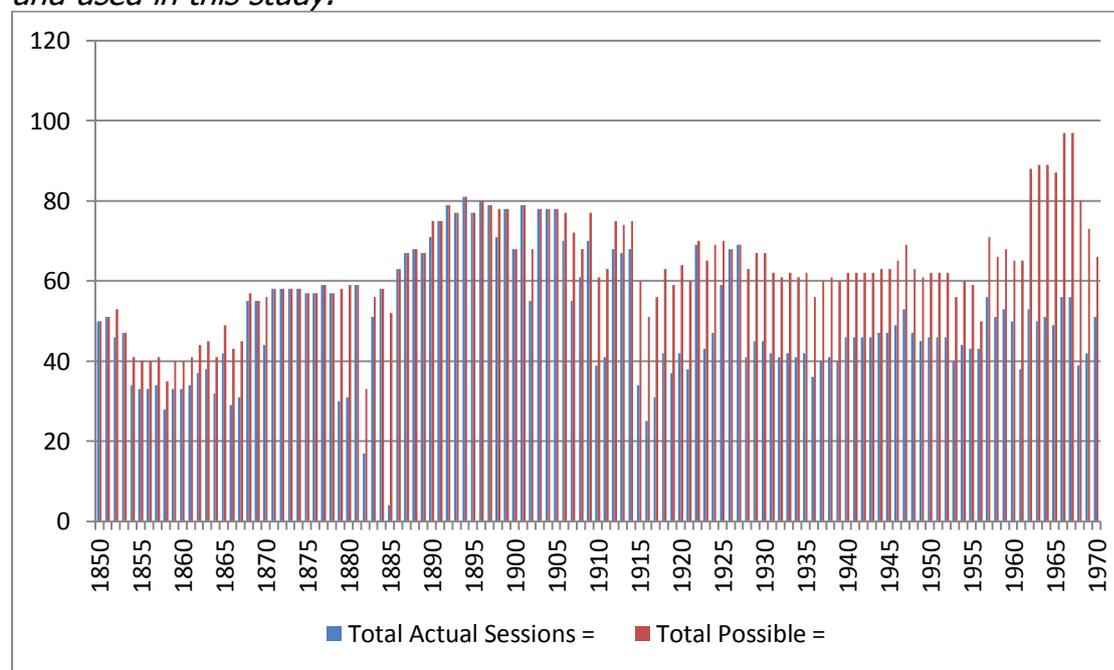
under the relevant column heading, 'Guilty' or 'Not guilty'. Next is recorded the 'Order of the Court' (Calendar column fourteen). In 'Guilty' pleas or verdicts, the punishment handed down by the court is entered in the adjoining column. In the case of 'Not-guilty' verdict the term 'To be discharged' or a similar wording appears. However, the reliability of this source for the approach used in this study rests on the key information detailed under the 'Particulars of Offence' heading. Only those cases that are included under this heading, referencing an inter-male sex charge or charges, were selected out for inclusion in the database created for this study. This was achieved by the meticulous inspection of tens of thousands of individual criminal prosecutions listed in the Lancashire *Calendars*. From that exhaustive survey, just over 2,000 prosecutions were identified as directly citing inter-male sex crime. It is those inter-male sex crime cases that have been transcribed, by means of statistical software, into electronic databases. A benefit of this method is that it provides both a unique and authoritative reading of the attitudes towards inter-male sex crime of the four key agencies within the Criminal Justice System: prosecution, defence, adjudication and the Judiciary.

The importance invested by contemporaries in these documents is worthy of note. The presentation of the *Calendars* suggests the highly prestigious nature of the courts they serve and the great effort and expense invested in their production (see Appendix One: The Calendars of Prisoners).⁹³

⁹³ These cases were not simply perfunctory events but clearly carried a gravitas and function beyond the obvious. For example the Calendars themselves were printed to a very high standard with highly decorative covers and large font type being afforded along with the main court and county officials being involved. The decoration evident on the Calendars covers is similar to that found on entertainment programmes of the period and suggestive of the divertissement value of these Assize and Quarter Sessions that generated significant popular interest and general social intercourse for the

An added advantage of the Calendars as a source is the comprehensive coverage they provide throughout the period covered by this study.

Table 2.3 Estimated (possible) number of Lancashire senior criminal court session (1850-1970) together with the actual number for which Calendars have been located and used in this study.⁹⁴



An apparent weakness of the evidence from the *Calendars* is that they only record criminal prosecution relating to committals sent for trial at the senior criminal courts of Quarter Session and Assize. Cocks also notes the problems in reading such prosecutions as representative sample of incidences: 'It should be remembered that

county elites. For example the care and prestige afforded the calendars reflected the status of the courts themselves not least echoed in the new spectacular civic buildings erected to house them; including St Georges Hall in Liverpool (1841- Present, although no longer used by the Justice System) and the Manchester Assize Courts (1877, bombed by the Luftwaffe 1940/41 and demolished in 1957). Even the lower magistrate's courts were afforded a very high civic status. For example the press coverage of the building and opening of the new Bolton Borough Magistrates Courts in 1934 was the subject of regular glowing newspaper coverage in the local Bolton Evening News: see reports 'Befitting a Proud Town' 20th March 1936, 'A New View of the Courts' 18 October 1934 and 'Opening of the Courts' 29th October 1934. Appendix II (The Lancashire Court Houses).

⁹⁴ Figure 1 shows that evidence used for this survey includes a majority of sessions in most years 1850-1970. Indeed, for 33 years out of the 121 years covered in this longitudinal study, it would appear that all Calendars are included. [Lancashire Committals of inter-male sex (1850-1970) Data Bases]

official statistics of committals for trial represent only the tip of an iceberg'.⁹⁵

Prosecutions in the senior criminal courts represented only a small percentage of all criminal trials, as is still the case in the twenty-first century. The 'workhouse' of the Criminal Justice System was and remains, criminal trials in the lower courts that presently deal with over ninety percent of all cases. These lower-courts, of first instance, are presided over by lay-magistrates who serve as both judge and jury, albeit with much more limited sentencing powers. Compared to the jury courts of Assize and Quarter session, the magistrates' courts were more numerous, local, much cheaper to run and quicker in their administration. Throughout the period of this study, Parliament was keen to transfer jurisdiction for whole categories of crime deemed previously the sole preserve of the senior criminal courts to the magistrates – with all the revenue savings that realised.⁹⁶

However, eight of the nine criminal offences identified by the Wolfenden Report relating to inter-male sex consensual and coercive behaviours (i.e. homosexualised)⁹⁷ were indictable and therefore to be tried in the most senior criminal courts: Assize, Quarter Session and, after 1956 in Lancashire, the Crown

⁹⁵ Cocks, H. (2003) *Nameless Offences: Homosexual Desire in nineteenth Century England*, (London: Penguin & I.B.Tauris, p. 23.

⁹⁶ The presiding magistrates, or Justices of the Peace, were largely made up during this period by local wealthy men appointed and empowered by the State to enact a number of local administrative roles including presiding at courts. However some of the larger Lancashire Boroughs including Manchester by 1850 had taken up the option of appointing a full time trained lawyer (i.e. paid by a stipend, hence Stipendiary magistrate) to preside over the bulk of cases in its local magistrates court. However, the records for the crimes heard in these courts are fragmentary, unavailable or non-existent (e.g. A Luftwaffe air raids on Manchester in 1940/41 included the bombing of the Manchester Assize Courts buildings that destroyed many records held by the courts administration staff).

⁹⁷ The conflation of all inter-male sex related behaviours into a single residual basket entitled 'Homosexual' and by definition a highly contingent and ambiguous stereotypical identity.

Courts.⁹⁸ Indeed, there is a wide margin of criminal law consistency throughout the period; the 1956 Sexual Offences Act endorsed much of the nineteenth century legislation and sentencing tariffs regarding inter-male sex. Therefore, another advantage of the *Calendars* is not simply their independently verifiable accuracy and consistency, but that they also list the overwhelming majority of all those categories of offences used in the prosecution of inter-male sex.

However, this reading, while confirming that the *Calendars* include most of the offences used against such behaviour, shows that they also exclude two summary categories: persistent soliciting or importuning of males for immoral purposes, where the 'immoral purposes' involve homosexual behaviour, or offences against the bylaws. As shown in Chapter 4, the review of the *Occurrence Books of the Lancashire Constabulary*, the role of the summary courts in the prosecution of such behaviour was not insignificant. Also, the 1960s' Manchester Police Annual Reports would suggest that the use of the magistrates' courts for dealing with such cases by using the summary charge of 'offences against the bylaws' would have appeared to

⁹⁸ These 'homosexual' offences were defined in law as being among the most serious of offences requiring a sentencing tariff to suit the seriousness of the threat the acts posed to the peace of society. The prosecution of the persons charged with such offences first had to establish a prima facie case before a local magistrate who if satisfied would then send or *commit* the case for trial before a jury court (i.e. Assize, Quarter Sessions or later Crown Court). It was only these senior criminal courts that had the sentencing powers to impose the full sentencing tariff on conviction. Indictable criminal offences listed in Wolfenden necessitating trial before a senior criminal court: Buggery, Attempted Buggery, Indecent Assault on a male by a male, Acts of gross indecency between males, Procuring acts of gross indecency, attempting to procure acts of gross indecency between males, Assaults with intent to commit buggery. Summary criminal offences listed in Wolfenden only requiring trial before a magistrate: Persistent soliciting or importuning of males for immoral purposes (where the 'immoral purposes' involve homosexual behaviour), Offences against the bye-laws (where the offences involve acts of indecency between persons of the same sex). Only the Assize and later the Crown Courts had the authority to impose the maximum sentences for the most serious of those offences: Buggery (i.e. Imprisonment for life), Attempted Buggery (Ten years imprisonment), Indecent Assault on a male by a male (i.e. Ten years imprisonment). [Home Department and the Secretary of State for Scotland. (1957) *Report of the (Home Office) Committee on Homosexual Offences and Prostitution*. London: HMSO, para.77, pp.29-30]

have greatly expanded a means of disposing of cases with otherwise expensive, indictable prosecutions.⁹⁹

The incidence of inter-male sex-related cases listed in the *Calendars* also provides a further more speculative insight into the attitudes of local magistrates. These courts provided the first level within the Criminal Justice System and thereby acted as gatekeepers for the caseload sent to the senior courts. In normal circumstances, only a referral or committal from a local magistrate's court was required for a case to be granted audience at one of the senior criminal courts and thereby listed in the *Calendars of Prisoners*. Therefore, any prosecutions relating to inter-male sex scheduled in the *Calendars* of an Assize or Sessions Court are not a good indication of the total number of prosecutions being brought before the lower courts. They are a measure of inter-male sex related cases committed and not dealt with summarily (i.e. read as being of sufficient seriousness to require a jury trial). The committal process was not a perfunctory one; the prosecution had to prove a prima-facia case for the magistrate(s) to be persuaded before a case was sufficiently sound to require trial in the senior courts. Therefore, the attitudes of local magistrates towards such behaviour must have played some role in that decision making process. What we cannot yet know is the rarity of such committals in the nineteenth century, and how much of that was a feature of local magistrates' opposition or just simple distaste for such cases being committed. By the same token, what is the extent to which the

⁹⁹ See Chapter Four findings of the review of police Occurrence Books from the Lancashire Constabulary whereby apparently prima-facia indictable cases were converted into lesser summary cases disposed of quickly and cheaply in the local magistrates' court. Also see Chapter Five review of the 1960 Manchester and Salford Police Annual Reports that indicate extensive use of summary charges for what appear to be indictable offences.

increased incidence of such committals can be read as a measure of changing attitudes among the newer generation of magistrates?

The cases listed for trial in the *Calendars* thereby provide an insight into attitudes well beyond the formal and often grand spaces of the Lancashire Assize and Sessions courts. Each entry offers an insight into the willingness of both the local police force managers to press serious charges (i.e. requiring the authority of the senior courts) and a comparable attitude by local magistrates to 'commit' a case to a higher court. The findings of this study (see Chapters Three to Five) stress, with the exception of the immediate post-World War Two period, the reluctance of prosecution agencies to spend funds and resources committing such cases to full trial at the senior criminal courts of the county.

These findings do invite questions: the chief of which is explaining why prosecutions of Lancashire inter-male sex crime rarely appear for trial in the senior criminal courts for most of the period of this study. Was this simply the result of the police targeting such behaviours in the post-World War Two world, having largely ignored the behaviour or viewed it as less serious than in previous decades? Alternatively, are the significant shifts in committal rates the result of other, more nuanced criteria outside the immediate workings of the Criminal Justice System? What greatly hinders this search for explanations is the lack of comprehensive and detailed evidence of all cases brought before and dealt with exclusively by the lower courts. That is as yet no comparable survey has been undertaken of the summary prosecution and treatment of such summary inter-male sex behaviour. As noted by

Upchurch and also suggested by the Lancashire Constabulary evidence discussed in chapter four not all arrested cases of inter-male were tried in the senior courts.¹⁰⁰ Therefore, one explanation for the significant increase of such cases being tried in the senior courts could be at least in part simply explained as a procedural shift within the Criminal Justice System. That is the post-1940 period increase be read as simply a reflection of more a shift in police prosecution policy, with the cooperation of local magistrates, of sending more inter-male sex case to trial in the senior courts rather than have them dealt with on lesser charges in the lower courts.¹⁰¹ However, until more research has been conducted into the criminalisation of inter-male sex the understanding the shifts in rates of indictable prosecutions must remain largely speculative. This speculation question remains unanswered. That is as to whether there had always been a consistently high level of summary prosecutions involving inter-male sex that, until the mid-twentieth century, Lancashire prosecutors and magistrates had resisted sending to the higher courts. Any definitive answer to the causation of the rarity, and then the post-World War Two increase, in the incidence of such prosecutions, awaits further a dedicated investigation.

As noted in Chapter One, Taylor argues that prosecutions that reached the senior criminal courts, as the nineteenth century progressed, were increasingly seen as expensive exercises demanding the expenditure of significant resources and time, both of which were in short supply. Prosecutions taken to the senior courts

¹⁰⁰ The only study to date of magistrate treatment of inter-male sex cases undertaken by Upchurch into mid-nineteenth century London magistrates courts does suggest the independence of the bench. Upchurch, C. (2009) *Before Wilde - Sex between Men in Britain's Age*. Berkeley: California Uni. Press.

¹⁰¹ That is the types of cases tried at the senior criminal courts can be and should be read as statements of the operational priorities of those that brought prosecutions. See; Upchurch, C. (2009) *Before Wilde - Sex between Men in Britain's Age*. Berkeley: California Uni. Press.

represented a significant drain on local policing resources and were consequently severely rationed. Taylor's longitudinal analysis of the most serious of crimes, murder, suggests that despite a rapidly rising population, murder trials remained static. This argument would appear to be reinforced by the data generated by this study, as set out in Table 1.3 above whereby the total sampled criminal prosecutions are measured against the populations of Lancashire (Census Years) suggesting a reduction of committals as population increased. This financially limiting argument, applied to the prosecution of inter-male sex, would certainly help to account for the rarity of such committals for much of the period. This would appear to challenge the popular belief in strictly demand-led policing and prosecutions, instead suggesting the primary motivation of considerations limiting public expenditure.

Therefore, in an environment in which economic priorities effectively rationed prosecutions, the types of cases sent to trial in those expensive senior criminal courts can be read as a reflection of policing priorities.¹⁰² Any decision by police forces to take a case to trial at a senior criminal court had to be a most deliberate balancing act of limited resources being informed by the contemporaneous political and operational police priorities of any particular period. The cases listed in the *Calendars of Prisoners* can be read as both a record of incidence but also as

¹⁰² Taylor's example of the rationing of murder trials in England from the later nineteenth century and throughout most of the 20th century provides a compelling example of such economic rationing of criminal prosecutions. Another example illustrated by the exhaustive review of criminal prosecutions undertaken for this study suggests that white-collar crime such as fraud and embezzlement cases rarely if ever appear listed in the Calendars. However the prosecution of theft 'larceny' by defendants with lower paid occupations is a most common listing. Taylor, H. (1998) 'Rationing crime: the political economy of criminal statistics since the 1850s.' *The Economic History Review*, 51 (3) pp. 569–590 & Taylor, H. (1998) 'The Politics of the Rising Crime Statistics of England and Wales, 1914-1960.' *The Economic History Review*, 51, (3) pp. 5-28.

providing an insight into the contemporary attitudes of the police, local magistrates' courts and politicians towards the seriousness of inter-male sex.

In order to handle the required amount of data provided in abundance by the *Calendars*, a specific methodology for collecting and analysing the evidence was required. A three-fold database system for collecting and processing the *Calendars* evidence was developed, with required data being registered directly into electronic databases, entitled: Lancashire Committals of inter-male sex (1850-1970) Database One (LLDB1), records the incidence of Lancashire Committals of inter-male sex as identified from the *Calendars* (1850-1970). Database Two (LLDB2) records in detail the details of each person committed to trial for inter-male sex as listed in the *Calendars* (1850-1970). Database Three (LLDB3) uses all the procedural and personal details of each case committed for trial for inter-male sex and by use of mathematical formula provides a breakdown of that information by court and year. The size of these databases is not inconsiderable. LDB1 records relevant extracts and enumeration of data from the exhaustive review of over 665 *Calendar of Prisoners* that enumerates the approximately 248,897 individual records of cases tried in the senior criminal courts of Lancashire: the Assize, County and Borough Quarter Sessions. The recorded data includes the dates of each court session, and enumerates and categorises all types of inter-male sex cases, together with sampled reading of all sex-related cases. These results are recorded by court, with a separate electronic sheet of the database being dedicated to each court. LDB2, comprised of approximately 177,023 data fields, is a more specialised database, and records the transcriptions of each case listed that relates to inter-male sex. LDB3 includes

approximately 190,253 fields, and is an amalgam of all the transcribed data of inter-male sex cases, together with the extensive analytical formulae used to convert all the hundreds of thousands of details into manageable quantitative and qualitative findings.

A major problem with readings of the misleading government crime figures, and the hundreds of annual crime figures produced by each local police force, on which the government returns were based, was the conflation of divergent sex acts under the heading '*Buggery*' and '*Attempted Buggery*'. This ambiguous conflation merely reflected the legislation that lumped together zoophilic sex acts, anal sex between male and female and anal sex between males.¹⁰³ What the Calendar provided was

¹⁰³ See: Consolidation Act 1828. (9 Geo. 4, c.31); Offences Against the Person Act 1861. (24 & 25 Vict. c.100) and Sexual Offences Act 1956. (4&5 Eliz. 2, c.69) and Sexual Offences Act 1967. (c.60). Indeed ambiguity regarding what actual behaviour constituted the crime of buggery appears to have been an important feature of the original secular legislation that Thomas Cromwell piloted through Parliament in 1533. [Buggery Act 1533, formally An Acte for the punishment of the vice of Buggerie (25 Hen. 8, c.6)] Interestingly Cromwell's political agenda at this time as Henry VIII's Chief Minister and Vicar General was of curtailing ecclesiastic power and enriching the Crown by dissolving mainly male only communities. This law that ambiguously criminalised inter-male sex crimes also including the death penalty and forfeiture on conviction of all wealth to the Crown for those convicted. The creation of a law that prosecuted such alleged behavior in Courts overseen by men appointed by the King might well have been, especially to those living in all-male communities, a useful aid in any political campaign to diminish monastic power and wealth. Hutchinson as part of the speculation about Cromwell's motivation for promoting such a measure suggests: '*...why this particular piece of law-making was deemed necessary by Cromwell remains unclear, unless it was intended as yet another weapon against the clergy ...*' [See Hutchinson, R. (2009) *Thomas Cromwell: The Rise And Fall Of Henry VIII's Most Notorious Minister*. New York: Thomas Dunne Books, pp. 47-69] Therefore this reading informs speculation that the buggery legislation was, from its inception, a deliberately ambiguous piece of legislation to assist a contemporary political agenda. In this connection it is of interest to note that one of the first usages of this offence was in 1540, used as a secondary charge against Walter Hungerford (1st Baron Hungerford of Heytesbury), a political opponent of the Crown. He was arrested, tried and executed for his 'treasonous' support of the Pilgrimage of Grace that had sought to challenge the Crown's religious police. [Ashton, D.J. (2004). 'Hungerford, Walter, Baron Hungerford of Heytesbury (1503-1540)', *Oxford Dictionary of National Biography* (online ed.). Oxford University Press.

Two centuries later this on-going ambiguity is confirmed when the first authoritative guides to the criminal laws were published in the eighteenth century, most notably Sir William Blackstone's *Commentaries on the Laws of England (1765-1769)*. [See Blackstone, W. (1788 reprinted 1811) *Commentaries on the laws of England with notes by John Frederick Archbold*. London: Printed by M. and S. Brooke for W. Reed. Especially section on buggery in ch. 15 'Of Offenses Against the Persons of Individuals' pp. 205-220.] It is only nearly three hundred years later in 1828 that parliament

an accurate means by which the buggery committals could be separated out into their constituent behaviours. This was archived largely through the extra detail provided about each buggery conviction in the Calendars under the heading 'Particulars of Offence'. The methodology exploited that important differentiating evidence recording the consistent buggery acts into three substantive buggery groups: inter-male sex buggery, zoophilic buggery and unknown.¹⁰⁴ Those three types of 'Buggery' were then enumerated and transcribed into the Lancashire Committals of inter-male sex (1850-1970) Databases whereby the first buggery category lists zoophilic 'Buggery' and '*Attempted Buggery*' committals. For example, the calendar entry for DONOVAN, John tried on 7 July 1878 at the Liverpool Assize: 'Having at Orford on the Twentieth June 1878 feloniously, wickedly and against the order of nature carnally known there a certain animal, to wit a sow, and then with the said sow feloniously did committed and perpetrated the abominable crime of buggery.'¹⁰⁵

The second generic category for '*Buggery*' and '*Attempted Buggery*' listed those prosecutions whereby the correspondent in the charge (i.e. another male, a female or the species of animal) is not given and therefore categorised in this study as 'non-

sought to address a measure of the ambiguity about the crime of Buggery. The ambiguous conflation of the diverse behaviours related to penetrative non-reproductive sex under the singular crime of 'Buggery' was maintained thought-out the period of this study and beyond. [e.g. Sexual Offences Act 1967. (c.60)]. The 1967 Sexual Offences Act continued the conflated definition of buggery, '...the said Schedule 2 shall be amended as follows (a) in paragraph 3(a) for the word "Life " there shall be substituted the words "If with a boy under the age of sixteen or with a woman or an animal, life; otherwise the relevant punishment prescribed by section 3 of the Sexual Offences Act 1967.'" Section 3/4/a of the 1967 Sexual Offences Act.

¹⁰⁴ The other constituent male-female buggery offence was not created because only one such committal was recorded during the period of this study. The evidence strongly suggests that the crime of buggery was, given the nature of the acts involved, a gender-based offence.

¹⁰⁵ LCC&D: Liverpool Assize, 1878.07.07, CE#, 011 [Source, NA HO 140/42 Calendar of Prisoners by County - Volume Lancs., Lincoln (1878)].

gendered sodomy/bestiality'. For example, Joseph a bricklayer appeared charged with '*Buggery*', as listed in the calendar at the spring session of the Manchester Assize in 1947.¹⁰⁶ Prosecutions listed within this category totalling 139 Lancashire committals over the period. The only way to categorise these ambiguous crimes further would be future, detailed research, perhaps using press reports or the individual indictments.

The third category of buggery committals used was for those cases relating to inter-male sex; that is those offences in which the participants were males, of which examples are provided in the following Chapters. This differentiated reading of the usage of buggery prosecutions allows not only a much more accurate reading of its actual usage but also the trends in its application. For example the findings suggest that prosecutions for zoophilic sex acts in the senior criminal courts of Lancashire were on the decrease before World War One, see Chapter Three. Thus it can be argued that a majority of the post-WW1 ambiguous '*Buggery*' cases can be considered to be cases relating to inter-male sex. However, until the exhaustive process of cross-referencing with the vast bundles of indictments held by the National Archives has been undertaken a definitive statement will have to remain informed speculation.¹⁰⁷

Another offence used in prosecutions of inter-male sex, 'gross indecency', also shares some of the same absence of precision as the more serious charge of

¹⁰⁶ LCC&D Manchester Assize, 1947.04.28., CE# 31, [Source, LCA 347 QUA 3/7 Assize Calendars (Jan. 1940 to Nov. 1947.)]

¹⁰⁷ This exercise has in part been undertaken in Smith's investigation of such material for her unpublished Thesis see Smith, H. (2012) *A Study of Working-Class Men who desired Other Men in the North of England c.1895-1957*. Ph.D. University of Sheffield.

buggery; the term 'gross indecency' was created by the 1885 Criminal Amendment Act (i.e. Section 11). In all Lancashire committals where the charge of 'gross indecency' is used to describe such a prosecution, when stated in the Calendars the gender of the other party involved was always male.

For example:

[GD appeared before the Manchester Assizes in November 1903 charged with:] At Wittington on the 29th October 1903 being a male person unlawfully committed an act of gross indecency with another male person to wit AM in public.¹⁰⁸

[ST appeared before the Quarter Sessions held in Lancaster in April 1965 charged with] 'On 27 March 1964 at Lancaster being a man committed an act of gross indecency with DY a man.'¹⁰⁹

However, it is common for the calendar entries to only state 'gross indecency' under the heading 'Particular of the Office'. Given the absence of any calendar evidence to the contrary, this investigation interpreted all 'gross indecency' prosecutions as being related to inter-male sex.

Another potentially ambiguous category regarding the calendar listing of inter-male sex prosecutions was those involving males under the age of sixteen: one group involving fifteen-year-olds and a second which included males aged fourteen and younger. In such cases, the male under sixteen years of age was either listed as the victim or the perpetrator of a crime even if, as in most examples, the other male involved was sixteen or older. For example:

[HR, a fourteen year old 'Office Boy' appeared before the Liverpool Assize in October 1946 appeared in the dock with 22 year-old RP charged with serious offence of:] '30th Oct 1946, *Buggery*'.¹¹⁰

¹⁰⁸ LCC&D Manchester Assize, 1903.11.09., CE# 40, [Source. H, NA HO 140/225 (1903)].

¹⁰⁹ LCC&D Preston Co., Q.S., 1965.05.04., CE# 46, [Source, LA QJC/88 Calendars of Prisoners (1964 NW)]

[HF a fourteen year-old appeared in January 1951 at the Salford Borough Quarter Session with 20 year-old JB charged with:] 'on 25 November being a male person committing a certain act of gross indecency with another male person namely JB.¹¹¹

The capacity of the prosecution service and Criminal Justice System to consider under boys under sixteen as both potential victim and perpetrator is considered within the context of each period set out in the following chapters.

The creation of LDB1 and LDB2 relied heavily on the information listed under the calendar column heading 'Particulars of the Offence' to identify and categorise 'sex' cases. Given that this information represents a summary of the charge(s), further investigation was considered important to ascertain its accuracy. The actual charge faced by any defendant in a criminal case is contained in a court document called the 'indictment'. Although some *Calendars* re-print the indictment, most *Calendars* present a summary sometimes of one word: e.g. '*Buggery*'. Initially, a sampled test was undertaken to compare the listing of crime from different *Calendars* and those of indictment held at the National Archives, which provided to be a consistent match.

That cross-checking of the charge details entered into the calendar under 'Particulars of the Offence', with the actual charge listed in the indictment confirmed the veracity of the *Calendars* summary of the prosecutions. The court papers concerning the charge faced by Richard Haynes, a 40-year-old schoolmaster from Manchester, who appeared before The Honourable Sir W.V. Field (Justice of HM High Court) on 26th

¹¹⁰ LCC&D Liverpool Assize, 1946.10.28., CE# 66, [Source, LCA 347 QUA 3/7 Assize Calendars (Jan. 1940 to Nov. 1947)].

¹¹¹ LCC&D Salford Borough Q.S., 1951.01.08., CE# 18, [Source, GMC A/QS (Salford QS after Trial Calendars 1922-1960)].

January 1881 at the County Assize held at Manchester, typically exemplified this comparative sample of data. The charge listed in the 'Particulars of the offence' column in the calendar for the Assize was as follows:

Having at Withington on the 30th August 1880 feloniously, wickedly and against the order of nature to carnally know one Alexander Foster and then with him did commit and perpetrate the abominable crime of buggery. Further charged with having at Withington on the 12th October 1880 feloniously, wickedly and against the order of nature to carnally know John Timmings and then with him did commit and perpetrate the abominable crime of buggery.¹¹² [70 words]

However, the formal indictment faced by Richard Haynes provides a more exhaustive commentary:

[1] On 13th August 1880 at the township of Withington in the Co of Lancashire in and upon one Alexander Foster feloniously did make an assault and then feloniously wickedly and against the order of nature to have a venereal affair [.] Alexander Foster then and feloniously wickedly and against the order of nature did carnally know the said John Timmings and then feloniously wickedly and against the order of nature with the said Alexander Foster did commit and perpetrate the abominable crime of Buggery against the form of the Statute in such case made and provided. [2] On Twentieth October 1880 at the township of Withington in the Co of Lancashire in and upon one Alexander Foster feloniously did make an assault and then feloniously wickedly and against the order of nature to have a venereal affair[.] John Timmings then and feloniously wickedly and against the order of nature did carnally know the said Alexander Foster and then feloniously wickedly and against the order of nature with the said Alexander Foster did commit and perpetrate the abominable crime of Buggery against the form of the Statute in such case made and provided.¹¹³ [166 words]

Setting aside the different dating of the alleged crimes, it is important to note the consistency of key detail in the indictment and Calendar versions: including the same time, location, charge and sex of correspondents.¹¹⁴ Two further comparative

¹¹² LCC&D Manchester Assize, 1881.01.20., CE# 48, [Source, NA HO 140/54 Calendars of Prisoners for Lancs. (1881)].

¹¹³ The case of Richard Haynes. LCC&D Manchester Assize, 1881.01.20., CE# 20, [Source, NA HO 140/54 Calendars of Prisoners for Lancs. (1881)].

¹¹⁴ A number of explanations might account for the significant changes between these two documents for which the indictment is quoted here. The indictment was an early version of the charge that was amended prior to the full case being heard at trial the Manchester Assize of January 1881. However,

examples, this time from the twentieth century, also suggest the veracity of the information included in the *Calendars*.

Table 2.4 Comparative analysis of Indictment and Calendar description of crime

	Wording of the indictment	Wording of the Calendar entry 'Particular of offence'
Ex.1	"Gross indecency contrary to Section 11 of the Criminal Amendment Act 1885. John on the 22 nd October 1955 in the City of Salford being a male person committed an act of gross indecency with John, a male person" ¹¹⁵	"On 22 Oct 1955 being a male person did commit an act of gross indecency with John, a male person." ¹¹⁶
Ex.2	Richard on the 9 th day of December 1944 in the Country Borough of Oldham in the County of Lancaster being a male person committed an act of gross indecency with Joe, a male person." ¹¹⁷	On the 9 December 1944 being a male person committed an act of gross indecency with Richard a male person." ¹¹⁸

The brevity of the information provided in the twentieth century document and indictments compared to the nineteenth century versions is the most striking difference; however, the consistency of key details appears sound. Clearly, human error must have ensured that some mistakes that were made during the initial recording of the court case itself. However, that margin of error would appear too small for this large-scale exhaustive survey of cases to raise concerns that it might distort the findings. Perhaps the main cautionary note concerns the dates listed in the nineteenth century indictment documents. It is suggested, given the larger

of note concerning the integrity of such data used in this study is the consistency of advice about the crime: inter-male sex crime detailed by both the indictment and Calendar documents.

¹¹⁵ Salford Borough Q.S., 1955.11.01., CE# 19, [Source, GR 124 City of Salford Quarter Session Depositions Box 'September 1955'].

¹¹⁶ Salford Borough Q.S., 1955.12.29, CE# 19, [Source: GMC A/QS (Salford QS after Trial Calendar of Prisoners 1922-1960)].

¹¹⁷ Oldham Borough Q.S., 1945.01.11., CE# 12, [Source, GR 124 Oldham Quarter Session Depositions Box 'January 1945'].

¹¹⁸ Oldham Borough Q.S., 1945.01.11., CE# 12, [Source, GR 124 Oldham Quarter Session Depositions Box 'January 1945'].

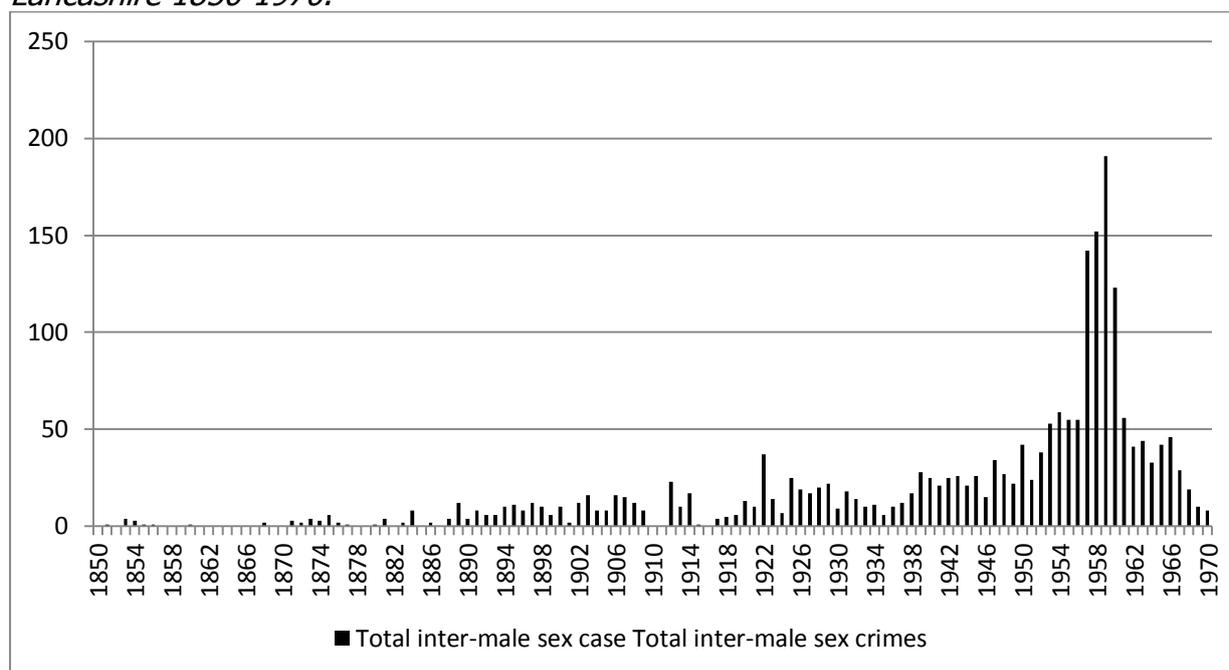
audience for the *Calendars*, that its record provides more reliable summary evidence.¹¹⁹

A number of reliability checks were employed in the creation of the databases. These included a simple 'double check' system whereby earlier transcriptions of prosecutions into LDB2 from regional Lancashire collections were revisited using the HO collection of *Calendars* held at Kew. Other than small, odd typos, the random cross-checking of previous transcriptions detected few errors.

The electronic databases created for this study allowed for a more detailed and exhaustive integration of the data for the periods set out in Chapters Three, Four and Five. This approach provided for the first longitudinal reading of incidence for any English region. Table 2.5 provides a unique overview of the frequency with which the Criminal Justice System was called on to deal with cases relating to inter-male sex.

¹¹⁹ Of all the corrections actually required none materially affected the evidence already entered into the data bases. In most cases it allowed supplementary evidence from the *Calendars* record of 'Previous Convictions' to be added when it had been deliberately omitted given archival opening time constrains during the original sweep of distant regional collections.

Table 2.6: Total inter-male sex prosecutions in the senior criminal courts of Lancashire 1850-1970.¹²⁰



In this representation of the totals of IMS prosecutions, the incidence of arrests in the first eighty-year period, 1850-1920, with a rare exception in the first decade of the twentieth century, never exceeds twenty cases a year. The margin of error involving such low numbers is such that any suggested patterns are open to a justified degree of statistical cynicism.

The inter-war period clearly shows a higher incidence of prosecutions, though never exceeding forty prosecutions a year in the Lancashire sample. It is only in the WW2/post-WW2 period that the incidence of prosecutions suggests any significant change. This longitudinal reading of the shifts and consistencies in such prosecutions is considered in more detail within each of three time periods and set out in Chapters Three (1850-1918), Four (1919-1939) and Five (1940-1970).

¹²⁰ Lancashire Committals of inter-male sex (1850-1970) Data Bases

This investigation does not concern itself directly with question of the morality or fairness of the Criminal Justice System, though it is perhaps important to note that this was not always a disinterested service. As Upchurch has shown, from at least the start of the period covered by this study - the mid- nineteenth century -the economic background of someone facing a charge related to inter-male sex was likely to influence the extent to which the case attracted a sympathetic treatment. The lowest tier of the system, the gatekeeper of the Assize and Quarter Sessions, was as, Lea suggests, presided over by a limited elite of the population:

The magistrates themselves were lay members of the propertied middle class. Notwithstanding the growing practice of appointing professional (Stipendiary) magistrates in large cities, the growth of summary jurisdiction reinforced the status of the middle class amateur - and perpetuated the role of the old elite, joined by the new urban middle classes in directly passing judgment on the poor. Thus in industrial towns the local magistrate would most likely be one of the local employers and factory owners sitting in judgment, in effect, upon his own workforce. This, in fact, rather perpetuated the eighteenth century system of local squires judging their farm labourers and tenants. Property qualifications for becoming a magistrate were abolished in 1906 and women were admitted to the Bench in 1918. Not until 1945 was the need for training of magistrates admitted! Today there are systems of nomination for the appointment of magistrates, but they are still overwhelmingly middle class.¹²¹

However, what the finding of this study suggest is that from the mid-twentieth century, the presiding Judiciary exhibited at times a more independent-minded reading of the law as it applied to inter-male sex, very rarely applying the harsher punishments that Parliament had authorised. Therefore, it would appear fair to conclude that attitudes towards inter-male sex behaviour enjoyed a wide range of responses within the justice system that might even, in certain cases, have ignored the severity demanded by the law.

¹²¹ Lea, J. (2004) *Courts and prosecution in nineteenth century England*. [Online] [Accessed 10th November 2013] <http://www.bunker8.pwp.blueyonder.co.uk/history/36807.htm>

It is also important to stress that there was nothing inevitable about the prosecution of inter-male sex behaviour. As already noted in Chapter One, Taylor's assertion of a supply-led, rather than a demand-led, policing policy necessitating criminal *justice*, is significantly limited or rationed with the majority of crime not being detected or prosecuted (i.e. the Dark Figure).¹²² Radzinowicz pointed out in 1957 that '..it may be doubted whether the amount of illegal sexual misconduct which is revealed can ever represent more than five percent of the actual crime committed'.¹²³ Therefore, only a fraction of actual criminal behaviour came to the attention of the Criminal Justice System. The Lancashire evidence uncovered for this study suggests that even when the police actually chose to arrest and prosecute cases, a trial at a senior criminal court was far from certain.

The *Calendars of Prisoners* cannot answer this question regarding the significance of the cases appearing before the senior courts relative to the inter-male sex crimes that did not reach these senior courts. Another series of little-used primary documents was employed to try and provide another source based reading of the incidence and attitudes towards inter-male sex cases to that evidenced in the *Calendars*. The *Occurrence Books* (1889-1952) of the Lancashire Constabulary, one of the earliest county police forces, provides a remarkable insight into how the police viewed such alleged crime. Primary evidence generated by the police is of particular interest in that the local police forces increasingly took over the principle role of prosecuting inter-male sex cases in the senior criminal courts during this period.

¹²² The 'Dark Figure' is a common term employed to refer to the majority of criminal behaviour in any society that is never reported, or known of and not investigated, that is not viewed as being criminal in the first place or that is otherwise redundant.

¹²³ Radzinowicz, L. (1957) *Sexual offences - A report of the Cambridge Department of Criminal Science*. London: Macmillan, p.xv.

The police *Occurrence Books* were a functional product of the Lancashire Constabulary and provide a remarkable insight into the varying treatments afforded those inter-male sex cases arrested or reported to the police in Lancashire.¹²⁴ What also made these records of particular interest was the increasing role of the police in the process of criminal prosecution, in that, as Taylor suggests, the monopolisation of criminal prosecution had important implications for the interpretation of what was and was not criminal. Each local police force largely became the arbiters of what constituted crime, including inter-male sex crime. Therefore, the records that evidenced the process by which arrests of alleged inter-male sex behaviours were defined and treated provides an invaluable insight into the contemporary attitudes of the main prosecution agency within the Criminal Justice System: the police.

What is of particular interest in the records of inter-male sex allegations is the range of police reactions to such allegations; from the pressing of the most serious charges to mitigation decisions to take little or no action. Although only a handful of inter-male sex cases are listed in the Lancashire *Occurrence Books*, they do provide a helpful and nuanced insight of police attitudes towards the prosecution of inter-male sex. One of the first entries in the Lancashire Constabulary occurrence books consulted, details the arrest for an alleged inter-male sex related offence: '26th

¹²⁴ The Lancashire Occurrence Books have survived over protracted periods of time. For example the police occurrences books for the small industrial Borough of Accrington in North East Lancashire (Lancashire Constabulary Accrington Division - Borough Police) run from 28th September 1889 to 1952. They provide an important primary source recording, in a comprehensive and consistent manner, alleged breaches of the law in any one police district. These documents, kept by each local police station, of hand written entries detail the day-to-day occurrences as reported by local people and police officers over serial years. The veracity of these records is further supported by the chronological sequential handwritten entries that would appear to limit the opportunity for subsequent alteration or editing. For example few of the volumes appear to have had pages removed, (e.g. volume pages were enumerated allowing easy identification of any such page removal). Now held at the LA series; GR55 PLA.

October 1917 at 5pm James Thomas Hargreaves' a 'labour master at the Clitheroe Workhouse'.

For that he on various dates between the 1st day of January and the Twentieth day of October 1917 at the said Borough being a male person did unlawfully commit certain act of gross indecency with another male to wit Robert Dickenson, and also that he the said James Tho. Hargreaves on various days between the 1st day of January and the Twentieth day of October 1917 at the said Borough being a male person did unlawfully commit certain acts of gross indecency with another male with John Silkwood contrary to the Statute [and committed to Manchester November Assizes 1917].

At the trial, the occurrence book entry advises that the 'Assizes Jury disagreed and prisoner was *'Bound Over'* to appear at February 1918 Assizes when the judge advised that no further evidence was offered and be discharged [On 21st February 1918].¹²⁵

However, during the inter-war period, a number of cases appear also to demonstrate a more nuanced approach by police managers towards such behaviour. As demonstrated in Chapter Four (1919-1939) there was no guarantee that a male arrested for inter-male sex crime, would result in a trial at one of the senior criminal courts. The evidence from the Lancashire *Constabulary Occurrence Books* for the inter-war period has provided a most insightful reading of the nuanced police response to such cases.

What informed the police attitudes regarding the treatment of allegations of inter-male sex behaviours is complex and perhaps in some cases unknowable unless occasionally documented in some personal memoir yet to be uncovered. Clearly,

¹²⁵ Lancashire Constabulary. (3.01.1906 to 31.12.1919) *Occurrence Book, Church Division Clitheroe Section, Register of Charges*. Entry 34. [LA PLA 28/4]

some consideration of costs and probability of the success of conviction were part of that process. However, the examples offered here help prevent a simplistic reading of a singular, or even overtly hostile, attitude of police managers towards inter-male sex crime. Critically, the trials held in the Assize and Sessions court of Lancashire relating to inter-male sex and interpreted by this study were not simply a very small minority of all such crime. These prosecutions were also the product of a police agency staffed by human beings, and thus susceptible to all flaws proscribed by the human condition, informed by the contingent geographical, political, economic and social realities and agenda of the period.

Nevertheless, some cases managed to negotiate the many obstacles and reached the senior criminal courts – the findings of this study set out the charges used and the shifting attitudes of the police together with the reactions of the ‘players’ within the Criminal Justice System. However, as will be shown, successfully getting a prosecution heard at the Assize or Sessions, meant only that the case might be heard. As will be shown in Chapter Three, a significant number of cases were thrown-out in the first period of this study 1850-1918, and even when they proceeded to full jury trial, a conviction by the jury was never certain; though it is noted in subsequent chapters that over time the frequency of convictions (‘Guilty’ pleas and verdicts) increased and was a notable development of the later period.

Throughout the period major practical economic implications confronted any agency seeking criminal prosecutions of alleged crimes. The Chief Constable of Manchester in his Annual Report to his governing Watch Committee in 1861 highlighted one of the many problems:

'Remuneration of Witnesses: '...the inadequacy of the remuneration allowed to witnesses for attending to give evidence at Sessions & Assizes. The direct effect being felt in the discharge and acquittal of prisoners through the reluctance and frequent refusal of persons concerned in criminal cases to go to prosecution when they learn how paltry they will be paid for their expenses and loss of time, and one of the indirect results of the system is undoubtedly the unwillingness of the police officers to exert themselves as formally to obtain information of robberies, the result of which will be to entail on them a pecuniary loss.'¹²⁶

Bentley, in his history of the English Criminal Justice System, provides a detailed reading of the many other significant procedural problems that might sabotage criminal prosecutions.¹²⁷ Even when a case managed to get tabled for trial and listed in the *Calendars*, the outcome was far from certain, especially with regard to inter-male sex cases in the first half of the period covered by this study.

The last large, singular body of primary enumerative evidence consulted while undertaking this research were the annual reports of one of the largest police forces: the Manchester Police Force, 1840-1970. The accuracy of the crime figures often extensively reviewed in these reports are subject to the qualifications already rehearsed. However, they can be seen as less flawed than the Home Office crime figures presented annually to Parliament. Using the 'interventionist' reading of the crime figures, they are viewed as a definitive statement of crime and operational priorities that the management of a large Lancashire police force wished advertised to the general public. These police reports also provide examples of police governing bodies intervening in day-to-day operational priorities when they conflicted with the dominant political agenda.

¹²⁶ Manchester Police. (1861) *Annual Police Report to the Watch Committee*. Manchester: Manchester Police Force, p.6. [GMC 352 2 Mi]

¹²⁷ Bentley, D. (1998) *English criminal justice in the nineteenth century*. London: Hambledon Press.

The potential and real conflict between the operational interests of senior professional police officers and the politicians governing local police forces is shown in a rare example from the later nineteenth century. It was in neither party's interests to publicly air disagreements. Invitations and excuses by those holding executive power to subject themselves to greater scrutiny and accountability is not a common feature of even 'democratic' local and national governments. In the area of 'law and order', any suggestion that it was not under secure and professional management was even more reason to afford greater discretion to any disagreements between police governance and operations.

However discreet though, such disagreements did occur and the operational advice of professional senior police managers not least on sexual policing priorities appears to have been subservient, at least in the first period of this study, to political peccadilloes. For example, the arrest figures for female prostitution in the city suggest that the Manchester Watch Committee supported the local police in targeting this type of sex crime. However, in his Annual Police Report presented to the Watch Committee on 19 October 1882, Mr Malcolm Wood, the Chief Constable of Manchester, appears to complain about the amount of time his officers spent addressing prostitution in the city:

I beg to draw attention of the Committee to table No.5 which gives the number of prostitutes and brothels in the City. It will be seen that there is an increase of no less than 61 in the number of these houses within the City over the number in 1881, and that there is an increase of 41 in the number of prostitutes. The increase in 61 brothels this year and 51 last year is a point to which I would specially call attention, as, in 1881, 89 of these houses were removed by the police and in the year under review the larger number of 114, notwithstanding which they increased at a most alarming rate. A considerable

amount of the time of the police has to be devoted in visiting and procuring evidence the only practical result of which is the removal of the occupants of the house of ill fame from one street to another, where the same lengthy procedure has to be gone through with the same apparently useless result, and so on infinitum.¹²⁸

Implicit in this commentary is the suggestion that the Watch Committee might consider deploying less police time obtaining 'the same apparently useless result' and directing that energy to other more pressing criminal activities. That is, the most senior manager of a large Lancashire police force is recommending a shift in policing operations on the basis of ineffectiveness. However, it is advice that the politicians on the Watch Committee seem to have ignored.

The following year the Chief Constable Malcolm Wood reported that increase in the policing of prostitution:

The number of prostitutes apprehended for drunkenness was 1,056, and for accosting strangers 1,416 an increase on the previous year of 60 and 545 respectively. The greater activity on the part of the police in arresting these unfortunate persons was rendered necessary on account of their resorting in great numbers in some of the principle thoroughfares of the city and by that means rendering it extremely unpleasant for respectable inhabitants to pass through them after certain hours in the evening and it is satisfactory to note that considerable improvement is observable in this respect. The efforts of the police have also been largely directed to the suppression of disorderly houses, 182 persons – 57 males and 125 females – having been apprehended and charged before the magistrates with this offence, 3 of them were committed to trial, 173 convicted and 6 discharged, the convictions by the magistrates being in most cases the full penalty authorised by the act or the committal to prison of the person charged, without the option of a money penalty. The police have removed 206 brothels and 30 houses of accommodation during the year.¹²⁹

¹²⁸ Manchester Police. (1882) *Annual Police Report to the Borough of Manchester Watch Committee*. Manchester: Manchester Police Force, p.vi.

¹²⁹ Manchester Police. (1883) *Annual Police Report to the Borough of Manchester Watch Committee*. Manchester: Manchester Police Force, p. vi.

The review of primary material of criminal prosecutions in general and specifically with regard to inter-male sex appears to consistently highlight the many obstacles faced by the prosecution agency when seeking to bring a case to court. A number of these operational and procedural obstacles are discussed in subsequent chapters. This chapter's discussion of the evidential review undertaken together with the of the methodology developed and applied to exploit that information, provides an insight into the scale of the operation undertaken to furnish the findings set out in the subsequent chapters. The goal for the Lancashire database of committals of inter-male sex related behaviours generated by this means, is to have it made available to all interested scholars and others via the internet so that so many years of endeavours are further justified by helping light the way for others.

This investigation now turns to the question of how the prosecutions that reached the Lancashire Assize and Sessions court fared with regard to the main agents and functions of the Criminal Justice System: prosecution, defence, adjudication and sentencing 1850-1970.

Chapter 3 'Nowt much': The Indictable Prosecution of Inter-Male Sex 1850-1918.

This chapter discusses the practical implementation of Parliament's sexualisation and thereby criminalisation of inter-male sex behaviours between males who were arrested and committed to trial between the mid-nineteenth century and the end of World War One, 1850-1918. That reading is set out in four distinct parts reflecting the four key constituent functions or players within the Criminal Justice System and principally recorded in the *Calendar* evidence: the policing and prosecution, defence, adjudication and finally the presiding judiciary.

The choice of the mid-nineteenth century as the starting point for this investigation was informed by both practical and historiographical considerations. As noted in Chapter One, a goal of this study was to make a contribution to the perceived structural weaknesses of the historiography and not least the preoccupation and chronological focus on the final decades of the nineteenth century.

The Attitudes of the Prosecution and Policing Agencies (1850-1918)

It is the rarity of criminal indictable prosecutions for inter-male sex related behaviours that marks-out the first decades of this study. A cursory review of the evidence for pre-1850 Lancashire pre-1850, suggests this was a continuation in the way in which such behaviour was investigated, prosecuted, punished and viewed during the period.¹³⁰ As the findings of this study suggest, there appears to have

¹³⁰ For example only six men during the first half of the nineteenth century are listed in the records of execution for Lancashire Castle, the traditional place of judicial execution in Lancashire, as being judicially tortured and put to death for 'sodomy'. Those incidences are limited to two years, 1806 (i.e.

been no great enthusiasm by private wealthy individuals or organisations to invest resources in the indictable prosecution of such behaviour through the Criminal Justice System, see Table 3.1 below.

It is perhaps useful to note that this apparent inactivity shares an echo in the finding of this study, especially for the period 1850 to 1890, which at least invites the suggestion that the arrest, prosecution, conviction and harsh punishment of males for inter-male sex was not the most pressing priority in Lancashire during this period; this at a time when the Criminal Justice System was experiencing a considerable boom in business. By 1850, Parliament was being advised of a '20 per cent' increase in the workload of the court system and D'Cruze's work on the extensive use of Lancashire summary courts of this period certainly does nothing to challenge this reading.¹³¹ Therefore, an increase in all categories of crime, including

the highly atypical 'Warrington Case') and a single hanging in 1810, both years falling into the period of national emergency relating to Napoleonic Wars 1803-1815. Thus for the remaining forty-eight years, including the later decades 1820s, 1830s (i.e. the last execution of men for sodomy was of James Pratt and John Smith in November 1835 thereafter such sentences were automatically commuted by the Home Secretary) there is no record of hangings at Lancaster for crimes relating to inter-male sex (i.e. sodomy). [See: Goodier, C. (2014) *Executions In Lancaster 1801-1910*. Lancaster Castle Museum. [Online] [Accessed 2nd November 2014] <http://www.lancastercastle.com/executions-in-lancaster-1801-1910>.] 13th September 1806, Joseph Holland, Samuel Stockton and John Dowell for Sodomy & September 27th Thomas Rix and Isaac Hitchen for Sodomy, 1810 - April 21st Adam Brooks for Sodomy & 1830 - September 18th Joseph Rowbottom for Bestiality [See Goodier, C. (2014) *Executions In Lancaster 1801-1910*. Lancaster Castle Museum. [Online] [Accessed 2nd November 2014] <http://www.lancastercastle.com/executions-in-lancaster-1801-1910>.] The 1806 hanging of five of these men resulted from one policing action by magistrates on a house kept by Isaac Hitchen in Great Sankey, a village to the west of Warrington, in the South of the county. For a history of this 1806 case see; Cocks, H. (2006) 'Safeguarding Civility: Sodomy, Class and Moral Reform in Early Nineteenth-Century England.' *Past and Present*, 190(1) pp. 121-146.

¹³¹ Howard notes this increased business for the courts: 'Between 1805 and 1842 the number of trials in higher courts rose seven-fold, while the population increased only by half'. In 1850, the Home Office also reported to Parliament a significant increase of committals during the period, '...the increase in committals is made apparent, the five years 1845-49 still showing an increase of no less than 20.8 per cent above the five years 1835-39'. While the statistics produced by the Home Office can be and are problematic in that government and Parliament were notified of a significant increase in committals it is worthy of note. [See HM Home Department (1850) *Parliamentary Report entitled: 'Tables showing the number of criminal offenders committed for trial or bailed for appearance at the assizes and sessions in each county* [Parliamentary Paper England and Wales 1227]. In the year

the incidence of inter-male sex related crime, might be expected. However, this study found little evidence of such an occurrence, as set-out in Table 3.1

*Table 3.1 Comparative overview of inter-male sex related Lancashire committals 1850-1918.*¹³²

	Total number of inter-male sex related prosecution [DB2:Catogiores:3-6]	Total number of Assize & Quarter Sessions Calendars sampled	Total number of <u>all</u> criminal prosecutions as listed in the Lancashire Calendar sample
1850-1859	8	394	19,998
1860-1869	3	342	16,023
1870-1879	13	475	21,881
1880-1889	26	425	17,759
1890-1899	90	619	14,516
1900-1909	96	577	10,493
1910-1918	52	347	4,518
Totals 1850-1918	288	3,179	105,188

These figures, taken from an overwhelming majority of the senior criminal court sessions held during this period certainly do not support any suggestion of a ruthless targeting of inter-male sex crime for prosecution using the most serious indictable charges. Indeed, the fact that in no one decade during this long period, did committals exceed ninety-six and were as low as three for a large industrial county does suggest an ongoing lack of appetite for such prosecutions.¹³³ These figures are more remarkable given that from the enactment of the 1885 Criminal Law

1849, and the result of the proceedings: made out by order of Her Majesty's Principal Secretary of State for the Home Department, from the criminal registers kept in that office'. D'Cruze, S. (1999) 'Sex, Violence and Local Courts: Working-class Respectability in a Mid-Nineteenth Century Lancashire Town.' *British Journal of Criminology*, 39 (1) pp. 39-55.

¹³² Lancashire Committals of inter-male sex (1850-1970) Data Base Two & Three.

¹³³ Clearly without quantitative readings of the incidence of inter-male sex related committals of earlier nineteenth century Lancashire, not yet available, such informed speculation must remain simply that.

Amendment Act, not only had all inter-male sex behaviour been criminalised but its prosecution was made easier, with only 'indecenty', not any specific action, having to be proved.¹³⁴

The general increase in court business was in large part reflective of the new nationwide police service made up of individual forces for each area of the country, which also by default if not design, functioned as *de facto* public prosecution services. The history of the advent of a new quasi-military policing agency from the late-1820s in London and then over the next few decades throughout the country, is a well-rehearsed part of the narrative of the period. The noted early increase in court business cannot but have been assisted by the introduction of these new police forces. However, the question as to the primary motivation of the reform of policing is a moot and relevant point. Was the general improvement of the implementation of the criminal code the principle sought outcome of these reforms? If so, why does this study show such a rarity of prosecution for the serious crime of sex between males during the second half of the nineteenth century? Clearly there is no one simple either/or answer to this intriguing question but there is certainly evidence to suggest that a key preoccupation of police reforms was a more comprehensive and systematic control of organised political protest of the period. As Hobsbawm notes: 'It is the era of the triumphant bourgeoisie...The middle classes of

¹³⁴ The 1885 Criminal Law Amendment Act was primarily a measure to protect girls by raising the age of consent; however, a late amendment had added the criminalisation of all 'gross indecenty' between males. Section entitled '*Outrages on decency*'; reads: '(11) Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecenty with another male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.' Criminal Law Amendment Act 1885. (48&49, Vict. c.69).

Europe were frightened and remained frightened of the people: "democracy" was still believed to be a certain and rapid prelude to "socialism"...The fear of revolution was real, the basic insecurity it indicated, deep seated.'¹³⁵ The decades following the military defeat of Napoleonic France, did not extinguish the revolutionary manifesto that had precipitated that war, *liberty, equality, fraternity*. The years after Waterloo witnessed a fierce campaign for the establishment of democratic government that enjoyed widespread popular support in Lancashire.¹³⁶ Within this context it would certainly be understandable for government to seek greater control in the face of determined popular political challenge not least when executive authority rested largely on 'tradition' rather than democratic credentials and transparency. Within this context it is telling that some of the most high profile examples of policing during the early decades of the nineteenth century, concerned the bloody and deadly intervention of state military power unleashed against popular protest for electoral equality. As is often the case in such violent episodes, the outcomes include a criminal investigation of protestors sometimes followed by the criminal trials of 'ring leaders.'¹³⁷ Therefore one way of interpreting the rarity of criminal inter-male sex related behaviours during the mid-century period is that they

¹³⁵ Hobsbawn, E. (1997) *Age of Revolution: 1789-1848*. London: Weidenfeld & Nicolson, p. 3.

¹³⁶ That was marked firstly by success in 1832 with the very limited extension of the franchise and ultimately by the defeat in the late 1840s of the popular Chartist movement. It was that latter political and direct action campaign in Lancashire, promoting universal political and economic equality that is exemplified by mass protest meetings such as that at St Peter's Field (Manchester 1819), Kersal Moor (1838) and the widespread response especially by millworkers to the 1842 'General Strike'. [Briggs, A. (1959) *Chartist Studies*. London: Macmillan; Royle, E. (1996) *Chartism*. London: Longman; Walton, J. (1999) *Chartism*. London: Routledge and Hobsbawn, E. (1962) *Age of Revolution: Europe 1789-1848*. London: Weidenfeld and Nicolson.]

¹³⁷ This necessitated validating and congratulating the Lancashire Magistrates responsible for the 'Peterloo Massacre' and keeping a close watch on overtly political trials of Chartist protesters. For example, following the 'Newport Rising' of 4th November 1839, twenty-one 'Chartists' were charged with high treason, with the three leaders, John Frost, Zephaniah Williams and William Jones, being convicted at the Monmouth Assize for high treason and sentenced to be hanged, drawn and quartered at Monmouth. The government eventually commuted the sentences of each to transportation for life. [See Chase, M. (2007) *Chartism: A New History*. Manchester: Manchester University Press, pp.137-40].

were not seen as threatening to the status-quo and as such, their prosecution was not a political priority. Another reason for such rarity of cases could lie in the economics of criminal prosecutions that was not a cheap process. Until the end of the nineteenth century the Criminal Justice System largely depended on privately motivated individuals and organisations to fund such cases. There appears to have been little support by local or national government to spend public funds to pay for committals of inter-male sex cases to trial. The possibility that the topic of inter-male sex crime was not a major concern to the ruling elites of Lancashire during the period is also worthy of consideration to account for such a low incidence of prosecutions.

The Lancashire ruling elites, who were empowered by successive governments to raise their own new and directly accountable, quasi-military police force, appear to have been as enthusiastic as parliament to see their introduction into the county.¹³⁸ These new police forces were not universally welcomed; they were seen by many as an unnecessary expense. Protests by Lancashire ratepayers in the 1840s were part of wider opposition to the new police forces and were sometimes physical in nature. Perhaps such protest was directly related to political considerations but was as likely to be due to less coherent factors. Emsley notes: 'Assaults...of policemen formed a significant percentage of nineteenth century assaults and declined at a slower rate

¹³⁸ The police forces operating in Lancashire in 1852 together with their establishment: Lancaster Constabulary (525), Blackpool Borough Police (13), Bolton Borough Police (25), Lancaster City Police (10), Liverpool City Police (806), Manchester Borough Police (445), Oldham Borough Police (22), Preston Borough Police (30), Salford Borough Police (39). Source: HM Home Department (1952) *Police Returns*, Parliamentary Papers, 490, p.6.

than common assault'.¹³⁹ Therefore, legitimacy was a major priority for the new police forces, which no-doubt impinged on operational decisions including decisions about whether to target or ignore victimless, covert inter-male sex behaviours occurring about their locales.¹⁴⁰ Indeed Emsley suggests 'working-class suspicion of the new police never died out during the nineteenth century'.¹⁴¹ Walter Greenwood's classic novel of working-class life opens with a stinging criticism of the very existence of the local police force and closes with the police manslaughter of one of the main characters.¹⁴²

As noted these new police forces introduced by default, if not by direct intention, a new level of coordinated policing, coupled with a public prosecution service

¹³⁹ Emsley, C. (1987) *Crime and Society 1750-1900*. 2nd ed., London & New York: Longman, p. 46. A regional example of this form of direct protest against the presence of police in a community is noted by Chief Constable of Manchester Edward Willis in '... Introductory Comments' to this 1847 Annual Report under the heading: 'Legitimacy of the Police': "As I have been informed that both prior to and during the years 1840, 1841 & 1842... the assaults on the police were so numerous ...induced the impression...that the best feelings on the part of the inhabitants towards the police did not exist...such has been the improved feeling manifest on the part of the inhabitants that the charges of assaults [on the police] during each successive year have...year considerably reduced." Manchester Police. (1847) *Annual Report to the Watch Committee for the Borough of Manchester, Criminal Statistical Returns of the Manchester Police for the year 1847*. Manchester: Watch Committee, pp.5-6. Manchester City Archive 352 2 Mi, 1848.

¹⁴⁰ From at least the early nineteenth century the authorities had known of many of the meeting places for males seeking-out quick consensual anonymous sexual encounters [see testimony of Thomas Rix reported by Cocks] and the reporting of the Hulme Fancy Dress Ball raid in 1880's which suggests a sound police knowledge of events and meeting places of sex and gender diversity [For example: *Manchester Gazette & General Advertiser*. 1st October 1880; *The Manchester Weekly Post*. 27th September 1880; *The Manchester Evening News*. 27th September 1880; *The Manchester Evening News*. 30th September 1880; *The Manchester Guardian*. 27th September 1880; *The Manchester Guardian*. 1st October 1880; *The Manchester Examiner & Times*. 27th September 1880; *The Manchester Examiner & Times*. 1st October 1880.

¹⁴¹ Emsley, C. (1987) *Crime and Society 1750-1900*. 2nd ed., London & New York: Longman, p. 32.

¹⁴² Greenwood, W. (1933) *Love on the dole: a tale of two cities*. London: J. Cape. A minor character that helps open the novel 'Blind Joe' (The 'knocker-upperer') voices his hostility of the police to a Salford Police Constable '...i'n' rest f' t' wicked, lad, 'cept them as is bobbies, an' they ne'er do nowt else' (p.13) and the novel climaxes with the dying Larry Meath, receiving blows to the head from a policeman's truncheon during a NUWM march on Salford Town Hall. A similar contemporaneous and critical Lancashire reading towards the police by the working and pauper classes can be also found in Roberts', *The Classic Slum*, 'no-one in our Northern Slum, to my recollection, ever spoke in fond regard, then or afterwards, of the policeman...' Roberts, R. (1971) *The classic slum: Salford life in the first quarter of the century*. Manchester: Manchester University Press, pp.99-100.

previously unknown in many parts of the county. By the end of the century, the reported total number of police forces in Lancashire had grown to twenty-two, with a total establishment of over five and a half-thousand officers (i.e. 5,807) being reported.¹⁴³ However, despite this marked increase in the capacity to police and prosecute with public funds the committal figures remained remarkably low, as shown in Table 1.3 above (Chapter One p.51)

Despite the many reforms the Criminal Justice System underwent during the nineteenth century, the main goal of that system was largely untouched and remained preoccupied with certain forms of property crime, together with any political threats to the power structures that underwrote that commitment to property.¹⁴⁴ Policing focused on the theft of private property as reflected by the

¹⁴³ The *Reports of the Inspectors of Constabulary* includes mention of the following police forces operating in Lancashire together with their establishment totals towards the close of the 19th century:- Lancaster Constabulary (est. 1402 officers), Accrington Borough (est. 43 officers), Ashton-under-Lyne Borough (est. 44 officers), Bacup Borough (est. 26 officers), Barrow-in-Furness Borough (est. 60 officers), Blackburn Borough, (est. 140 officers), Blackpool (est. 75 officers), Bolton Borough (est. 166 officers), Bootle Borough (est. 72 officers), Burnley (est. 97 officers), Clitheroe Borough (est. 11 officers), Lancaster City Police (est. 38 officers), Liverpool City Police (est. 1,460 officers), Manchester City (est. 1,000 officers), Oldham Borough (est. 158 officers), Preston Borough (est. 116 officers), Rochdale Borough (est. 81 officers), St Helens Borough (est. 87 officers), Salford Borough (est. 330 officers), Southport Borough (est. 70 officers), Warrington Borough (est. 69 officers), Wigan Borough (est. 68 officers). [HM Home Department (1900) *County and Borough Police; Reports of the Inspectors of Constabulary* (1899-1900), pp-103-136. & HM Home Department (1901) *Reports of Police Commissioners*, XXXII. p.200.

¹⁴⁴ For example some forms of what is today referred to as *white collar crime* (i.e. fraud, embezzlement, etc.), were not even criminalised during the period. Emsley notes; 'It is clear that considerable sums were embezzled and otherwise fraudulently appropriated in the late Hanoverian and Victorian period...The Law was very slow to act against abuses in the commercial world.' [Emsley, C. (1987) *Crime and Society 1750-1900*. 2nd ed., London & New York: Longman, pp. 6-7]. The community of such 'white collar crime' is all the more remarkable given the findings of one of the rare historical investigations into this criminal phenomena by Siddall who concluded that 'Middle-class crime displayed a greater criminality than the lower classes and that middle-class crimes represented a much larger financial loss'. [Sindall, R. (1983) 'Study of Middle-Class Crime in Nineteenth Century England.' *Criminal Justice History*, 4, pp. 23-40. See p.36.] NB: The review of thousands of Lancashire Calendars of Prisoners over the 121 years of this study identified only a handful of committals relating to such crime. Of the many thousands of Lancashire Calendars of Prisoners reviewed as part of this investigation the dominant feature was of committals relating to property. When reviewed the occupations of those charged with property crime, usually described employment in less well paid

overwhelming committal categories listed in the *Calendars* throughout the period of this study. The functional reason for the very low incidence of committals for 'sex' offences in general, including inter-male sex related behaviours, was quite simply that they were not the key and over-arching practical priority of the criminal code; simply put, inter-male sex crimes were not property crimes. Indeed, the handful of male-female sex related prosecutions during this period can be read predominantly as property related offences rather than sex crimes.¹⁴⁵

It is only by seeking to place the evidence of the committals for inter-male sex related behaviours within the overall historical context of the period and specifically within the dynamics of the Criminal Justice System and its prosecution agents, increasingly in the hands of the local police services, that the findings of this investigation can be reliably interpreted. Clearly, a contextual awareness of the priorities and operational limits of the agencies seeking out prosecutions together with a reading of the overarching functional priority of the Justice System to protect private property is vital in interpreting such primary evidence. This study adds a unique insight into the attitudes and role of the other important and constituent players within the Criminal Justice system: the defence, the jury and the presiding judges in the treatment of inter-male sex related prosecutions.

jobs, thereby underscoring the suggested focus on 'blue-collar' rather than 'white-collar' property crime.

¹⁴⁵ For example the sections 48 to 56 of the 1861 Offences Against the Person Act entitled '*Rape, Abduction and Defilement of Women*' focus repeatedly on the question of 'ownership' of the women. For example paragraph 53 states 'Abduction of Women... Woman, being under the Age of Twenty-one under Age Years, out of the Possession and against the Will of her Father or Mother, or of any other Person having the lawful Care or Charge of with Intent to marry or carnally know her, or to cause her to be married or carnally known by any other Person, shall be guilty of a Felony.' Offences Against the Person Act 1861. (24&25 Vict., c.100) London: HMSO. Upchurch has noted that in his study of inter-male sex prosecutions at the Metropolitan Magistrates Courts in the mid-ninetieth century it is not uncommon for fathers to be the principle agent seeing redress for the alleged defilement of his son. [Source private correspondence with the author.]

However, it is perhaps useful to highlight again the apparent rarity of the substantive topic: the committals for consensual and coercive inter-male sex related behaviours of the period. That is of the 105,194 committals scheduled for trial at the senior criminal courts of Lancashire for the period 1850-1918 only two-hundred and eight-eight cases were identified as relating to inter-male sex offences. What perhaps makes these figures all the more intriguing, is the much higher incidence recorded in the succeeding periods of this investigation and discussed below (see Chapter Four and Chapter Five).

As noted in Chapter One, perhaps one of the more unhelpful interpretations of any crime figures is that they reflect some a measure of the degree of criminal behaviour occurring at any one time in a particular society (see above Table 1.3 'Total of all criminal prosecutions (Census Years) in senior criminal courts of Lancashire mapped against Lancashire census population (1951-1971)' p. 51). This study therefore simply adds to the reading of official crime figures as being highly misleading as long rehearsed by statisticians, criminologists and historians of crime.¹⁴⁶ Indeed to counter such misreading reference is often made to the abstract concept of the 'dark figure': the unknowable majority of unknown and unknowable criminal behaviour.

¹⁴⁶ The early pioneers of criminology, Radzinowicz (University of Cambridge) and Sellin (University of Pennsylvania) both highlighted the inaccuracy of the crime figures early on their academic careers. E.g. Sexual offences, a report of the Cambridge Department of Criminal Science 'Report of the University of Cambridge. Department of Criminal Science' Preface by L. Radzinowicz (London: Macmillan; 1957) and Sellin, Thorsten (1931) 'The Basis of a Crime Index' *American Institute of Law & Criminology*. pp. 26-38.

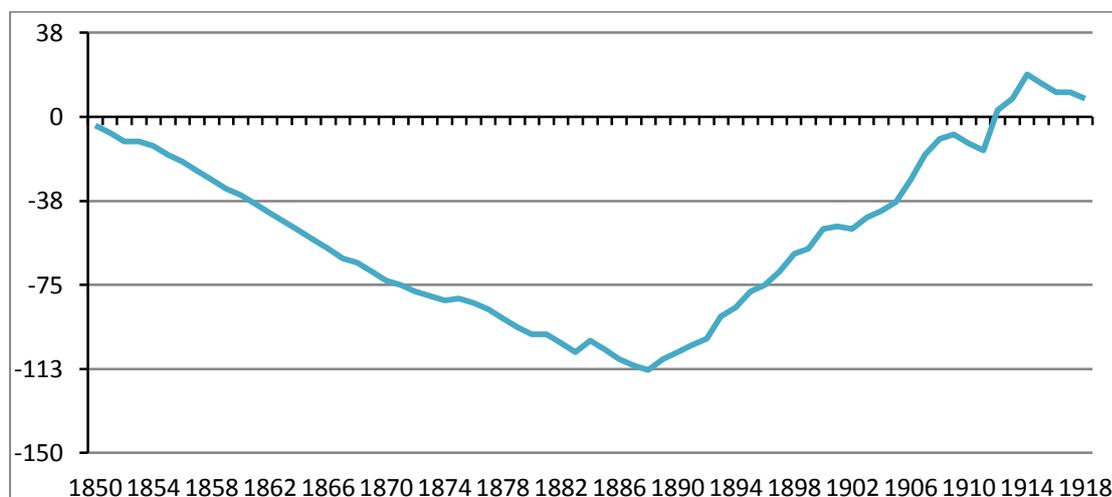
Thus official crime figures would appear not only to be an unrepresentative reading of actual crime but also the product of a selective process by which the managers of what were for most of this period, the official local police forces, made serial decisions about operational policing and prosecution practice. This rationing of prosecutions points to a highly selective exercise by which certain crimes, primarily property related, were sent for trial at the assize and quarter sessions.

However, that non-property sex related crimes such as consensual and coercive inter-male sex crime managed to appear, albeit fluctuating into the pages of the Calendars between 1850-1970, suggests the ongoing and fluctuating prosecution of such behaviours. Thereby reflecting the influences and priorities among the agencies responsible for such prosecutions through the period. That the frequency of prosecutions fluctuated during the period of this longitudinal study is specifically highlighted by the cusum calculations in Table 3.2, below, graphically demonstrating the underlying pattern of the 288 inter-male sex Lancashire committals identified.

Firstly it is important to note that that there is nothing to suggest that such behaviours, both coercive and consensual, were a major priority for prosecution agencies in Lancashire at this time. Indeed, for many of the decades in question the suggestion of incidence is of committals *bumping along the ground* and of near redundancy of the law.¹⁴⁷

¹⁴⁷ This has led at least one scholar to question whether such rare Lancashire committals rates might be better understood as exemplary 'show-trials'; question by Prof Charles Upchurch at the presentation of a related academic paper by the author at the *What is & How to Do LGBT History Conference* in Manchester, 15th February 2015. That is, keeping the law from redundancy by ill-use, almost serving as a token demonstration that the law had some moral spiritual authority beyond its focused protection of base materialism against human need.

Table 3.2 Cusum Analysis of incidence of the Lancashire sample of indictable inter-male sex prosecutions: 1850-1918



This cusum analysis shows an underlying pattern of committals that for the first four decades, 1850 to 1890, demonstrates a fairly consistent pattern of incidence.

Between the decades 1890 and 1914 that consistency is arrested with a shift in trajectory indicated. This change, when compared with the breakdown of incidence figures in Table 3.1, suggests a steady, but limited, increase of such committals.

This slight-yet-significant increase in the incidence of inter-male sex prosecutions endorses Cook's finding for London between 1885 and 1914 that the 'arrest and prosecutions ...become more frequent over the period'.¹⁴⁸ What these Lancashire finding add is a qualification of the scale of that increase.

In explaining that post-1880s' recorded increase, it has been argued that prosecutions of inter-male sex could be linked to the advent of an individualised and societal sexual labelling that sought to define individuals by their sexual proclivities and desires. A process that Weeks suggests in embryonic form can be witnessed

¹⁴⁸ Cook, Matt (2003) *London and the culture of homosexuality 1885-1914*. Cambridge: Cambridge University Press, p.48.

from the eighteenth century...`that was to flourish in the proliferation of homosexual identities in the twentieth century.¹⁴⁹ Weeks, for example, notes that, 'by the 1890s new responses to homosexuality were clearly emergent.'¹⁵⁰ Such abstraction 'opened-up the possibility of new modes of self-articulation'¹⁵¹ however while such identity politics would become the common currency towards the end of this study it appears no more than a novel notion at this time.¹⁵²

Indeed this study suggests is that while a very small numbers of people within Lancashire were investigating such concepts (e.g. such as the Eagle Street group in Bolton instigating identity through the works of Whitman and writing and visits to Carpenter) the emergence of 'homosexuality' appears to have had little wider impact within the county.¹⁵³ This itself raises the wider and intriguing question of the relevance - if any - of the 'homosexual' identity to the incidence of inter-male sex. However, a question that is regrettably beyond the scope of this current investigation and as with all such hypotheses, providing supporting evidence is much more problematic. As Walton and more biographically the Salford born slum-dweller Roberts suggest, the everyday grid of survival in the new urban centres of

¹⁴⁹ Weeks, J. (1986) *Sexuality*. London: Routledge, p34.

¹⁵⁰ Weeks, J. (1990) *Coming Out: Homosexual Politics in Britain from the Nineteenth Century to the Present*. 2nd ed., London: Quartet Books, p.19.

¹⁵¹ Weeks, J. (1989) *Sex, Politics and Society. The Regulation of Sexuality since 1800*. 2nd ed., New York: Longman, p.102.

¹⁵² That is not to suggest that such self-identity was unknown. George Ives and more publically Edward Carpenter were clearly defining and re-defining 'sexuality' directly informed by their own feelings and desires and E.M Forster penned his 'homosexual' love story 'Maurice' as early as 1913–14. [See Part II 'Pioneers' in Weeks, J. (1991) *Coming Out: Homosexual Politics in Britain from the Nineteenth Century to the Present*. 2nd ed., London: Quartet Books, pp.45-84. Forster, E (1971) *Maurice; a novel*. New York, Norton.] However as Smith has suggested by the court testimonies of those arrested for inter-male sex crime of the later period 1940-1970 (discussed in Chapter five) the adoption of such self-categorisation by those who were desirous of inter-male sex often rejected such sexual personification. [See Chapter Five below & Smith, H. (2012) *A Study of Working-Class Men who desired Other Men in the North of England c.1895-1957*. Ph.D. University of Sheffield].

¹⁵³ Cocks, Harry (2001) 'Calamus in Bolton: Spirituality and Homosexual Desire in Late Victorian England.' *Gender and History*, 13(2) pp.191-223.

Lancashire was the overarching consideration for most people and perhaps not imagining on how their sexual desires might conflict with 'bourgeois domestic ideals. That is 'ideal' and 'respectable' sex lives were, 'dependent upon material conditions – which were denied poorer groups.' Notwithstanding the improvements in domestic working-class life, it was the wretchedness of so many urban dwellers, even at the end of the century, which explained the failure of so many to follow 'normal' sexual codes.'¹⁵⁴

However, with regard to the Lancashire committal data, a number of much less abstract, practical, persuasive considerations can help to explain both the relative rarity of the committals for inter-male sex-related behaviours and the slight increase about the 1890s. Arguably, the creation of the first police Criminal Investigation Department within the Metropolitan Police Service in 1878 with a national remit, had potentially more practical impact on crime figures than pioneering abstract constructions relating to sexual identity.¹⁵⁵

The most obvious reason for the low committal figures for inter-male sex related cases during this earlier period, 1850 to 1890, was that such prosecutions were left in the hands of the traditional agency of prosecution: private, individual and collective, enterprise still dominated such cases; bringing such cases to trial in the higher courts was, as remains in the civil courts, a private matter. The number of inter-male sex-related cases which were or were not being prosecuted in the lower summary courts, using generic by-laws targeting 'nuisances', is not known. However,

¹⁵⁴ Walvin, J. (1988) *Victorian Values*. London: Cardinal, p. 130.

¹⁵⁵ Emsley, C. (1987) *Crime and Society 1750-1900*. 2nd ed., London: Longman, p. 237.

what is certain is that they did not include trials for 'buggery' or later for 'gross indecency', which both demanded trial in the senior courts. A measure of the seriousness with which inter-male, sex-related buggery committals were viewed in Lancashire, is reinforced by the findings of this study. That is, all such committals were reserved exclusively for the most senior criminal courts, the Assizes, until the 1870 and then after that only gradually were the lower courts of quarter session allowed to deal with such cases.¹⁵⁶

The introduction of a nationwide, full-time quasi-military agency with the exception of London¹⁵⁷ dedicated ostensibly to crime 'prevention', did introduce a new dynamic agency into the prosecution of crime. This provided for the first time the potential for criminals suspected of all categories of crime to be arrested and prosecuted on a county and country-wide basis, including inter-male sex crime. The booming criminal business that was perhaps in part, directly related to the introduction of this new public police service appeared in many part of the country. However, the distinction needs to be drawn between the types of prosecutions being pursued by these new police forces. Historians do not agree as to just when police or public sponsored prosecutions in the senior criminal courts overtook private enterprise as the main

¹⁵⁶ In 1871 the County Quarter Session sitting for cases from the Salford Hundred at Manchester tried John Sore (41) 'Salt Boiler' for 'At Bury on the 26th December 1870 unlawfully did make an assault upon one Joseph Shaw with intent then with him feloniously to commit and perpetrate the detestable and abominable crime of buggery', convicted and sentenced to 1years imprisonment [LCD&E: Salford 100 Co. QS. 1871.01.09. CE# 08 [Source, National Archives HO 140/14 Calendars of Prisoners for Lancs. (1871)] The next time there is a record of non-Assize courts trying an inter-male sex Buggery case is in 1890 of George Potter (42) 'artist' at the County Quarter Session at Lancaster, who was acquitted by the jury [LCC&D; Lancaster Co. Q.S. 1889.12.20. CE#, 08 [Source, National Archives HO 140/113 Calendar of Prisoners by County - Cos Lancs. - Lincoln Note: 1 Volume 1889)].

¹⁵⁷ The Metropolitan Police was from its beginnings an instrument of central government its commissioners being directly appointed and overseen by the Home Office (i.e. Home Secretary) on behalf of parliament as set out in the Metropolitan Police Act 1829 (10 Geo.4, C.44) . For further discussion on the topic see Lyman, J.L. (1964) 'Metropolitan Police Act 1829 Journal of Criminal Law and Criminology.' *Journal of Criminal Law and Criminology*, 55 (1) pp. 141-154.

agency for the bringing of prosecutions before juries. Godfrey has proposed the 1880s as a tipping-point between private and police sponsored cases:

...by 1880, police had in many cases assumed the role of prosecutor... that crime rates were increasingly subject to the policies and practices of the police and other appointed officials and that the role of the victim as active prosecutor had become almost redundant by World War One.¹⁵⁸

What appears clear is that the principle motivating agency and funding prosecutions, including committals, shifted radically during this period, from one reliant on private

¹⁵⁸ Godfrey, B. (2009) 'Changing Prosecution Practices and their impact on Crime Figures 1857-1940.' *British Journal of Criminology*, 48, pp.171-189 [p.171]. Indeed Howard has been quite emphatic in locating the limited prosecution of crime in the senior courts of Assize and Quarter Sessions to the deliberate management of such expensive court cases by the police. Taylor's argument is that financial considerations were the dominant feature in the limiting of all indictable prosecutions and accounts for the numerical consistency of such cases despite the significant ongoing growth of population during the period. Thus it is a supply-led not demand-led policing that is defined by Taylor as 'Rationing crime'. This theme has been developed in subsequent work and by others. [See: Taylor, H. (1999) 'Forging the job: a crisis of 'modernization' or redundancy for the police in England and Wales, 1900-39.' *British Journal of Criminology*, 39 (1) pp. 113-135; Taylor, H. (1998) 'Rationing crime: the political economy of criminal statistics since the 1850s.' *The Economic History Review*, 51 (3) pp. 569-590; & Taylor, H. (1998) 'The Politics of the Rising Crime Statistics of England and Wales 1914-1960.' *Crime, History and Societies*, 2 (1) pp.5-28. Also See Williamson, T. (2003) 'Policing a Myth, Managing an Illusion: Victorian and Contemporary Crime Recording.' In Rowbotham, J. & Stevenson, K. (eds.) *Behaving badly: social panic and moral outrage-Victorian and modern parallels*. Aldershot: Burlington, VT: Ashgate, pp.47-62. A criticism of this 'managed' reading of the Victorian crime figures can be found in Morris, R. (2001) 'Lies, damned lies and criminal statistics: Reinterpreting the criminal statistics in England and Wales.' *Crime, History & Societies*, 5(1) pp. 111-127. Certainly this theme of apparent institutional parsimony is underscored by the fact that a number of the key functions of the courts system were fulfilled by volunteers, lay-justices appointed from the local landed and business ruling elites to preside over the Quarter Session and lower courts, jury members drawn from the more respectable and wealthier lower classes. The only paid members of the Criminal Justice System were the High Court Justices that presided at the Assize and the Assize Clerk (a crown appointment). For example with the exception of the Lancaster Castle in which the Lancaster Assize met, the Cooperations of Liverpool and later Manchester paid for and built the architectural splendours that housed the Manchester and Liverpool Assize (i.e. St Georges Hall, Liverpool and the Assize Courts in Manchester). Given the infrequency of court meeting and the focus on saving money, the Town Clerk usually doubled as Clerk to the Borough Quarter Sessions. More recently Churchill, has provided a critical critique of this reading of this date, while still noting a significant shift in the agency of prosecution towards the police, he notes that: '...existing research suggests that the police directed most theft prosecutions only by the 1880s and that charges of common assault were still routinely handled by private individuals by this point. In other words, police prosecution developed piecemeal and therefore remained a significant role for victims of crime in bringing cases before magistrates. Such a chequered path to police control reveals the flimsy empirical basis for the abrupt shift in the terms of historiographical reference which divides eighteenth-and nineteenth-century criminal justice history'. [See: Churchill, D. (2014) 'Rethinking the state monopolisation thesis: the historiography of policing and criminal justice in nineteenth-century England.' *Crime, History & Societies*, 18 (1) pp.131-152.] This qualified and more nuanced reading of the lack of different local police forces following different polices is also supported by the findings of this study. The committal rate by geographical area and thereby by inference of different forces of inter-male sex cases for trial in the higher courts as will be shown is divergent not synchronistic.

enterprises towards a singular public agency. This being the case, it is reasonable to assume that the committal records of the mid-nineteenth century are more likely to reflect the motivations of individual private prosecutors, whereas the committals from the later period increasingly reflect the more singular institutional interests of the local police forces.

Therefore, early Lancashire committals detailed in this study — especially those during the 1850s to 1880s — cannot be solely or predominantly read as the singular act of one agency; only in the last decades of the nineteenth century can committals be more securely read as publicly financed police led prosecutions. This is perhaps one of the main reasons for the very low incidence of committals during the opening period of this study.

However, despite the developments in the physical means by which arrests and prosecutions could be prosecuted and funded, the incidence of committals for inter-male sex remained very low throughout the period 1850-1918. Indeed, even the introduction of the catch-all offence of 'gross indecency' (section eleven of the Criminal Law Amendment Act 1885) which criminalised all forms of inter-male sex behaviour, appears to have sparked little immediate take-up in Lancashire. This supports Cook's suggestion that this offence, within the 1885 Act was, '...specifically related to London rather than the nation'.¹⁵⁹ Most of note in that the apparent shift in the agency of pursuing committals for inter-male sex from private towards a

¹⁵⁹ Cook, M. (2003) *London and the culture of homosexuality 1885-1914*. Cambridge: Cambridge University Press, p.45.

monopolistic police function, is in the type of indictment being employed. That is, while there was no huge increase in total committals, there was a noticeable increase related to the particular type of charge. Table 3.3, provides a breakdown into four categories of criminal charges used in Lancashire for the explicit prosecution of inter-male sex behaviours during this period.

Table 3.3 Criminal prosecutions for inter-male sex related behaviours 1850-1918 by category of charge¹⁶⁰

	Inter-male related 'Buggery' cases [DB2: Cat.3]	Inter-male related 'Attempted Buggery' case – [DB2: Cat.3.2]	Inter-male related 'Gross Indecency' Cases [DB2: Cat.4]	Inter-male related 'Indecent Assault' Cases [DB2: Cat.5]	Total number of inter- male sex related prosecution [DB2:Catogiores:3-6]
1850-1859	5	4	0	1	10
1860-1869	1	2	0	1	4
1870-1879	5	8	0	0	13
1880-1889	7	17	2	0	26
1890-1899	22	20	44	3	89
1900-1909	18	14	60	5	97
1910-1918	8	5	39	1	53

If, as suggested, the police were taking over the role of principle prosecutor in such cases, then a range of considerations were alive in the minds of the police managers making such decisions. Howard argues that financial management was a major

¹⁶⁰ Lancashire Committals of inter-male sex (1850-1970) Data Base. The categories in the table are; 'Buggery' that includes both inter-male sex related 'Buggery' (the substantive charge), [Lancashire Committals of inter-male sex (1850-1970) Data Base Three: Cat.3]; the lesser charge of 'Attempted Buggery' [Lancashire Committals of inter-male sex (1850-1970) Data Base Three: Cat.3.2]; together with the charges of 'Gross Indecency' [Lancashire Committals of inter-male sex (1850-1970) Data Base Two: Cat.4] and inter-male related 'Indecent Assault' charges [Lancashire Committals of inter-male sex (1850-1970) Data Base Two: Cat.5]. The bracketed information in each case relates to the corresponding Data Base category from which the figures have been taken. The two columns in that table entitled 'Total number of Assize & Quarter Sessions within the sample' and 'Total number of all criminal prosecutions within that sample' are included to provide a comparative measure of scale. Generic source: Lancashire Committals of inter-male sex (1850-1970) Data Base.

consideration.¹⁶¹ However, other influences were also evident, including the political demands of their bosses on the Watch Committee, the managers' own career interests and peccadillos, together with those of colleagues, their wider staff and public perceptions of the local police service, including the wider civic interests of ratepayers. Also, the relative success or failure of any prosecutions would have to be seriously weighed, especially the most expensive prosecutions: committal proceedings. As will be shown in the follow sections, the success rates for such prosecutions were for most decades relatively poor. It would appear reasonable to suggest then, that poor conviction rates in inter-male sex-related cases in Lancashire at this time would have influenced the decision police managers made. Critically, a poor conviction rate hardly represented a good use of public money.

There was clearly a trend from the 1890s in the type of committal charge selected for ostensibly, victimless inter-male sex behaviour: from difficult-to-prove consensual buggery or attempted buggery to the newer and in theory easier to prove, crime of 'gross indecency'. A practical and understandable police interest in obtaining an improved conviction rate, would help account for the shift in the type and increasing frequency of the newer charge of 'gross indecency' for committals of inter-male sex-related behaviours. The much higher conviction rate for this newer crime would itself be more likely to encourage, rather than discourage, those police managers increasingly seeking to prosecute such behaviour with indictable charges. The first time this charge appeared in the Lancashire sample was 1888, three years after the crime was outlawed. At the Manchester Assizes on the 24 April 1888, Charles

¹⁶¹ Taylor, H. (1998) 'Rationing Crime: the political economy of criminal statistics since the 1850s.' *The Economic History Review*, 51(3) p.569.

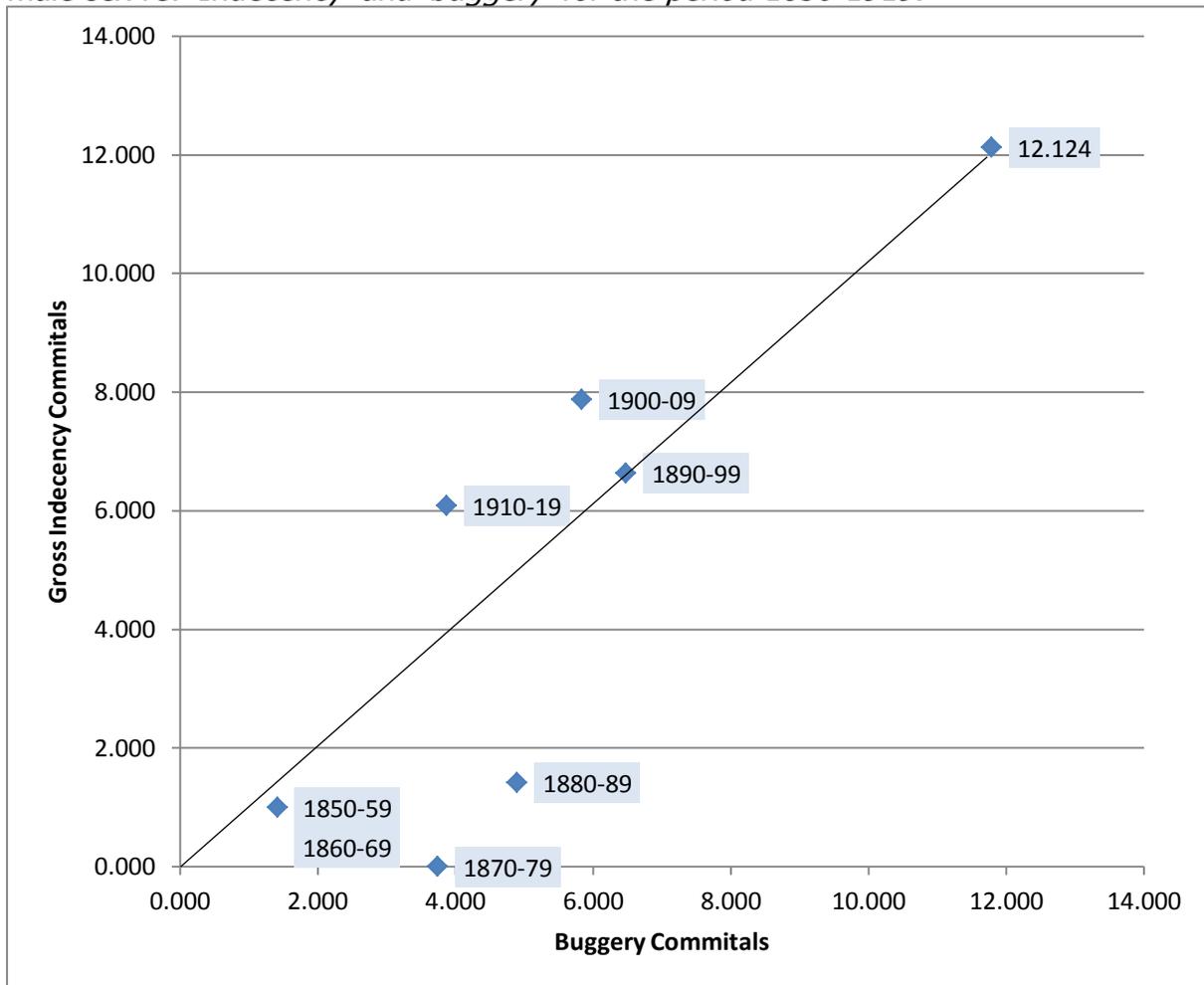
Conway (44), 'labourer', appeared before Mr. Justice Charles not for any actual physical action but for allegedly 'attempting to procure' such entertainment, 'Having at the city of Manchester on the 9th April 1888 being a male person did in private unlawfully attempted to procure the commission by a certain other male person of an act of gross indecency with himself the said Charles Conway'.¹⁶² This case was the forerunner of a general shift in the category of charges selected to commit inter-male sex behaviours; that is, a shift towards a much greater use of the charge of 'gross indecency' which is evident from the early 1890s.

Indeed, in the later decades a converse relationship occurred between a fall in the use of the older buggery charge in preference to the then newer and now increasing, use of the charge of 'gross indecency' used to prosecute such behaviour in the higher courts. A chi-squared analysis of the relationship between inter-male sex committals for the offence of all cases of buggery compared with those related to the offence of 'indecency' denotes a marked shift towards the latter, see Table 3.4.¹⁶³ That is the incidence of inter-male sex buggery exceeds is normative distributive expectations in the first decades of the period 1850-1890 only for the trend to be reversed in favour of gross indecency cases for the latter period.

¹⁶² Lancashire Calendar, Court & Date, Manchester Assize 1888.04.21., CE# 15. [Source: National Archives HO 140 Calendar of Prisoners by County - Cos Lancs. - Lincoln Volume (1888).]

¹⁶³ A chi-squared test lets you know whether two sets of figures are significantly different, in this case from a normal random distribution that might be expected from undirected policing and arrest. The diagonal line dissecting the graphical representation of the chi-squared test demonstrates the expected random distribution. The greater the distance of the plotted points from that line denotes the degree of significance of that data. Thereby any pattern formed by such plotted points confirms such significance. Thus chi-squared distribution arises from an assumption of independent normally distributed data.

Table 3.4 Chi-Squared comparative analysis of committals charges relating to inter-male sex re: 'Indecency' and 'buggery' for the period 1850-1919.¹⁶⁴



As noted, a practical advantage of a 'gross indecency' charge over a buggery charge was to increase the chance of conviction. At least in theory, 'gross indecency' was a much easier charge to successfully prosecute and these findings also suggest that was the practical reality. As the Wolfenden Report acknowledged, the prosecution in such cases was not required to prove that any physical contact had occurred between two males for the crime of 'gross indecency' to have been committed. It was only necessary that the court was convinced that something 'indecent' had occurred or was being planned and that need only be dependent on the location of

¹⁶⁴ Lancashire Committals of inter-male sex (1850-1970) Data Base categories 3, 3.2 & 5.

the alleged offenders and 'impressions' of indecency.¹⁶⁵ The findings of this study certainly confirm that by World War One, 'gross indecency' had become the preferred committal charge of choice when seeking expensive jury trials for inter-male sex behaviours.

Calendar evidence also demonstrates that during this period, the new crime of 'gross indecency' included apparently consensual inter-male sex acts. Fifty-two of the 138 cases of 'gross indecency' involved more than one defendant, inviting the conclusion that these were consensual sex acts that were being prosecuted. For example, John Connor (a labourer) and Fredrick Samuel Summer (a 26-year-old porter) charged with the same crime that they, 'At Liverpool on the 2nd October 1892 in a public urinal unlawfully did commit an act of gross indecency with each other'.¹⁶⁶ The increased incidence of joint inter-male sex prosecutions using the charge of 'gross indecency' is especially marked in the Liverpool area. Between 1900 and 1918, twenty of the thirty-nine committals for this offence were joint committals. The link between this type of committal resulting from the targeted policing of traditional and known meeting places of males seeking anonymous inter-male sex is not only suggested by the one entry noted above but also by evidence for a later period, as discussed in Chapter Five. The *Calendar* evidence that records the date of committal and actual trial for the majority of cases could be months apart, a dramatic reminder that this type of prosecution was not quick or cheap. Any prosecution agency must have carefully weighed the costs personnel-related,

¹⁶⁵ The Wolfenden Report notes that '...the offence if committed even though there has been no actual contact' [citing in a footnote the legal case *R. v Hunt*: 34 Cr. App. R., 135.] Secretary of State for the Home Department and the Secretary of State for Scotland. (1957) *The Report of the (Home Office) Committee on Homosexual Offences and Prostitution*. London: HMSO, Para.104, p.38.

¹⁶⁶ LCC&D Liverpool Assize, 1892.05.12., CE# 36. [Source, National Archives HO 140/153 Calendar of Prisoners by County - Cos Lancs. - Lincoln Note: 1 Volume (1892)]

financial and political of such cases, which can only be read as highly deliberate actions.

However, at the time the majority of 'gross indecency' cases (86) involved only one person, although the actual actions alleged are in common with the charge itself — 'indecenty' — almost impossible to define with the limited summary *Calendar* evidence. A typical example of such a single prosecution from this period is of Josiah Clay, a 52-year-old 'Hawker', who appeared before the Manchester Assize August 1893 charged with:

Having at Salford on divers days between the 1st April and the 1st May 1893 unlawfully committed certain acts of gross indecency with another male person named Joseph Tomlinson. Having at Salford on the nineteenth April 1893 unlawfully and maliciously committed a certain act of gross indecency with another males person named Franck Robert Shaw.¹⁶⁷
That the other men, Joseph Tomlinson and Franck Robert Shaw, were named, but not charged, in this prosecution suggests that they were read as being 'victims' and that the behaviours in which they were involved were unwelcome. However, as with many such listing further investigation is required from perhaps the indictments and any newspaper coverage of the case to provide a more conclusive reading of such circumstances.

The increased incidence of such gross indecency committals paralleled a marked decrease in the incidence of buggery committals, which endorses the impression of underlying trends and thereby highlights the contingent rather than consistent nature of the chosen committal categories. For example, if such cases were a

¹⁶⁷ LCC&D Manchester Assizes, 1893.07.11 CE# 25. [Source, National Archives NA@K HO 140/145 Calendar of Prisoners by County - Cos Lancs. - Lincoln Note: 1 Volume (1893)]

reflection of what was actually occurring in Lancashire during this period, a logical conclusion of such findings would be the suggestion of a significant behavioural shift in inter-male sexual behaviours: from penetrative anal sex towards non-penetrative acts. The appearance of public toilet facilities built by local councils during the period, may have resulted in males seeking out anonymous sexual encounters sometimes re-locating to the protection that these facilities provided from the Lancashire weather. However, until further research is undertaken, there is no firm evidence to support or refute such speculation.

There was also another interesting finding regarding the use of the buggery charge towards the end of the period and thereby largely in the hands of the police service of Lancashire. Buggery committals, as the decades progressed, were increasingly singular in their application: targeting inter-male sex and largely ignoring other related behaviours also criminalised by that law. For example, between 1910-1919, there were twenty-six committals for buggery relating explicitly to zoophilic sex. This evidence is suggestive of a progressive narrowing of the usage of the buggery charge and is again, indicative of a shift in prosecution towards a more professional and coordinated reading of the seriousness afforded the different types of buggery.

The choice of the particular type of charge to be used, summary, misdemeanour or felony, must be read as the important aspect of the prosecution decision making process combining a number of many practical factors and political considerations (i.e. local and national). It is with only a fuller appreciation of the many issues and obstacles faced by the police during this period (i.e. as they became established in

Lancashire and took-up their monopolistic role over criminal prosecution) that the rarity of indictable inter-male sex prosecutions can be more clearly understood.

The contingent nature of the decision-making process behind the committal rates of inter-male sex related, is further illustrated by what happened to those types of prosecutions during the emergency of World War One. This investigation shows a sharp reversal of previous committal rates, during the War as shown in table 3.5.

Table 3.5 Incidence and type of inter-male sex related committals from Lancashire magistrates to the senior criminal courts during the period of war-time emergency 1915-1918¹⁶⁸

Year	Cat. 3 IMS Buggery committals	Cat. 3.2 IMS Attempted Buggery committals	Cat. 4 IMS Gross Indecency & related committals	Cat. 5 IMS Indecent Assault committals	Cat. 6 IMS cases involving committals	Total
1915	0	0	0	0	0	0
1916	0	0	0	0	0	0
1917	1	0	3	0	0	4
1918	0	0	1	0	0	1

There are a number of potential explanations for these very low incidence levels.

Most obviously, perhaps the sample could be flawed. However, since these figures were obtained from the *Calendars* documenting one-hundred and fifteen Assize and quarter session trials during the period, that explanation appears problematic. That the Lancashire police forces, like many nationwide, suffered from being understaffed during wartime as officers joined the armed forces could be a contributory factor.¹⁶⁹

The shortage of police officers, as well as the use of specials and older officers

¹⁶⁸ Lancashire Committals of inter-male sex (1850-1970) Data Base Three.

¹⁶⁹ Emsley, C. (2009) *The Great British Bobby: A History of British Policing from the 18th Century to the Present*. London: Quercus, pp.177-201.

returning from retirement, would have caused headaches for police managers, but not operational paralysis. The record demonstrates that throughout the War police still patrolled the streets and lanes of the county, continuing to bring criminal prosecutions, including expensive committals, for property related crime.

There is also an apparent anomaly in the record of these wartime committals, highlighting a divergence with past prosecutions regarding the type of inter-male sex behaviour being committed for trial. Throughout most of the years covered by this chapter, the prosecution agencies appear to have increasingly invested their funds and resources into committing greater numbers of cases suggestive of consensual and not coercive behaviours. Although a small sample, it appears noteworthy that all five Lancashire committals in these war years appear related to singular, including clearly unwanted or violent, sex acts.¹⁷⁰ What appears to highlight this anomaly

¹⁷⁰ James Arwood Salts, charged with: '*Buggery contrary to section 61 of the Offences against the Person Act 1861, on the 11th March 1917 at Liverpool in the Co of Lancashire committed with one George Adams the abominable crime of buggery. [2] attempted Buggery [section 62 of the Offences against the Person Act 1861] on the 11th March 1917 at Liverpool in the Co of Lancashire committed with one William Alfred Pownall the abominable crime of buggery [3] Gross indecency [Sec.11 CLA Act 1885] on the 11th March 1917 at Liverpool in the Co of Lancashire being a males person commit an act of gross indecency with another male person to wit William Alfred Pownall*'. [LCC&D Liverpool Assizes (Spring), 1917.04.18, CE# 18, [National Archives ASSI 51/138]. Moses Parry charged with: '*... contrary to section 11 of the Criminal Law Amendment Act 1885 being a male person on the 29th April 1917 at Borough of Salford in the Co of Lancashire unlawfully procured the commission of an act of gross indecency in public with one James Anderson another male person*'. LCC&D Manchester Assizes, 1917.05, 18, CE# 22, [National Archives ASSI 51/138 Northern Circuit Winter]. Andrew Hughes charged with: '*... contrary to section 11 of the Criminal Law Amendment act 1885 being a male person on the 23rd March 1917 at the Borough of Salford in the Co of Lancashire unlawfully procured the commission of an act of gross indecency in public with one Joseph Thomas Thornton another male person*'. LCC&D Manchester Assizes, 1917.05.09, CE# 07, [National Archives ASSI 51/138 Northern Circuit Winter]. Charles Edward Davis charged with: '*Contrary to section 11 of the Criminal Law Amendment Act 1885 being a male person on the 1st August 1918 at Osbaldeston in the Co of Lancashire in public or private committed or was a party to the commission of or procured or attempted to procure the commission of an act of gross indecency with Richard Rowley another male person [2] being a male person on the 20th September 1918 at Ribbelton in the Co of Lancashire in public or private committed or was a party to the commission of or procured or attempted to procure the commission of an act of gross indecency with James Hornby another male*

further is committal evidence for the year in which war broke out, 1914. Fourteen committals for that year related to inter-male sex offences were identified, of which two in every three committals related to apparently consensual cases, including joint committals in which two or more males were charged with the same sexual offence(s) with each other. That is, a minority of cases related to apparent or actual coercive inter-male sex acts.¹⁷¹

This suggests that the demands of wartime in Lancashire encouraged pre-war policing prioritisation of apparent or actual consensual inter-male sex acts to lapse. It also suggests that by this period, some Lancashire police forces were taking complaints of coercive inter-male sex acts very seriously and that consensual inter-male sex behaviour was being looked at in a different and less severe light, at least for the duration of the War. These finding invites further investigation, of wartime

person' LCC&D Manchester Assizes, 1917.11.01, CE# 37, [National Archives ASSI 51/138 Northern Circuit Winter]. Thomas James Hargreaves charged with: '*... contrary to section 11 of the Criminal Law Amendment Act 1885 [1] on diverse dates between the 1st January 1917 and the 20th October 1917 at the Borough of Clitheroe in the Co of Lancashire in public unlawfully did commit an act of gross indecency with one Robert Dickenson another male person [2] on diverse dates between the 1st January 1917 and the 20th October 1917 at the Borough of Clitheroe in the Co of Lancashire in public unlawfully did commit an act of gross indecency with one John Silverwood another male person*' LCC&D Manchester Assizes, 1918.02.18 CE# 1, [National Archives ASSI 51/138 Northern Circuit Winter].

¹⁷¹ Robert Fraser (Joint committal), LCC&D Liverpool Assize, 1914.01.26, CE# 12, [National Archives HO 140/313 (1914)]. Edward Brogden (Joint committal) LCC&D Salford Hundred Assize, 1914.11.16, CE# 03, [National Archives HO 140/313 (1914)]. Alfred Burton (Joint committal), LCC&D Manchester Assize, 1914.05.11, CE# 25, [National Archives HO 140/313 (1914)]. George Evans (Joint committal), LCC&D Liverpool Assize, 1914.06.10, CE# 005, [National Archives HO 140/313 (1914)]. Robert Hagan (Joint committal), LCC&D Salford Hundred Assize, 1914.05.11, CE# 24, [National Archives HO 140/313 (1914)]. John William Hinchcliffe (Joint committal), LCC&D Liverpool Assize, 1914.06.10, CE# 006, [National Archives HO 140/313 (1914)]. Patrick McPartlen (Joint committal), LCC&D Liverpool Assize, 1914.04.20, CE# 017, [National Archives HO 140/313 (1914)]. Herbert Shaw (Joint committal), LCC&D Salford Hundred Assize, 1914.11.16, CE 04, [National Archives HO 140/313 (1914)]. Andrew Whyte (Joint committal), LCC&D Liverpool Assize, 1914.04.20, CE# 016, [Source, National Archives HO 140/313 (1914)]. Philp Henry Dening (Single Committal), LCC&D Liverpool Assize, 1914.06.10, CE# 011 [National Archives HO 140/313 (1914)]. Henry Hurst (Single Committal), LCC&D Salford Hundred Assize, 1914.07.04, CE# 05, [National Archives HO 140/313 (1914)]. Alfred Morrison (Single Committal), LCC&D Liverpool Assize, 1914.10.26, CE#, 006 [National Archives HO 140/313 (1914)]. Tom Stopford (Single Committal), LCC&D Salford Hundred Assize, 1914.07.04, CE# 04 [National Archives HO 140/313 (1914)]. William West (Single Committal), LCC&D Lancaster Assize, 1914.10.22 CE# 01, [National Archives HO 140/313 (1914)].

policing of inter-male sex. What might have occurred is that a number of police managers chose to prosecute arrests of inter-male sex crime in the lower courts using generic nuisance offences, thereby not showing in the committal evidence. Alternatively, it could also suggest that any peacetime operational targeting of known meeting places of males for quick, anonymous sexual assignation was not considered a priority for the duration of the wartime emergency. Regardless, the local police might have been expected to be supportive of operational priorities that directly furthered the war effort.

Overall, the bias of committals for apparent or actual consensual inter-male sex behaviour is a consistent longitudinal feature of these findings for the period 1850-1918. The protection of men and minors from sexually motivated assault and/or rape by other males appears to have been an even lower priority than those other forms of inter-male sex. For example, for the whole of the period, only ten committals relating to such offences were identified, with only one case involving a minor.¹⁷²

¹⁷² *Table 3.6 Incidence of the committals involving under-sixteen year old 'lads' as defendant or 'victim' (1850-1918).*; were Cat. 5: Inter-male related 'Indecent Assault' & Cat.6: Inter-male related 'Indecent Assault' Cases involving a minor by decade as follows: Totals 1850-59:- Cat.5: 0 & Cat.6: 0 cases, *Totals 1860-61:-* Cat. 5: 1 & Cat.6: 0 cases, *Totals 1870-79:-* Cat.5 : 0 & Cat.6 : 1 case, *Totals 1880-89:-* Cat.5: 0 & Cat.6: 0 cases, *Totals 1890-99:-* Cat.5 : 3 & Cat.6: 0 cases, *Totals 1900-09:-* Cat.4: 0 & Cat.6: 0 cases, *Totals 1910-18:-* Cat.5 : 1 & Cat.6: 0 cases, *Totals 1850-1918:-* Cat 5: 9 & Cat. 6: 1 case. [Lancashire Committals of inter-male sex (1850-1970) Data Base Three].

*Table 3.6 Incidence of the committals involving under-sixteen year old 'lads' as defendant or 'victim' 1850-1918.*¹⁷³

	Committals for inter-male sex involving a male less than 16 years.	Total inter-male sex related committals.
Total 1850-1859		10
Total 1860-1869		4
Total 1870-1879	1	13
Total 1880-1889		26
Total 1890-1899	1	89
Total 1900-1909	1	97
Total 1910-1918		53
1850-1918	3	292

These figures suggest that the protection of minors and males in general, from sexual assault was either not an operational priority, or if it was, was not subject to committal proceedings.

Any number of reasons might account for the apparent lack of action by police in seeking out and committing inter-male sex crime for trial. An early pre-occupation of police and their managers was to establish public legitimacy, an important, yet elusive, quality that could not be neglected if popular support was sought. In the early years of this study, such legitimacy was more problematic for two out of the three newly formed police forces in Lancashire. The popular agitation for democratic government that had occasioned events such as the 'Peterloo Massacre' in August 1819 can surely not be unconnected from contemporaneous developments that witnessed the development of a new nationwide body of quasi-military police forces.¹⁷⁴ For example Parliament

¹⁷³ Lancashire Committals of inter-male sex (1850-1970) Data Base.

¹⁷⁴ A less famous example but with a deadly outcome are the protests in Preston as part of the 1842 First General Strike that resulted in the shooting and numerous injuries of 'rioters' including the

took the unusual step of directly imposing by use of bespoke Bills the Manchester and Bolton Police Forces to help 'control' the ongoing promotion of that political agenda in these known strongholds of Chartist protest.¹⁷⁵ The third 'new' police force, the county police, was established, as were all other forces outside of London, by application from the local government. The County Constabulary, established by the Lancashire Justices of the Peace (JPs, aka county magistrates) in 1839, was one of the first to establish such a county-wide policing agency. However, this local initiative met with significant protests from local ratepayers and many of the JPs responsible for establishing the force, subsequently voted to disband it a few years later although they failed to get a two-thirds majority. Indeed, protests by Lancashire's *middling* class ratepayers, together with the physical challenges faced by sections of the poorer classes, was a consistent feature of the first decades in the life of the new Lancashire police forces.¹⁷⁶ However, initial protests rumbled on

deaths of four protesters.[Leigh, J.S. (2007) *Preston Cotton Martyrs: the millworkers who shocked a nation*. Lancaster: Palatine Books].

¹⁷⁵ Together with members of the British Government and Parliament they appear to have been most keen for the county and many of its Boroughs to have the new police forces quickly established and operating. The government's explicit priority in the establishment of the County and Borough Police of Manchester and Bolton appear to be prompted by immediate and explicit concerns about political control rather than the more general parochial issues. As Emsley notes in response to Chartist agitation in Birmingham in July 1839: 'Parliament resolved to ignore local sensibilities and passed three acts creating government-controlled police for, respectively; Birmingham, Bolton and Manchester...Former army officers were appointed by the Home Secretary to command each of the three new urban forces...' [Emsley, C. (2009) *The Great British Bobby: A History of British Policing from the 18th Century to the Present*. London: Quercus, p.80]. Indeed such was Parliament's keenness to have established new police forces in old Chartist strongholds of Manchester and Bolton that they passed bespoke enabling legislation in 1840 (i.e. Acts Regulating the Police of Manchester, Birmingham and Bolton (365) 2 & 3 Vict. c. 87. These acts allowed the 'Mayor, Aldermen and Burgesses' of the two towns to speed-up the establishment of their local police forces. These two 1840 Acts were temporary measures to allow Bolton and Manchester Councils to immediately levy a rate to establish new local police forces. Therefore, the apparent enthusiasm by national and Lancastrian politicians to install the new police forces into Lancashire is perhaps better viewed as a response to the serious threat to the *status quo*; challenges generated from both practical and political consequences generated by the unregulated economic 'revolution' occurring in the county rather than any general parochial demand.

¹⁷⁶ Lancashire ratepayers protested at paying the new police rate and by the end of the 1840s won considerable concessions with a reduction of the Lancashire Constabulary by one-hundred officers. The physical assault on policemen in the street was repeatedly highlighted in the press and more

about the County Constabulary throughout its first decades of operation and were a particular point of annoyance for its first Chief Constable, Captain J. Woodford.¹⁷⁷

Despite disputes internal to the Lancashire police forces the popularity of the new system of policing among the governing class is obvious in the growing numbers of local forces established in the second half of the nineteenth century in Lancashire, as noted above.

As Taylor has forcefully argued, policing was rationed, that is supply-led, not demand-led, which would have resulted in difficult choices for police managers tasked with the decision of whether to sponsor an expensive committal case or a lesser and cheaper summary charge tried in a lower court or alternatively, to drop the case altogether. Before an indictable prosecution could be considered, evidence had to be collected, statements taken down etc., to prepare a convincing body of material for the magistrates, persuading them of the bona fides of the case (i.e. that a prima facie case existed). It might also be required to show the desirability of the case over others given the very limited number of days higher courts met each year. Each stage of this prosecution process had to be successfully navigated for a case to appear in the *Calendar of Prisoners* for the senior criminal courts. The relatively poor success rate of committals for inter-male sex cases, as discussed below, allied to the

formally in the early reports of Chief Police Officers to their local governing bodies. For example the Manchester Chief Constable Edward Willis in 1847 noted an improvement; that in the past years *'the assaults on the police were so numerous ...induced the impression...that the best feelings on the part of the inhabitants towards the police did not exist.* [Source 'Watch Committee for the Borough of Manchester Criminal Statistical Returns of the Manchester Police for the year 1847' Presented to the Watch Committee and ordered to be printed 27th April 1848. Manchester City Archive 352 2 Mi and catalogued by year].

¹⁷⁷ Captain J. Woodford in his evidence to the First Parliamentary Committee on the Police repeatedly bemoaned the parsimony of Lancashire ratepayers. Houses of Parliament (1853) *First report from the Select Committee on Police; with the minutes of evidence*, 603, para.1529-1720.

expense associated with taking such cases to trial, must have caused some police managers pause for thought. The existence of a cheaper means of prosecution via summary courts, albeit on a lesser charge, no doubt offered an attractive alternative that carried the potential added advantage of a higher chance of some success, although another possible obstacle to obtaining a successful conviction might have been the authority vested in these magistrates. As Upchurch has shown they could interpret and re-formulate and even reverse a prosecution brought before them, including inter-male sex cases.¹⁷⁸ The lack of expertise in actually prosecuting inter-male sex related cases might also weaken the chances of prosecution and forestall or even sabotage cases. The operational incompetence of the Manchester Police in its mass-arrest of forty-seven males at a Temperance Hall in Hulme, Manchester in September 1880 demonstrated such weaknesses.¹⁷⁹

Another operational obstacle could be the result of direct interference by the police's own governing body in day-to-day operations. As already noted, Mr Malcolm Wood the Chief Constable of Manchester had argued for a more rational use of police time in operations against prostitution, at worst a social nuisance and health issue.

¹⁷⁸ See Upchurch, C. (2009) *Before Wilde - Sex Between Men in Britain's Age*, Berkeley: California Uni. Press.

¹⁷⁹ The Manchester police employed a local solicitor to help prosecute the case. A prosecution that was significantly hindered by the poverty of the police evidence and included an apparent reluctance to even name in court the charge for which the prosecution was seeking to obtain a committal (i.e. buggery). See coverage of the 'Police Raid of Fancy Dress Ball.' *The Manchester Guardian*. 1st October 1880, p.4.

However, the Committee appears to have clearly discounted the professional operational recommendation of their Chief Constables to define policing priorities.¹⁸⁰

Another practical problem that is a feature of especially covert victimless crimes and noted by Cook for this period, was the 'difficulty in obtaining adequate proof', (i.e. the police have to go looking for such crime given the lack of 'victims' that could be expected to come forward).¹⁸¹ Indeed the increase in such prosecutions after 1940, discussed in Chapter Five, appears in large measure to be the result of an unprecedented police targeting strategy that included officers spending hours 'staking-out' known semi-private meeting places for men in search of obtaining a quick anonymous 'wank.'¹⁸²

The very real practical problem of prosecuting both consensual and coercive sexual acts was their clandestineness and therefore the challenge lay in collecting evidence.

¹⁸⁰ Annual return of criminal prosecutions of females for prostitution, or related charges at the Manchester magistrate's court for the period 1860-69 are given as follows: in 1860, 632 cases; 1861, 628 cases; 1862, 942 cases; 1863, 852 cases; 1864, 740 cases; 1865, 955 cases; 1866: n/k; 1867, 1600 cases; 1868, 1667 cases and in 1869, 2099 cases. [*Criminal and Miscellaneous Statistical Returns of the Manchester Police Force*. Manchester City Archive 352 2 Mi 1860-69] In Lancashire, with its sparse and absentee indigenous aristocracy, civic governance and direction of the new police fell into the hands of the new enterprising economic class of businessmen, industrialists and manufacturers, often collectively referred to as the bourgeoisie. Therefore, for the first time in many parts of Lancashire, the new bourgeoisie, together with the landowning class, enjoyed effective agency of a powerful new tool of physical political control – its own police force. Volumes have been written about the attitudes towards 'sex' held by this new class, but clearly the Lancashire figures would suggest that these were not coherently translated to directing police priorities towards inter-male sex crime in mid-nineteenth century Lancashire. However, the ongoing investment of Lancashire police governing bodies on prioritising the arrest of petty crime related to female prostitution certainly suggest that 'sex' was still a very important preoccupation for police governing bodies and therefore their forces but did not apparently 'spill-over' into the committal of inter-male sex crime.

¹⁸¹ Cook, M. (2003) *London and the culture of homosexuality 1885-1914*. Cambridge: Cambridge University Press, p.47.

¹⁸² One of the Manchester police officers who volunteered for such work in the 1960s and 70s recounted his hours spent silently posted in the roof space above a gents lavatory in the city peering through a small hole to the urinals below watching men urinate in the hope of catching some sexualised behaviours. A testimony demotes the extreme lengths required to obtain evidence of such victimless crime. [Oral Testimony of Manchester Police Officer 'A' evidence taken and in the authors possession].

In the case of criminalised sex acts, including male-female and male-male anal sex, secrecy was an essential ingredient for those not wishing to invite punishment, or at least some form of adverse social reaction. These self-interested factors had to be overcome by any prosecution seeking to build a case against such behaviour.¹⁸³

There were also related political problems that both Cocks and Cook highlight: any state or local government policing agency had to consider the publicity such cases would generate. Cook suggests that restraints to prosecuting inter-male sex included creating a 'perceived danger to public morals' by advertising such behaviours through the pages of the media.¹⁸⁴ 'Endangering public morals' echoed similar warnings issued by Lord Ellenborough, Lord Chief Justice of England and Wales, at the beginning of the century regarding the publicity associated with the Lancaster buggery trial of 1806. Ellenborough was particularly worried that press coverage of buggery trials would licence public discussion and thereby undermine the ignorance and the taboo about the topic which he appeared most keen to preserve.¹⁸⁵ The need to mitigate or at least limit the scope of public discourse about sex was a likely

¹⁸³ For example, obtaining a guilty confession from one person involved in such enterprise together with testimony implicating their former 'sex-partner' or lover. Alternatively, in the case of coercive sex any successful prosecution depends on the male victim's willingness to come forward and publicly declare their rape by another man (i.e. that they had been the non-compliant partner in a serious criminal act). Both scenarios invite the social odium by association with tabooed and in many minds 'abominable' behaviour. Even when such evidence was available significant private or public resources were required to invest in framing and promoting a case to the magistrate.

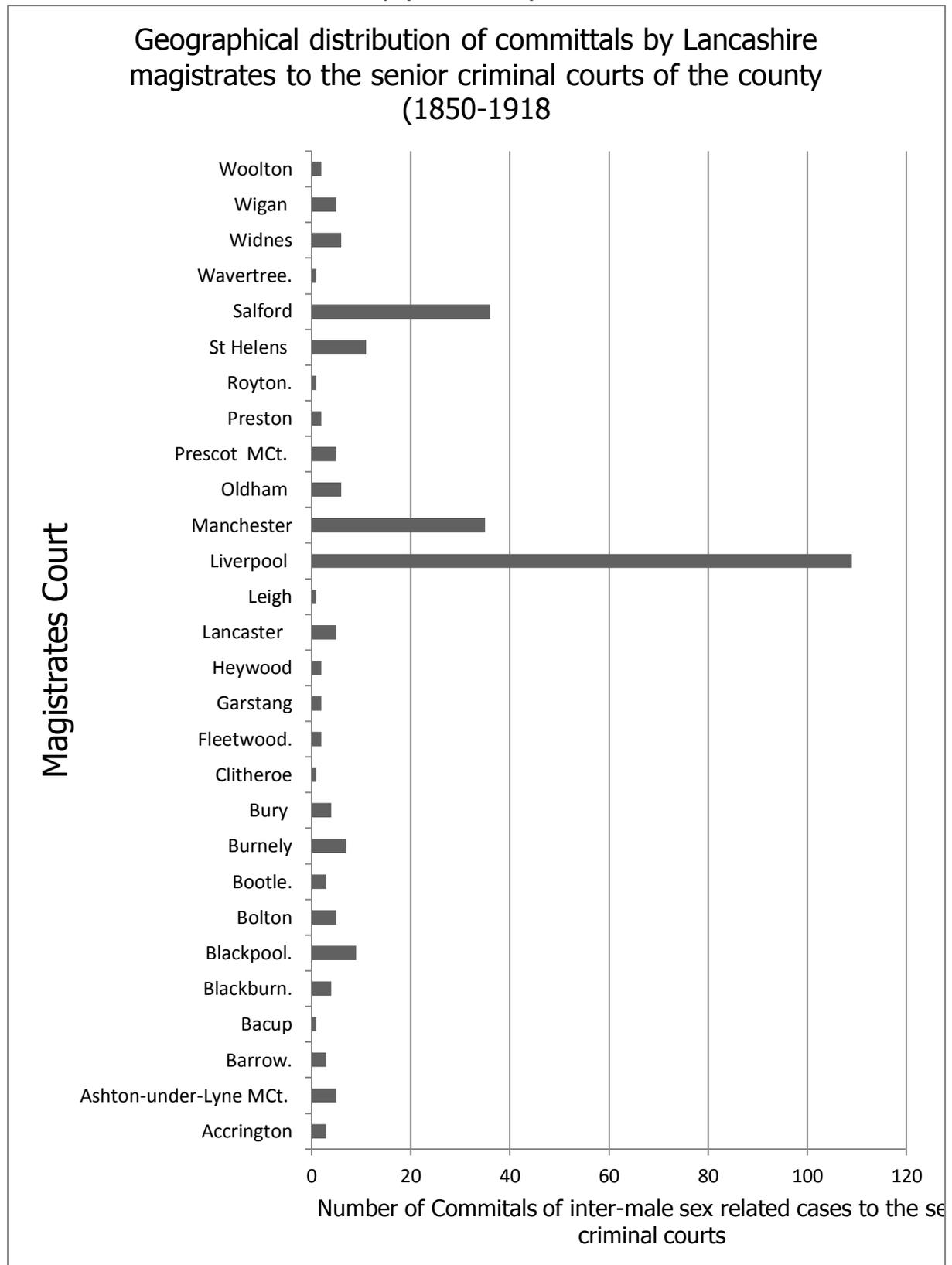
¹⁸⁴ Cocks, H. (2006). 'Safeguarding Civility: Sodomy, Class and Moral Reform in Early Nineteenth-Century England.' *Past and Present*, 190 (1) pp. 121-146. & Cook, M. (2003) *London and the culture of homosexuality 1885-1914*. Cambridge: Cambridge University Press, p.47.

¹⁸⁵ 1st Lord Ellenborough and Lord Chief Justice of England (1802-1818) "*Public morals had suffered enough from the 'Remarkable Trials' at Lancaster [but] the knowledge that so widely extended a conspiracy against nature exists in point of fact [along with awareness of the] generality and notoriety of the crime [which further prosecutions would generate, threatened to] diminish much of the abhorrence which it is to be wished should always belong to it*". See Cocks, H. (2006). 'Safeguarding Civility: Sodomy, Class and Moral Reform in Early Nineteenth-Century England.' *Past and Present*, 190 (1), p.143.

factor to be addressed by any prosecution seeking to build a case against such behaviour.

Given the context and problems, it is perhaps not surprising that a majority of Lancashire police forces chose not to, or alternatively failed, to seek committals for inter-male sex related behaviours occurring in their jurisdiction. The *Calendars* most helpfully note the geographical origin of the magistrates' courts committing inter-male sex related cases for trial. From that reading, a patchy and divergent geographical pattern emerges. The *Calendar* evidence does not link each local police force with a particular magistrate's court, although it does differentiate in towns between borough and country courts. The following Table 3.7 provides a breakdown of the incidence of committals by geographical locale.

Table 3.7 Geographical distribution of committals by Lancashire magistrates to the senior criminal courts of the county (1850-1918)



The mean, medium and range calculations of these committals, shown in Table 3.8 demonstrate the even among the small number of Lancashire magistrates committing such cases there is a huge disparity in the frequency of such referrals.

Table 3.8 Breakdown of the incidence of committals

Total No. of Magistrates' Courts committing inter-male sex related cases for the period 1850-1918	28 ¹⁸⁶
Total number of inter-male sex related committals	276
Medium	4
Mode	5
Range (Max)	109
Range (Min)	1

Within this sample, only four urban centres recorded more than double figures of committals for inter-male sex-related offences for the period 1850-1918: Liverpool with one-hundred and nine, Manchester with thirty-five, St Helens with eleven and Salford with thirty-six committals. The magistrates operating in only twenty-eight locations within the large county of Lancashire were moved to commit such cases for trial. This geographical reading does not suggest that such offences were a pressing or even marginal aspect of most prosecution agencies' policing priorities. A median and modal reading of four and five, respectively, suggests that such committals were a rare occurrence for the vast majority of Lancashire magistrates, with the notable exception of Liverpool.

¹⁸⁶ The given geographical location of those local magistrates and courts area: Accrington, Ashton-under-Lyne, Barrow, Bacup, Blackburn, Blackpool, Bolton, Bootle, Burnley, Bury, Clitheroe, Fleetwood, Garstang, Heywood, Lancaster, Leigh, Liverpool, Manchester, Oldham, Prescot, Preston, Royton, St Helens, Salford, Wavertree, Widnes, Wigan & Woolton. [Source: Lancashire Committals of inter-male sex (1850-1970) Data Base Three.]

Based on the *Calendars* geographical evidence, denoting the origin of committals for the period 1850-1918, it appears reasonable to conclude that only a minority of the twenty-two Lancashire police forces operating at the time were involved in the indictable prosecution of inter-male sex. Furthermore that of those force, which did seek the occasional committal of an inter-male sex case, only a small number did so with any regularity. For example, in the 1870s, fourteen inter-male sex committals were identified originating from seven locales in Lancashire:¹⁸⁷ Ashton-under-Lyne (1 case),¹⁸⁸ Bury (1 case),¹⁸⁹ Lancaster (1 case),¹⁹⁰ Liverpool (2 case),¹⁹¹ Manchester (6 cases),¹⁹² St Helens (2 cases),¹⁹³ Wavertree (1 case).¹⁹⁴ During the same decade, fourteen police forces had been established and were in operation within

¹⁸⁷ They are: Lancaster Constabulary, Ashton-under-Lyne Borough Police Force, Blackburn Borough Police Force, Bolton Borough Police Force, Lancaster City Police, Liverpool City Police, Manchester Borough Police Force, Oldham Borough Police Force, Preston Borough Police Force, Rochdale Borough Police Force, Salford Borough Police Force, Southport Borough Police Force, Warrington Borough Police, and Wigan Borough Police Force. [Source: HM Home Department (1850) *Fifteenth report of the inspectors appointed, under the provisions of the act 5 & 6 Will. IV. c. 38, to visit the different prisons of Great Britain. II.--Northern and eastern district. Session: 1850*, 1167.

¹⁸⁸ LCC&D Salford Hundred Co., Q.S., 1872.08.01, CE# 02, [National Archives HO 140/18 Calendars of Prisoners for Lancs., (1872)].

¹⁸⁹ LCC&D Salford Hundred Co., Q.S., 1871.01.09, CE# 08, [National Archives HO 140/14 Calendars of Prisoners for Lancs., (1871)].

¹⁹⁰ LCC&D Lancaster Co., Q.S., 1874.10.19, CE# 2 [National Archives HO 140/26 Calendars of Prisoners for Lancs., (1874)].

¹⁹¹ LCC&D West Derby Hundred Co., Q.S., 1876.01.18, CE# , 017. LCC&D West Derby 100 Assizes, 1876.12.06, CE# 006, [National Archives HO 140/34 Calendars of Prisoners (1976)] and LCC&D West Derby Hundred Assizes, 1875.12.04, CE# 051, [National Archives HO 140/30 Calendars of Prisoners for Lancs. (1875)].

¹⁹² LCC&D Salford Hundred Assize, 1873.07.30, CE# 33, [National Archives HO 140/22 Calendars of Prisoners for Lancashire. (1873)] . LCC&D Salford Hundred Assize, 1873.07.30, CE# 32, [National Archives HO 140/22 Calendars of Prisoners for Lancashire. (1873)]. LCC&D Salford Hundred Assize, 1875.03.12 CE# 02 , [National Archives HO 140/30 Calendars of Prisoners for Lancs., (1875)]. LCC&D Salford Hundred Co., Q.S ., 1875.05.24 CE# 07, [National Archives HO 140/30 Calendars of Prisoners for Lancashire (1875)]. LCC&D Salford Hundred Assize, 1871.12.02, CE# 06, [National Archives HO 140/14 Calendars of Prisoners for Lancashire (1871)].

¹⁹³ LCC&D West Derby Hundred Co. Q.S., 1875.11.02, CE# 040, [National Archives @ Kew HO 140/30 Calendars of Prisoners for Lancs. (1875)]. LCC&D West Derby Hundred Co., Q.S., 1875.11.02, CE# 039, [National Archives HO 140/30 Calendars of Prisoners for Lancs., (1875)].

¹⁹⁴ LCC&D Liverpool Assizes, 1877.10.29, CE# 017, [National Archives HO 140/38 Calendar of Prisoners by County - Volume Lancs., Lincoln (1877)]. Also worthy of note is that only two of the committing courts (i.e. Blackburn and Lancaster) were located outside the heavily industrialized conurbations of South Lancashire.

Lancashire.¹⁹⁵ This evidence would at least appear to invite the suggestion that a number of Lancashire police forces chose not to, or failed to, obtain even one committal of an inter-male sex case during this decade, although allowance has also to be made for the unknown number of Lancashire forces making use of the swifter and cheaper charges to prosecute.

The apparent bias in the geographical significance of inter-male sex committals as a feature of the period is further exemplified by the case of Liverpool. Of the two-hundred and eighty-eight committals that reached the Lancashire jury courts between 1900 and 1918, a quarter originated solely from Liverpool-based magistrates' courts. This is not to suggest that more inter-male sex was occurring in the port city of Liverpool relative to other parts of the county, simply that more men were being arrested and charged with the most serious category available for such behaviour. Likewise, it would appear unreasonable to exclude a coordinated role in the figures relating from supervised police action. Indeed, the *Calendar* evidence provides a brief glimpse of how the Liverpool prosecution agency obtained such a high rate of arrests. The case of John Connor and Fred Summer noted earlier regarding the early use of the then new crime of gross indecency between males, notes the location of that offence:

John Connor, a labourer and Fredrick Samuel Summer, a 26 year-old Porter, appeared together at the Liverpool Assize held in December 1892 charged

¹⁹⁵ They are: Ashton-under-Lyne Borough Police Force , Blackburn Borough Police Force , Bolton Borough Police Force , Lancaster City Police , Liverpool City Police , Manchester Borough Police Force , Oldham Borough Police Force Preston Borough Police Force , Rochdale Borough Police Force , Salford Borough Police Force , Southport Borough Police Force , Warrington Borough Police Force, Wigan Borough Police Force. [Source, Reports of Inspectors of Constabulary to Secretary of State, 1869-70. Session: 1870, Paper Series: House of Commons Papers; Reports of Commissioners, Collection: 19th Century House of Commons Sessional Papers, CH Microfiche Number: 71.343-344]

with the identical crime of: 'At Liverpool on the 2nd October 1892 in a public urinal unlawfully did commit an act of gross indecency with each other'.¹⁹⁶

The large number of inter-male sex committals originating from one locale, Liverpool, also helps highlight the lack and even absence, of committals coming from other parts of the county. The findings underscore the suggested of police 'reticence' in the prosecution of such cases noted by Cocks and endorsed by Cook.¹⁹⁷ For example, the Manchester Police prosecution statistics for the sixty-eight years, 1850-1918, note only fourteen committals for the offence of 'Buggery' (which did not differentiate between zoophilic and inter-male sex). Of this number, police reported only eight successful committals, which again reinforces the suggestion that police had problems both bringing and prosecuting such cases.¹⁹⁸

Liverpool's apparent pre-eminence in the committal of such cases stands out as the exception to the general picture of indictable prosecutions for inter-male sex behaviour by Lancashire police forces. The Liverpool committal figures also further endorse the impression that at least from the 1890s, there was a more targeted and perhaps singular, prosecution agency originating and coordinating such committals. The most likely candidate was clearly the Liverpool City Police force. If this was the case, then a further conclusion might be drawn, namely that when a Lancashire police force during these decades chose to target such behaviours, it could produce

¹⁹⁶ LCC&D Liverpool Assizes, 1892.05.12, CE# 36, [Source, National Archives HO 140/153 Calendar of Prisoners by County - Cos Lancs. - Lincoln Note: 1 Volume (1892)]. Also of note is that this is a rare type of Calendars entry for Liverpool in that it states the specific location of the behaviour.

¹⁹⁷ Cook, M. (2003) *London and the culture of homosexuality 1885-1914*. Cambridge: Cambridge University Press, p.47.

¹⁹⁸ Criminal and Miscellaneous Statistical Returns of the Annual Report of the Chief Constable of Manchester to the Watch Committee Manchester Police Force for the years ending 1850 to 1918. Manchester City Archive 352 2 Mi and catalogued by year.

a significant number of committals. By the same token, while other police forces enjoyed a similar potential, that they chose to use it more sparingly or not at all is worthy of note. A quick review of any Lancashire Calendar of the period demonstrates the clear priority of the Criminal Justice System was the protection of property-related. This reflects both the main preoccupation of the law and thereby the police forces targeted funding of resources in the execution of their role. However, that is not to suggest that the policing was strictly uniform particular police forces no-doubt had specific interests beyond the protection of private property.¹⁹⁹

Therefore in all probability the police forces, especially in the larger conurbations, must have had a very good idea regarding the location of those participating in inter-male sex behaviour if they wished to arrest them. For example, as early as 1806, Thomas Hix had testified to the established presence of meeting places for such activity under the arches under the old Manchester Exchange building and a location at the bottom of Dale Street in Liverpool.²⁰⁰ In the following century, Wolfenden reported that such locales this time in London enjoyed an 'international' reputation.²⁰¹ That such places were again the subject of targeting in the post-World War Two period, discussed below in Chapter Five, further highlights the known ubiquitous presence of such meeting places before, throughout and no-doubt

¹⁹⁹ Of course conclusions cannot be definitive and it is possible that the nature of Liverpool as a port city might have influenced incidences.

²⁰⁰ Cocks, H. (2006) 'Safeguarding Civility: Sodomy, Class and Moral Reform in Early Nineteenth-Century England.' *Past and Present* 190 (1) pp.121-146.

²⁰¹ 'We have been surprised to find how widely known the location of these conveniences [public toilets known for the ready availability of anonymous inter-male sex behaviours] among homosexuals, even those who come from distant parts of the world, the location of these conveniences has proven to be.']. Secretary of State for the Home Department and the Secretary of State for Scotland. (1957) *The Report of the (Home Office) Committee on Homosexual Offences and Prostitution*. London, HMSO, Para.120, p.43.

beyond the period. Such places were known by those who used them and no-doubt ignored by many members of the disinterested public but surely not by the local police service. The most obvious conclusion, based on the findings of this study, is that the local police forces, outside of Liverpool, chose to give such places a wide berth. This reading would appear to further endorse Weeks' explanation as to why there appeared to be divergent priorities at work between police forces in Lancashire regarding the arrest of inter-male sex:

In practice of course enforcement varied between police forces areas, depending on local police chiefs, the power of the watch committees and over time on the general social climate and effectiveness of social-purity campaigns.²⁰²

However, this apparent absence of committals from many local magistrates' courts in Lancashire towns does not necessarily translate into a complete lack of interest in prosecuting such crimes. It simply notes a reluctance to spend money and resources in the pursuit of costly cases in the Assize and Quarter Session courts. An important consideration when assessing the incidence rate of these Lancashire committals is to be mindful that they only represent a small portion of all such cases. The magistrates acted as gatekeepers to the senior criminal courts; only their authority could commit a case to be included on the *Calendars* for the Assize and Quarter Session. Indeed, Williamson citing an estimate by Rawlings notes that, '...between 1850 and 1880 indictable offences never amounted to more than five per cent of the total' [number of criminal cases].²⁰³

²⁰² Weeks, J. (1980) 'Inverts, perverts, and Mary-Annes: Male prostitution and the regulation of homosexuality in England in the nineteenth and early twentieth centuries' *Journal of Homosexuality*. (6) 1-2 p.118

²⁰³ Williamson, T. (2003) 'Policing a Myth, Managing an Illusion: Victorian and Contemporary Crime Recording.' In Rowbotham, J. & Stevenson, K. (eds.) *Behaving badly: social panic and moral outrage-Victorian and modern parallels*. Aldershot: Burlington, VT, Ashgate, pp.47-62.

Summary justice provided a much cheaper and faster route for prosecution agencies. This lowest rung of the Criminal Justice System ladder still offered a cost effective means of obtaining prosecution.²⁰⁴ However, the problem for historical enquiry is that inter-male sex cases could and would most likely be charged with lesser and generic public nuisance offences, as noted by Cocks and Cook and exemplified in the evidence from the *Lancashire Constabulary Occurrence* books for a later period (see Chapter Four). The true extent of the inter-male sex related offences prosecuted under such generic by-laws will perhaps, because of that very anonymity, remain another unknowable aspect of the past.

The role of the magistrates' courts in this study of indictable prosecution of inter-male sex is limited to that of committal of cases for trial at the senior courts. They could have and no-doubt did, try cases relating to inter-male sex under the guise of summary offences such as nuisance by-laws. Indeed, throughout the period the lower courts were increasingly encouraged and empowered by Parliament to try more criminal trials and therefore help reduce the workload of the much more expensive Assize and Quarter Sessions court.²⁰⁵ However, the impact this had on explicit prosecution of inter-male sex related offences awaits investigation.

²⁰⁴ These magistrates were usually unpaid lay-people drawn from the local ruling elite, although Manchester was one of the few boroughs to pay for a professional Stipendiary Magistrate.

²⁰⁵ See: Bentley, D. (1998) *English criminal justice in the nineteenth century*. London: Hambledon Press.

Another feature of the apparent increasing police monopolisation of prosecution in general and of inter-male sex cases in particular, was the growth of charges brought against younger males. Between 1850 and 1899, there were only two committals of two teenage males. However, during the years 1900 to 1918, twenty-five teenagers, of whom five were under the age of sixteen, were accused of inter-male sex related crimes and committed for trial.²⁰⁶

*Table 3.9 Prosecution of teenager for inter-male sex related offences 1850-1918.*²⁰⁷

	Prosecutions of 16 year olds	Prosecutions of older teenagers 17, 18 & 19 year olds
Total 1850-1859	0	0
Total 1860-1869	0	1
Total 1870-1879	0	0
Total 1880-1889	0	1
Total 1890-1899	0	4
Total 1900-1909	4	11
Total 1910-1918	1	4
1850-1918	5	21

The period 1850–1918 witnessed significant shifts in the way the Criminal Justice System operated and just how the prosecution functioned and was funded. It is argued that these changes had only a limited impact on the incidence of indictable prosecution of inter-male sex related cases. However, towards the end of this period, the police in certain parts of the county began to take an interest in prosecuting such behaviour and at least in Liverpool, evidence suggests a willingness to disrupt established meeting places where males sought out and obtained

²⁰⁶ Samuel Blackhurst and BRADSHW, John Henry Bradshaw LCC&D Manchester Assize, 1907.07.01, CE# 10, 1907.07.01 [Source Ref.# 10 & 11, [National Archives HO 140/257 Lancashire Calendars of Prisoners (1907)].

²⁰⁷ Lancashire Committals of inter-male sex (1850-1970) Data Base Three.

anonymous sex with other males. There also appears to have been no great interest in the protection of minors or older males from sexual violence, although there is an indication that youth inter-male sexual behaviours were considered worthy of the occasional prosecution. These developments, combined with a significant shift in the type of charge used from buggery to gross indecency, set trends that became established in later decades.

The Attitudes of the Defendants (1850-1918)

During this period and in particular with regard to committals for inter-male sex-related cases, the voice of the defendant might not even be recorded. That is, a significant number of such cases were rejected at the preliminary stage when the jurors met as a Grand Jury to decide which cases enjoyed sufficient evidence to justify a full jury trial. As discussed in the following section on the role and attitude of the jury, the incidence of such rejection, recorded as 'no bill', no prima facie case being found, is worthy of note.

The voice of the defendant in committal cases that did reach the court for trial is minimal within the *Calendar* records and is limited to the record of the plea, 'guilty' or 'not guilty'.²⁰⁸ Although offering limited evidence, the provision of the plea

²⁰⁸ The only occasions within the calendar evidence that this evidence is omitted is in cases of incomplete records (i.e. a common occurrence in the earlier editions) or when a 'prisoner' is judged unfit to face trial due to some mental incapacity. For example: in 1851 William was committed to the Liverpool Assize for the crime of 'Sodomy' but no trial was held, therefore no plea recorded, the Calendar noting that that 'Found insane upon his arraignment so that he could not be tried upon an indictment against him for sodomy.' LCD&E: Liverpool Assize, 1851.02.17 CE# 088. [Source NA@K HO 27/96 Results of Proceedings Volume 2 Glamorgan to Lincoln (1851)]. Until the 1890's the convention apparently employed by the clerks left this column empty given that the subsequent

provides a unique insight into how those being prosecuted reacted to the criminal charges they had been accused of. Prior knowledge of the defendant's plea was in many cases, a major factor in a committal being brought in the first place. If a 'prisoner' (as all defendants are described in the *Calendars*), for whatever reason, cooperated with the prosecution and returned a 'guilty' plea, then the task of bringing the case was comparatively quick, cheap and, barring accidents, produced a successful outcome. That is, in such cases the task of the prosecution was simply to provide sufficient evidence to substantiate the guilty verdict, and thereby provide to the presiding judiciary the surety of the plea.

However, if the accused contested the charge, then the prosecution required an investment of significant time and energy into marshalling evidence, arranging witnesses, etc. As the reform of the Criminal Justice System progressed, the role of defence counsel became more common and thereby the challenge to prosecution evidence might be expected to increase.²⁰⁹ No doubt advanced knowledge of a

record entries made that plea self-evident. That is the plea for the Lancashire Committals of inter-male sex (1850-1970) Data Base created for this study has been obtained from the calendar evidence relating to the verdict of the jury. If the jury is recorded as returning a verdict (i.e. a trial was had) then the assumption is that the defendant had pleaded 'not guilty' and therefore a trial had been required. In cases where a verdict has not been recorded then the assumption is that the defendant returned a 'guilty' verdict and therefore the prosecution had only to provide supporting evidence to convince the judge of the surety of that plea. For example in the 1889 case of Peter Roberts (35) 'Labourer' & Nimrod Twist (55) 'Labourer', committed for the crime of: 'At Windle [i.e. near St Helens] on the 16th November 1889 feloniously, wickedly and against the order of nature did carnally know one another and together feloniously did commit and perpetrate the abominable crime of buggery.' The calendar entry notes that they both pleaded guilty to the lesser offence of; 'Guilty of felony to wit attempting to commit buggery' and no verdict is recorded but the court must have accepted the plea in that the presiding judge, The Hon. Sir William Grantham sentenced them on the 19th Dec. 1889 to eighteen months imprisonment. [LCC&D: Liverpool Assizes, 1889.12.05 CE#, 078 & 079 [Source, NA@K HO 140/113 Calendar of Prisoners by County - Cos Lancs. (Lincoln Note: 1 Volume 1889)]

²⁰⁹ The statutory provision of legal aid had to await the coming of the inter-war years of the twentieth century and later. Poor Prisoners Defence Act ...marked an important milestone in the provision of legal aid for those who otherwise would have found financing a professional legal defense problematic followed in 1949 by the Legal Aid and Advice Act 1949, c. 51. See Bentley for the slow

prisoner's intention to contest or go along with a particular charge had some influence on the type of charge to be preferred and indeed, in weak cases, whether a case would proceed. Contested committals also invited the caprice of the jury, a decision making process with significant unknown and no-doubt encompassing a degree of irrationality that was difficult for prosecution agencies to predict thus limiting the chances of the successful outcome they were seeking and funding.

The *Calendar* evidence suggests that the prosecution agencies did not obtain too much cooperation from the prisoners they charged with inter-male sex related offences throughout the period covered by this chapter. Table 3.10 below, sets out the record of pleas submitted for inter-male sex related cases into the three categories into which they fall:

Table 3.10 Pleas submitted by defendants in committals for inter-male sex offences 1850-1918²¹⁰

	PLEA - Not Guilty	PLEA - Guilty	Plea - Guilty of Lesser charge
Total 1850-1859	5	0	0
Total 1860-1869	3	0	0
Total 1870-1879	8	1	1
Total 1880-1889	16	0	6
Total 1890-1899	73	11	2
Total 1900-1909	70	22	1
Total 1910-1918	41	7	2
Total 1850-1918	221	41	12

Again, the Lancashire findings clearly suggest a divergence between the earlier and later decades of this period. The defendants in the early decades were almost

development of the provision of legal defence in criminal trials; Bentley, D. (1998) *English criminal justice in the nineteenth century*. London: Hambledon Press.

²¹⁰ Lancashire Committals of inter-male sex (1850-1970) Data Base Three.

certain to contest a charge. By the 1890s, the number of cases had increased with a majority of defendants still seeking to defend themselves against the charges with the majority returning a 'not guilty' plea. In the final years before and during World War One, the ratio between defendants returning a 'not guilty' plea rather than 'guilty' had not significantly changed; the prosecution still had a hill to climb. Interestingly, in the case of gross indecency prosecutions, the prosecution might expect the defendant to cooperate and plead guilty. Of the forty-one 'guilty' pleas for inter-male-related offences recorded from the sample, twenty-five were in response to the charge of 'gross indecency'. The success of the newer charge of 'gross indecency' in obtaining for the prosecution the full cooperation of the prisoner, i.e. a guilty plea, suggests a good reason why this charge appears to have become increasingly popular. However, overall the *Calendar* evidence suggests that regardless of the category of offence related to inter-male sex, there was a willingness by the majority of defendants to contest such charges in open court. The high incidence of 'not guilty' pleas invites speculation as to the reasons behind such reactions including: innocence, rejection of the association with inter-male sex and rejection of the right for private sexual behaviours to be policed.

However, given the lack of any further information about the proceedings of the trials, the *Calendars* cannot provide much further insight into the part played by the defendants in these cases. What can be concluded is that the consistent refusal of defendants to plead guilty placed more demands on the prosecution in terms of more time, effort and money in preparing their case that could in itself, have acted as an effective deterrent to taking-up the cases in the first place. That is, potential

'not guilty' pleas could themselves have militated against the number of committals being initiated and might be a factor accounting for the low level of committals being pursued against inter-male sex related crime during this period. However, until the investigation and publication of a longitudinal study of the treatment of the magistrates of inter-male sex cases this must remain an interim and speculative conclusion.

The Attitudes of Lancashire Juries (1850-1918)

The voice of the third component, or constituent 'player', within the Criminal Justice System recorded by the *Calendars* is that of the jury. Again, the evidence provided is limited but invaluable in providing further insight into the treatment of committals related to inter-male sex. It was the material qualifications for serving on a jury that makes this 'voice' all the more important. Juries were male and made up of the 'better off', 'The hallmark of trial juries in the nineteenth century was their wholly unrepresentative character'.²¹¹

The composition of contemporary Lancashire juries, middle-class men, offers a unique insight into the attitudes of this influential section of any community, towards inter-male sex. The *Calendars* record the most important feature of a jury's attitudes: the verdict, most commonly 'Guilty' or 'Not-Guilty' or less commonly, 'Guilty of a lesser charge'.²¹² However, at this time there was also a pre-trial

²¹¹ Bentley, D. (1998) *English criminal justice in the nineteenth century*. London: Hambledon Press, p.89.

²¹² Unlike the other three constituent players, prosecution, defendant and judges, the role of the jury is not reported in all cases simply because its function at trials was elective. However, given the number of contested committals related to inter-male sex, they were called on to adjudicate in the majority of such trials during this period.

session, known as the 'Grand Jury', when all the jurors called for jury service for that particular session (Assize or Quarter Session) met together to decide which cases would be heard, i.e. that a prima facie case had been established, or thrown-out, i.e. not tried and the prisoner(s) discharged.²¹³ The rejected committals are noted in the *Calendars* with the phrase 'no bill' or similarly entered under the column heading entitled 'verdict'.²¹⁴

Lancashire grand juries appear to have had few problems exercising their right to throw-out committals, including those relating to inter-male sex, as shown in Table 3.11.

*Table 3.11 Total number of No Bill verdicts in inter-male sex related prosecutions*²¹⁵

	IMS Buggery Cases	Attempted Buggery Cases	Gross Indecency Cases	Total 'No Bill'
Total of 'No Bill' returns 1850-1918	22	8	8	36

What is perhaps most intriguing in these figures is not the propensity of juries to throw out committals, but the apparent disparity with regard to the category of indictment being used. For example, in the final decades of the period, when committals for 'gross indecency' started to appear, those cases seemed to stand a much better chance of being approved for trial than committals for buggery. Those

²¹³ The Criminal Justice System of the USA is one of the last common law jurisdictions that still operates such a lay-jury function, gifted a part of the legacy of the pre-revolutionary English governance. [See; Hall, D. (1996) *Criminal law and procedure*. Albany, NY: West Legal Studies/Thomson Learning & Berger, L. & Sarat, A. (2000) *The Grand Jury*. Philadelphia: Chelsea House Publishers.]

²¹⁴ Mindful that in this period anyone with the funds could and did, seek to prosecute others as long as they could pursue a sympathetic magistrate, the case would be committed to trial at a senior criminal court. No doubt all kinds of personal vendettas and trivialities could and did land on the desk of the Clerk of Assize who administered the magistrates committals to these senior courts. In these circumstances, the task of the Grand Jury was perhaps most welcome by all those involved, not least the jury members who had to give up valuable time to hear the cases.

²¹⁵ Lancashire Committals of inter-male sex (1850-1970) Data Base Three.

seeking to prosecute inter-male sex crime, irrespective of the actual acts being prosecuted, were made increasingly aware of the relative success and failure of certain charges.

It was only in cases where the committal charge was challenged, when the defendant returned a 'not guilty', that a full trial occurred and the jury was empanelled to adjudicate a trial and frame a verdict (i.e. a *petit* or standard jury). A detailed breakdown of verdicts returned in this Lancashire sample suggests that when full trials of inter-male sex related committals took place, there was a shift in the verdicts returned as set out in Table 3.12.

*Table 3.12 The verdict returned in prosecutions concerning inter-male sex behaviours 1850-1918*²¹⁶

	VERDICT - Not Guilty	VERDICT - Guilty	VERDICT - Guilty lesser Charge	None (Hung jury)/RE-Trial Ordered	No Verdict - Procedural	Verdict - clinical
1850-1859	0	6	0	0	0	1
1860-1869	1	2	0	0	0	0
1870-1879	0	8	0	2	0	0
1880-1889	5	8	5	0	0	0
1890-1899	33	30	11	0	0	0
1900 -1909	31	30	9	0	0	0
1910-1918	6	24	6	0	0	1
Total for 1850-1918	76	108	31	2	0	2

²¹⁶ Lancashire Committals of inter-male sex (1850-1970) Data Base Three.

In the first few decades of this study, the majority of the cases that got to trial proved successful with a conviction being secured. However, circa the latter 1880s and into the 1890s, a shift in conviction rates occurred. Proportionally more trials resulted in not-guilty verdicts or the accused being found guilty of a lesser crime. For example, men accused of inter-male sex buggery cases were frequently found guilty of only the lesser charge of attempted buggery that greatly limited the sentencing power of the presiding judiciary. A breakdown of verdict by type of offence being tried, also highlights differences in those overall conviction rates. Those males facing the most serious inter-male sex crime, of buggery, during the period had a 2:3 chance of being found not guilty.

Table 3.13 *Verdicts returned in prosecutions of IMS Buggery 1850-1918*²¹⁷

VERDICT	Not Guilty	Guilty	None (Hung jury)
Total 1850-1859	0	0	0
Total 1860-1869	0	0	0
Total 1870-1879	0	1	0
Total 1880-1889	5	1	0
Total 1890-1899	10	6	0
Total 1900-1909	7	4	0
Total 1910-1918	1	3	0
Grand Total 1850-1918	33	21	0

What is of particular interest is that the relative success of the newer charge of 'gross indecency' used to prosecute inter-male sex related behaviour, see Table 3.14.

²¹⁷ Lancashire Committals of inter-male sex (1850-1970) Data Base Three.

Table 3.14 *Verdicts returned in prosecutions of 'gross indecency' 1850-1918*²¹⁸

VERDICT	Not Guilty	Guilty	None (Hung jury)
Total 1850-1859	0	0	0
Total 1860-1869	0	0	0
Total 1870-1879	0	0	0
Total 1880-1889	0	0	0
Total 1890-1899	17	17	0
Total 1900-1909	24	19	1
Total 1910-1918	5	23	2
Grand Total 1850-1918	46	59	3

The higher success of 'gross indecency' committals to successfully navigate the Grand Jury, obtain a full trial and ultimate conviction, shows a marked difference to the track record of prosecutions using the older buggery laws. If the *Calendar* evidence regarding the number of successful guilty verdicts returned is then contrasted with the higher proportion of prisoners cooperating and pleading 'guilty', an intriguing insight is provided. If, as suggested, the police were from the 1890s, becoming increasingly interested in committing inter-male sex crime for trial, a certain professionalism might be expected to have been developed and with that, improved chances of securing the sought after successful convictions. That a successful prosecution of the crime of gross indecency did not require proof of an act or even of physical contact, only that something sexually 'indecent' had happened or was sought between two males, as opposed to a physical act related to intercourse, made the charge potentially a more 'reliable' vehicle to ensure a successful prosecution. It would appear reasonable to suggest that this combination of factors — greater incidence of cooperation from those being prosecuted to with regard to their plea, a greater propensity of juries to convict and increased police

²¹⁸ Lancashire Committals of inter-male sex (1850-1970) Data Base Three.

proficiently at prosecuting such cases — led to the increased usage of ‘gross indecency’ charges in the final decades of this period.

As noted another function, performed by the jury during this period and suggested by the *Calendar* evidence, concerns the actual framing of the prosecution; inferring that juries enjoyed a role in the framing of the actual charge. For example, a frequent feature of the records is a note to the effect that the indictment had been changed during the trial, modified to a lesser charge. This can be seen in the case of John and William, both listed as labourers, who appeared at the July Assizes at Liverpool charged with the very serious crime of buggery, ‘Feloniously, wickedly and against the order of nature did carnally know one another and together feloniously did commit the abominable crime of buggery at Garstang on the 15th July 1889.’²¹⁹ However, the verdict column in the *Calendar* records ‘Guilty of attempting to commit buggery’, which suggests that at some stage during the trial, the jury, judge, prosecution or two or more acting in concert had agreed to reject the substantive charge and tried and found guilty the men on a different albeit related charge. As Upchurch has shown, mid-nineteenth century magistrates’ courts enjoyed a licence that afforded the judges the power to radically alter prosecutions, sometimes producing charges unrecognizable relative to the original charge brought to trial.²²⁰

This apparent negotiation of charges appears largely limited in the *Calendars* to committals relating to inter-male sex; however further investigations are required to

²¹⁹ LCC&D: Liverpool Assize, 1889.07.25 CE# , 049 [Source, National Archives HO 140/113 Calendar of Prisoners by County - Cos Lancs. - Lincoln Note: 1 Volume 1889]]

²²⁰ Upchurch, C. (2009) *Before Wilde - Sex Between Men in Britain's Age*. Berkeley: California University Press.

understand more clearly what was actually occurring. That is, especially before the 1890s, the switching of charges was a not uncommon feature of inter-male sex-related cases charged with a single crime, e.g. buggery, attempted Buggery or indecent assault. Table 3.15 sets out the frequency of substitution of the original substantive charges of buggery to the lesser one of 'attempted buggery'.

*Table 3.15 The frequency of the substitution a substantive charge for buggery for the lesser one of attempted buggery*²²¹

	Substantive Buggery charge changed to attempted buggery
Total 1850-1859	0
Total 1860-1869	0
Total 1870-1879	1
Total 1880-1889	8
Total 1890-1899	8
Total 1900-1909	5
Total 1910-1918	2
Total 1850-1918 [Cat.3-6]	24

The number of 'buggery' prosecutions that became 'attempted buggery' prosecutions suggests that this procedure was an established one. It will require further investigation to determine at which stage in the process changes to the charge were made and what procedure, if any, was followed. After the passing of the 1885 Act, a similar trend, although not as pronounced, can also be detected in the treatment of prosecutions for 'attempted buggery', which were substituted during the trial process for prosecutions of 'gross indecency'. It is possible of course that the switching of committal charge was simply the result of the defendant changing his plea during the process of prosecution. William Wright and William Beswick were tried at the

²²¹ Lancashire Committals of inter-male sex (1850-1970) Data Base Three.

Manchester Assize held in April 1899, jointly charged with an inter-male sex act for which two charges were preferred:

At Old Trafford on the 28th February 1900 did unlawfully attempt feloniously wickedly and against the order of nature to commit and perpetrate the abominable crime of buggery and unlawfully did commit acts of gross indecency with each other.²²²

There is a procedure within the established process that allows for such a change, most commonly when the defendant pleaded guilty to a lesser crime than the one by which they had been originally charged.²²³ This type of recording only accounts for a small number of the committals where the charges were apparently switched between committal and outcome of the trial. How the legal procedure by which this substitution of a one crime for another occurred is not yet clear but, what is intriguing is the apparent negotiation of an inter-male sex charge during the trial process. There are few historians researching the history of procedures within the Criminal Justice System; Bentley has undertaken work in this area but has little to say on this apparent 'switching' of charges.²²⁴

The juries of this period could have enjoyed a significant role in the process of criminalising inter-male sex cases. It is a role which they appear to have exercised to make the prosecution of inter-male sex highly problematic for the prosecution: by throwing out the indictment at the grand jury stage, finding large numbers of cases

²²² LCC&D: Manchester Assize, 1899.04.19 CE# , 5& 6 [National Archives HO 140/193 Volume Calendars of Prisoners Lancaster to Lincoln (1890)].

²²³ For example John Shore was committal by local Bury magistrate Mr. R. Bealey Esq., on 29th Dec 1870 on the charge of, 'At Bury on the 26th December 1870 unlawfully did make an assault upon one Joseph Shaw with intent then with him feloniously to commit and perpetrate the detestable and abominable crime of buggery'. However at his trial the following month at the County Quarter Sessions held at Salford before Mr. William Housam Higgin Esq., QC., his plea for the lesser crime is noted in the Calendars, 'Pleaded guilty to an indecent assault.' LCC&D: SALFORD Hundred Co. Q.S. 1871.01.09. CE# , 8 [Source, National Archives HO 140/14 Calendars of Prisoners for Lancs. (1871)].

²²⁴ Bentley, D. (1998) *English criminal justice in the nineteenth century*. London: Hambledon Press.

'not-guilty' or when making guilty decision, sometimes opting for a 'lesser charge'. Mindful that the juries were made up of males from the respectable Victorian and Edwardian middle classes there appeared little enthusiasm for convicting buggery cases, but there was a growing keenness, towards supporting the prosecution of the more ambiguous charge of 'gross indecency'.

The Attitudes and Sentencing of the Presiding Judiciary (1850-1918)

The *Calendar evidence* regarding the role and attitudes of the presiding judiciary is again limited to the function of these documents: recording the name and under the heading 'Order of the Court' the outcome of each trial. The most senior criminal county courts, the Assize, were the exclusive preserve of High Court judges who travelled from London in 'circuits' trying cases in each county, at least in theory, four times a year. In the mid-nineteenth century, the Assize courts were staffed and presided over by professional High Court Judges, usually obtaining such senior posts as a result of political considerations.²²⁵

The qualification of judges sitting at the county Quarter Sessions also included political considerations and membership of the 'county bench' was reserved for the local ruling elite. These local landowners were appointed by the crown on

²²⁵ As Bentley notes: 'The bench [high court judgeships] was used throughout the century [19th] as a means of rewarding past political services' [See Bentley, D. (1998) *English criminal justice in the nineteenth century*. (London: Hambledon Press, p. 66.) Examples of assize Judges operating at this time in Lancashire and noted in the Calendars were: 'The Hon. Justice Sir Colin Blackman, knight, Justice of HM Court of the Queen's Bench Westminster'. [LCC&D Salford Hundred Co., Q.S., 1874.11.26., CE# 42. [National Archives @ Kew HO 140/26 Calendars of Prisoners for Lancs. (1874)], 'The Hon. Justice Sir Colin Blackman, knight, Justice of HM Court of the Queen's Bench Westminster.' LCD&E: Lancashire Assizes at Salford Hundred. 1874.11.26. CE# , 43 [National Archives HO 140/26 Calendars of Prisoners for Lancs. (1874)] & 'The Lord Chief Justice The Rt. Hon. Charles Baron Russell of Killowen GCMG.' LCD&E: Liverpool Assizes. 1893.04.11. CE# , 016 [National Archives HO 140/161 Calendar of Prisoners by County - Cos Lancs. - Lincoln Note: 1 Volume (1895)].

recommendation of the Lord Lieutenant of the county and managed by the Sheriff of the County. These county judiciaries were often styled in the *Calendars*, either by their hereditary title or by the addition of 'Esquire' to their names. However, greater professionalism began to be introduced into the Quarter Sessions as the century progressed. The presiding judge, or 'Recorder' at Borough Quarter Sessions, was being paid and was required to have a minimum of five years' experience as a barrister.²²⁶ The *Calendars* also note that even the county Quarter Sessions sometimes enjoyed presiding judges who were also professional lawyers, as suggested by the addition of the prefix Q.C. (Queens Counsel) after their names.²²⁷

Therefore, the county and borough criminal courts of Quarter Session of Lancashire appear to have been well served by presiding judges with a recognised and even prestigious, level of legal knowledge and practice in the law. That is not to suggest that a number of the presiding judges were not amateur lay-justices but that during the period a shift was in motion towards a professionalisation of the post. The high esteem, in which these men were held and no-doubt demanded, is reflected on the cover page of most Lancashire *Calendars*. As the decades progressed, the use of bold lettering and ornate fonts and type size on *Calendar* covers were all used to highlight the names of the key officials involved in that session of the court, with

²²⁶ Examples from the *Calendars* of presiding judiciary at borough quarter session: 'The Recorder of Manchester', LCC&D City of Manchester QS. 1874.03.09. CE# 26 [Source, National Archives @ Kew HO 140 *Calendars of Prisoners for Lancs.* (1874)]. The Recorder of Salford Borough LCC&D Salford Borough Q.S., 1893.10.09 [National Archives HO 140/129 *Calendar of Prisoners by County - Cos Lancs.* (Lincoln Note: 1 Volume 1891)].

²²⁷ King's or Queen's Council (depending on the gender of the reigning monarch) denotes membership of the most senior rank of barristers. For example the presiding judge of the Preston Quarter Session convened in May 1875 is recorded as 'The Chairman William Housman Higgin Esq., QC.' LCC,D; Salford Hundred Co. Q.S. 1875.05.24 CE# , 07 [National Archives HO 140/30 *Calendars of Prisoners for Lancs.* (1875)]. Higgins is not the only such apparently qualified lawyer (i.e. senior barrister) that appears as a regular presiding judge in the county quarter session circuit.

what might be called 'top billing' being afforded to the presiding judiciary, (see Appendix I).

As noted, the key evidence of the role and attitudes of the judges presiding at the Lancashire assizes and quarter sessions as recorded by the *Calendars* is that of the 'order of the court'. Only in a handful of cases was the order of the court indeterminate; when a trial was not held or there was a trial with no clear outcome. For example in November 1874, two men, Alexander Vause Birks, (44) 'Draper' and John Bracewell (27) 'Clerk', were committed to appear before the Hon. Justice Sir Colin Blackman, Justice of HM Court of the Queen's Bench Westminster, Manchester Assize. They were charged with:

Having at Manchester on the 5th September 1874 feloniously wickedly and against the order of nature committed the abominable crime of buggery.' [The jury failed to return an agreed verdict and the *Calendar* records] '[Re-] Trial postponed until the next Manchester Assizes and the prisoners to be kept in custody in the meantime unless they shall respectively enter into recognizance before a Magistrate for the City of Manchester in £200 each with two sufficient sureties for each of them in £100 each. Twenty four hours' notice of bail to be given to the Attorney for the prosecution.²²⁸

At the re-trial the following March, again the jury could not return a verdict and the case was clearly passed beyond the court because the *Calendar* entry for that trial notes: 'Nolle prosequi' ["to be unwilling to pursue"] entered by HM Attorney General'.²²⁹ On rare occasions, within this sample, the trial did not proceed because the prisoner was judged unfit to stand. For example, in May 1908, David Cromarty (46), 'Sailor', appeared at the Liverpool Assize charged with 'Gross indecency with a

²²⁸ LCC&D; 1874.11.26., Salford 100 Assize, CE# 42&43, [National Archives HO 140/26 Calendars of Prisoners for Lancs. (1874)].

²²⁹ LCC&D; Lancashire Assize at Salford, 1875.03.12., CE# 01& 02. [Source, National Archives @ Kew HO 140/30 Calendars of Prisoners for Lancs. (1875)].

male person at Liverpool on the 12th Oct 1908. The *Calendar* notes that he was 'Guilty of the act charged but insane at the time so not to be responsible according to law.' The outcome was that the presiding judge, the Hon. Sir Arthur Mosely Channell ordered that David Cromarty was 'to be detained in custody as a criminal lunatic till HM pleasure be known'.²³⁰ In such instances, the case was referred to the Home Office for further advice and action.

In the majority of cases however, the Criminal Justice System resulted in a clear outcome: the prisoner was guilty or not guilty. In not guilty results, the order of the court was recorded as 'discharged' — the prisoner was released and pronounced free to go with, at least in theory, no blemish on his or her character. For those cases resulting in a conviction, the task of the presiding judiciary moved from one of running the trial to judgement: the handing down of a bespoke punishment, within the guidelines set by the criminal code, to fit that particular crime or crimes.

The attitudes of the presiding judiciary toward proven cases of inter-male sex, in the early decades of this study, could be and were harsh. This is reflected in the use of the maximum tariff available to them under the criminal law for the crime of buggery.²³¹ For example: Joseph Dean was committed, tried and found guilty of 'Sodomy' at the Liverpool Assize held in February 1851 and sentenced to 'Death'. The record notes that this was commuted to 'Trans per Life'; transportation for

²³⁰ LCC&D; Liverpool Assizes, 1908.12.05 CE# , 046 [Source, NA@K HO 140/265 Calendar of Prisoners by County - Cos Lancs., Lincoln Volume (1908)].

²³¹ Although the death sentence was available until reform by the 1861 Offences Against the Person Act in fact after 1835 all death sentences for buggery were commuted by the Home Office.

life.²³² The use of the death sentence in this case is a lingering echo and reminder of the earlier and much harsher punitive regime that can still be found in the *Calendar* records of the 1850s. Weaning some judges off the dramatics associated with donning the 'black cap', even when it was ineffectual, was clearly not easily achieved and was a reflection of the seriousness with which the crime was viewed by some members of the judiciary.²³³ Apparently consensual, victimless inter-male sex convictions were still viewed by some judges as requiring the most severe of punishments well into the 1880s, for example: David Rimmer (37) 'Labourer' was convicted jointly with George Lynn (19) 'Labourer...At Upholland on the 5th June 1884 feloniously wickedly and against the order of nature did carnally know one George Lynn and then with him feloniously did commit and perpetrate the abominable crime of buggery'. They were each sentenced to twenty years of 'Penal Servitude'.²³⁴

²³² LCC&D 1851.02.17 CE# , 003 Liverpool Assize [Source, NA@K HO 27/96 Results of Proceedings Volume 2 Glamorgan to Lincoln (1851). The reference to transportation is largely administrative and not practical; transportation from Britain and Ireland officially ended in 1868, although it had virtually ended by the 'early 1850s' [see Emsley, C. (1996) *Crime and Society 1750-1900*. 2nd ed., London & New York: Longman, p.276] NB: .Death sentences were still being handed down for convictions of Sodomy, in the middle decades of the nineteenth century, even though judges must have been aware that after 1835 they were inevitably commuted. Parliament did not catch-up with Home Office practice and Common Law until the 1861 Offences Against the Person Act i.e. Sections 61-63 replaced the death penalty for buggery with life imprisonment and endorsed the Common Law practice of trying the subordinate offence of attempted buggery with a maximum tariff of ten years imprisonment.

²³³ The Parliamentary reform of the sentencing regime commenced in the 1820s marked a gradual shift away from the regular use of 'death' and corporal punishments towards a more progressive differentiated sentencing system, still largely in operation in twenty-first century Britain. Although punishments such as whipping (i.e. the birch) remained part of juvenile Criminal Justice Systems sentencing regime (including in Lancashire) to punish boys in custody for inter-male sex behaviours well into the twentieth century. For example: on the 27th June 1924 two boys 'H.W. [&] F.P.', were disciplined at the Liverpool Juv. Reformatory for 'Gross indecency' and given 'eight with the cane on seat over trousers by G.I.' *Liverpool Juv. Reformatory Punishment Book 1909-1924*, entry dated 1924.06.27 [Lancashire Archive DDX 824/4/8].

²³⁴ LCC&D Liverpool Assizes, 1884.07.28., CE# 011&12, [National Archives HO 140/73 Liverpool Assize)].

In Lancashire, the harsher sentencing regime of the early decades of the period slowly and decisively gave way, in relative terms, to a much more lenient policy for both consensual and coercive inter-male sex-related behaviours. It is argued that this shift in sentencing for inter-male sex-related crime marked a change in the way those men judging regarded the seriousness of such behaviour. Significantly, those judges were drawn from elite backgrounds, enjoying political connections with central government that had played some part in attaining their prestigious and powerful role. Thus the more lenient sentencing regime discussed in this section could be also read as a reflection of thinking on the topic of inter-male sex among the most powerful and senior member of the wider ruling elite.

Table 3.16 sets out a measure of the seriousness and threat posed in the minds of the presiding judiciary towards the crime of 'Buggery' as read through the sentences handed down in successful convictions.

Table 3.16 Median, Mode and Range (i.e. Maximum & Minimum) analysis of sentences handed down in successful prosecutions for inter-male sex related buggery committals.

IMS Buggery Cases	1850-59	1860-69	1870-79	1880-89	1890-99	1900-09	1910-18
Medium	n/a	n/a	1.0	7.0	1.5	1.3	1.5
Mode	n/a	n/a	n/a	20	1.5	0.5	1.5
Range Max	0	0	1	25	10	14	7
Range Min	0	0	1	1	0.25	0.25	1.5

The *Calendars* cannot show the thinking of the judges who decided on the sentences to be handed down. However, although each sentence was in theory designed to fit the crime, it is reasonable to assume that some consistent criteria applied including

the threat such behaviour represented to others and to the protection of property, a major consideration of the Criminal Justice System. Even with the qualification of the unique consideration of the circumstances of each case the change from the death sentence to one of three months (i.e. 0.25 of a year) for convictions for the same crime of inter-male sex buggery, appears significant. When comparisons are made of the cases handed down, a rough pattern emerges in which the maximum sentences were commonly reserved for singular convictions, suggestive of unwelcome or outright coercive behaviour and the shorter sentences, including a significant number of joint cases, were suggestive of consensual behaviours.

The sentences handed down in the successful conviction of males for the crime of gross indecency again suggest a trend towards a more lenient sentencing policy. Although the maximum sentence licenced by Parliament for gross indecency was two years within a few decades of this enactment non-custodial sentences were increasingly commonly being handed down for such committals. The first non-custodial sentences noted by this study was a joint prosecution of two young men in 1912 William Lancaster (collier) and John Hargreaves (Labourer) convicted of the crime of 'Gross indecency with another male person on 28th July 1912'. They were sentenced by Mr. Justice Coleridge at the Manchester Assize on 29th November to be 'Bound over in the sum of £5 to come up for judgement if called upon within 12 months and to be of good behaviour'.²³⁵ Table 3.17, setting out the summary breakdown of sentences handed down for convictions of 'gross indecency' demonstrates a median trend towards more lenient sentences.

²³⁵ LCC&D Manchester Assize, 1912.11.18., CE# 24& 25, [Lancashire Archive PLBu/24 Calendar of Prisoners].

Table 3.17 Median, Mode and Range (i.e. Maximum & Minimum) analysis by decade of sentences handed down in conviction of gross indecency.²³⁶

	1850- 1859	1860- 1869	1870- 1879	1880- 1889	1890- 1899	1900- 1909	1910- 1918
Count	0	0	0	0	24	30	22
Mean	n/a	n/a	n/a	n/a	1.1	0.6	0.6
Median	n/a	n/a	n/a	n/a	1.0	0.4	0.3
Mode	n/a	n/a	n/a	n/a	1.5	0.25	0.25
Range Max	0	0	0	0	2	2	2
Range Min	0	0	0	0	0.25	0.083	0.014

Again, these findings would appear to caution against any sweeping statements about the sentencing policy exercised by the presiding judges during this period, but clearly, a more nuanced and less harsh sentencing policy had emerged by the First World War.

As a general rule, the harshest sentences were confined to the earlier period and for cases of buggery – the most serious of the inter-male sex crimes. In the 1890s, the new gross indecency laws were increasingly used, resulting in convicted persons being more likely to be given a sentence in the lower half of the two-year maximum available to judges. The handing down for the first time of non-custodial sentences is highly significant. During this period, inter-male sex behaviours had gone from behaviour subject to the most serious punishment of death, albeit from 1835 always commuted, by to one that only required, in certain cases a non-custodial ‘rap-on the knuckles’.

²³⁶ Lancashire Committals of inter-male sex (1850-1970) Data Bases.

In this interpretation of the *Calendar* evidence for the period 1850-1918, the rarity of inter-male sex committals has been noted with a slow, but steady, increase in such incidents occurring during the later decades. This rarity of committals has been associated with a range of wider and more specific practical obstacles, some of which were unrelated to inter-male sex behaviours. The role of defendants and juries in challenging and rejecting such prosecutions appears one of the major factors in arresting any dramatic increase in such committals during this period. However, the specific prosecution of inter-male sex offences or its prosecution under more general charges is the great unknown. Although it is difficult to assert that there was a radical divergence of the defendants' reactions to such charges between the lower and higher criminal courts, what has been shown is that the incidence of inter-male sex committals were the result of numerous forces which have been discussed above.

However, although Cocks' assertion that 'never before in the history of Britain had so many men been arrested, convicted, imprisoned and even executed for homosexual offences' is not challenged by this study, this investigation seems to add the observation that the level and zeal of that campaign in nineteenth century Lancashire was still in its infancy. These findings broaden our understanding of attitudes towards inter-male sex behaviours made visible through the operation of the Criminal Justice System in the period 1850-1918. Changes to the identification and treatment of offenders did become more evident in the subsequent decades as discussed in the following chapters.

Chapter 4. 'Learning the Ropes': The Indictable Prosecution of Inter-Male Sex 1919-1939.

The previous chapter demonstrated the comparative rarity of committals for inter-male sex related behaviours and the range of attitudes exhibited by those directly involved in such cases within the Criminal Justice System. The cusum analysis of the Lancashire committal data for the inter-war period notes a slight but significant increase in the committal of inter-male sex related cases. Although unlike the previous steady shifts of incidence noted during the previous period the cusum analysis of underlying trends for the two decades covered by this Chapter are marked by more erratic shifts. The most marked of those shifts occur during the few years at the start and close of the period.²³⁷ This chapter will again set out the finding of this investigation by means of a reading of the actions and attitudes of the four main players within the Criminal Justice System, prosecution (i.e. largely undertaken by the various Lancashire police forces by this period), defendants, juries and presiding judiciary.

This Chapter covers a period that hindsight has entitled the 'inter-war years' and Hobsbawn refers to as 'The Age of Catastrophe'.²³⁸ The former Lancashire slum dweller Robert Roberts notes that, 'The First World War cracked the form of lower-

NB: The surnames of all those males committed from 1918 onwards and cited in this study have been omitted. This is not a legal requirement in that all of these cases are in the public domain having been publicly tried and as Smith has shown frequently reported in the pages of the local press but does recognise the ongoing 'sensitivity' regarding inter-male sex. The footnoted reference for each case cited will identify the date, court and *Calendar* entry from which full details of the defendant can be accessed. [Smith, H. (2012) *A Study of Working-Class Men who desired Other Men in the North of England c.1895-1957*. Ph.D. Thesis. University of Sheffield].

²³⁷ The near cessation of inter-male sex related case noted during World War One, discussed in Chapter Three can be seen as a continuance of that war time policy and perhaps the disruptions to policing resulting from the return to peace time. However, the sharp shifts in the cusum analysis for the closing years of this period 1937-39, see Table 4.1, cannot be as easily accounted for with the evidence to hand which in turn provides invitation for future targeted research.

²³⁸ Hobsbawn, E. (1994) *Age of Extremes: the short twentieth century 1914-1991*. New York: Oxford University Press.

class life and began an erosion of its socio-economic layers that has continued to this day.²³⁹ This change manifested itself not least in 'a feeling of release [that] filled the air' Roberts noted 'The young men in their ever widening 'bags' and double-breasted jackets, slicked and fresh, a different race from their fathers ...the first moderns of the twentieth century'.²⁴⁰ As the longitudinal cusum analysis of sampled Lancashire committals has shown, see Chapter One, both World Wars saw mark significant shifts in the incidence of committals for inter-male sex behaviours.

The Attitudes of the Police (1919-1939)

The very low incidence rate of committal during the war years 1914-1918, discussed in the previous chapter, strongly suggests that the over-arching motivation of committing inter-male sex crime to the highest courts for trial was contingent rather than a very strongly held priority to be pursued at all costs. As shown in Chapter Three the committal rates for the period 1850-1918, apart from World War One, were overall characterised by a very low incidence rate. During the inter-war years (1919-1939) such marked consistency was absent. Indeed the cusum analysis can best be described as erratic, (See Table 4.1 Cusum 1919-1939).

It is worthy of note that despite the stated reservations of the deeply flawed nature of the Home Office crime figures noted in Chapter One such figures also advertised a similar overall increase in committals.²⁴¹ That is the government crime figures and

²³⁹ Roberts, R. (1971) *The Classic Slum: Salford Life in the first quarter of the century*. Suffolk: Penguin, p.186.

²⁴⁰ Roberts, R. (1971) *The Classic Slum: Salford Life in the first quarter of the century*. Suffolk: Penguin, p.224.

²⁴¹ The title of the Home Office 'Judicial Statistics' produced, published and annually presented to parliament remained constant during this period, as did for all intents and purposes the contents, only the sub-title changed in 1924 to include the term 'Criminal statistics' [Sic]. Her Majesty's Principal

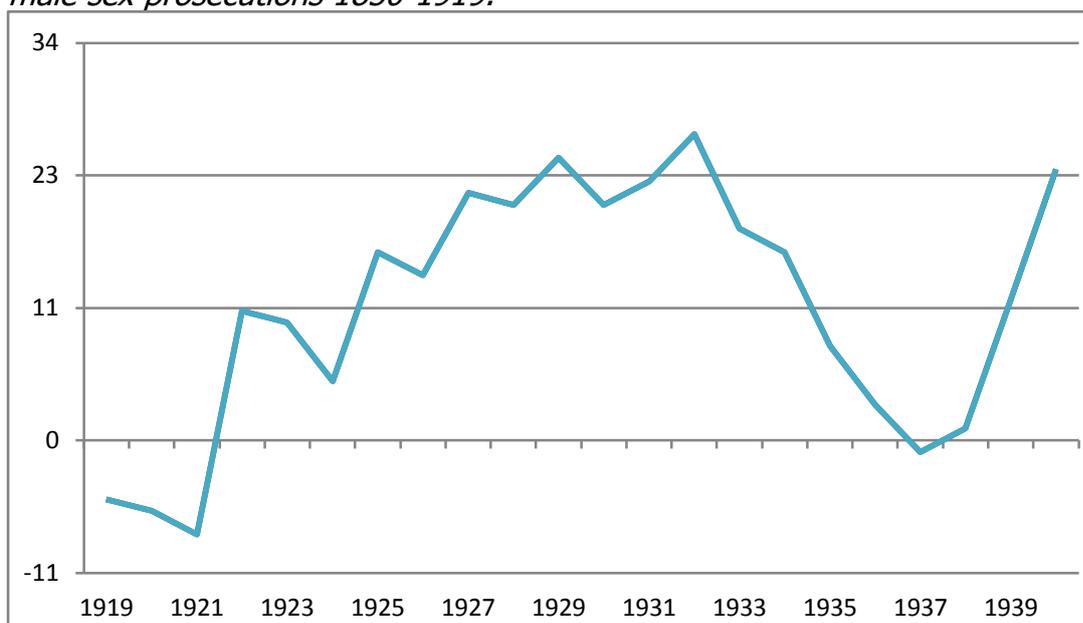
the hundreds of reports from local police forces on which they were nominally based, do exhibit some relationship with the actual incidence of contemporaneous committals.

However, what this increase in the official readings of criminal prosecution figures published by the Home Office and therefore recorded by local police forces suggest is that they were spending, or at least wished to create the impression that, more money and effort was being expended, on the Criminal Justice System. The possible increase in funding could help account, at least in part, for the increased willingness of police forces to spend public funds on the most expensive form of prosecutions; indictable committals.²⁴²

Secretary of State for the Home Department. (1919-1923) *Judicial statistics (Home Office) England and Wales: relating to criminal proceedings, police, coroners, prisons, and criminal lunatics.* London: HMSO. Her Majesty's Principal Secretary of State for the Home Department. (1924-1939) *Judicial statistics (Home Office) England and Wales: Criminal statistics relating to criminal proceedings, police, coroners, prisons, and criminal lunatics.* As discussed in Chapter One the Home Office crime figures are so deeply flawed that any claim to accuracy can be and should be discounted. However, the annual and subsequently quarterly crime figures submitted to parliamentary were and are based on local police returns. Therefore it might be reasonable to expect a measure of resonance, albeit crude, between Home Office figures and the reality of actual incidence of criminal prosecutions furnished by this investigation.

²⁴² Bailey, V. (1988) 'The alarming rise in British crime in the second half of the twentieth century.' *History Today*, 38 (5) [Online] [Accessed on 14th February 2014]. <http://www.historytoday.com/victor-bailey/crime-20th-century-britain> Bailey notes that recorded crime increased by 5 per cent a year between 1915 and 1930; by 7 per cent between 1930 and 1948.

Table 4.1 Cusum Analysis of incidence of the Lancashire sample of indictable inter-male sex prosecutions 1850-1919.²⁴³



From the end of World War One to the start of the World War Two, a new pattern of policing and prosecution of indictable inter-male sex behaviours emerged. What might account for this marginal yet significant shift in the prosecution of inter-male sex behaviours? It might be even considered naïve to suggest that criminal prosecution could be immune from the impact of World War One.²⁴⁴ The sheer

²⁴³ Lancashire Committals of inter-male sex (1850-1970) Data Base. The extent of the committal evidence used to inform the findings of this chapter, drawn from the Calendar of Prisoners document, was obtained from over three thousands Calendars. As shown in Table 4.1.a., below a sample representing a majority of the sessions of the senior criminal courts (i.e. Assizes and Quarter Sessions) convened in the county between 1919 and 1939.

Table 4.1.a. Analysis of Calendars sampled for the inter-war period

Years 1919-1939	(1) Total number of Calendar of Prisoners in this sample (i.e. No. of Lancashire Assize & Quarter Sessions) employed in this study	(2) Potential total number of Calendars generated during this period (estimate)	(3) Difference between the total number of calendars used and the estimated total number of Calendars generated during the period (i.e. 1-2=3)
Totals	931	1277	346
Count (years)	20	20	20
Mean	46.6	63.9	17.3
Median	42	62.5	20
Mode	42	60	20
Range Max	69	70	22
Range Min	36	56	0

Source: Lancashire Committals of inter-male sex (1850-1970) Data Base.

²⁴⁴ The scale the war is hard for anyone to comprehend being the first modern industrial conflict in which a majority of the population, government and industry was actively involved or directly

human cost of the First World War One is beyond human comprehension: as the former German soldier Kurt Tucholsky suggested writing after the war '*Der Tod eines Menschen: das ist eine Katastrophe. Hunderttausend Tote: das ist eine Statistik!*' [One person's death is a tragedy; a hundred-thousand is a statistic].²⁴⁵

Caught up in this horror would also have been males who were prosecuted for inter-male sex related crimes.²⁴⁶ The comprehensive impact of the war on Lancashire is reflected in that only two Lancashire villages were listed among the small number of British settlements that were 'blessed' (i.e. having all its soldiers return after the war).²⁴⁷ Also, the legacy of annual remembrance and memorials of the war dead that sprang up in every part of Britain and its Empire, often eclipsed another tragedy below that public façade: '...there were the many millions of largely silent victims of

affected. The first conscript army of modern warfare involving millions of men and many women, involved in vital 'war work'.

²⁴⁵ Tucholsky, K. (1931) *Französischer Witz*. Hamburg: Rowohlt, p.22. Within those unimaginable human statistics included over five million men approximately 1:4 of all British males served in the armed forces between 1914 and 1918, together with tens of thousands of women in non-combatant roles. Over three-quarters of a million members of the UK armed forces died during the war. [See; Cox, M. and Ellis, J. (2001) *The World War I Data book: The Essential Facts and Figures for all the Combatants*. London: Aurum Press: 2001]. To these human costs can be added the approximately one and a half million casualties that returned home demanding on-going medical treatment and care some for the rest of their lives. [See, Great Britain. War Office (1922) *The War Office Statistics of the Military Effort of the British Empire During the Great War 1914–1920*. London: H.M.S.O., p. 339, which lists the following tally of 1,663,435 (Army) and 5,135 (Navy) personnel classified as casualties of the war.

²⁴⁶ One hundred and three males, whose ages are recorded in the Lancashire Calendar of Prisoners, would have been eligible to volunteer from 1914 or be conscripted into the army by the terms of the Military Service Act in 1916 (i.e. that specified that single men aged 18 to 40 years were to be called up). [Lancashire Committals of inter-male sex (1850-1970) Data Base]. A further one-hundred and forty-four men convicted post-1918 were of an age to volunteer or be conscripted and it is difficult to envisage why these men also might not have been members of the armed forces and fought in the war.

²⁴⁷ Both of these Lancashire villages are located in the rural north of the county; Arkholme, south of Carnforth, and Nether Kellet in the Lune Valley both in the north of the county. Arthur Mee in the 1930s listed only thirty-two 'Thankful' or 'Blessed' settlements in England in which all the men who went-off to war returned and all of these are small villages. [Mee, A. (1936) *Enchanted land; half-a-million miles in the King's England, Volume one of The King's England*. London: Hodder and Stoughton.

the Great War: the widows, parents, siblings, children and friends who lost loved ones between 1914 and 1918... [the] full cost is incalculable.²⁴⁸

Another often overlooked, relevant consequence of war is the relationship between sex, the ostensive subject of this study, and war. Costello reviews the ancient commentary and provenance of that linkage noting: 'Sex and war have always been inextricably linked'.²⁴⁹ At the start of the war in 1914, the linkage between war and sexual licence was afforded a new endorsement by no less an authority than the founder of psychoanalysis, Sigmund Freud.²⁵⁰ Cook notes the ways in which the practical material condition of war opened-up sexual opportunities:

People were on the move: troops travelled between the major cities; nurses, doctors, farm workers, intelligence staff, civil servants and conscientious objectors drafted into non-combatant duties found themselves posted to work away from home. There was scope for new friendships; 'Let's face it'; recalls Firth Banbury of the World War One I, [perhaps equally applicable to all soldiers experience of this period] 'people were in different circumstances, away from their families so the what-the-neighbours say factor did not come into it'.²⁵¹

Perhaps one of the most enduring, albeit neglected, legacies of World War One, is the challenge it presented to the dominant political agenda regarding the place and function of sex. Dagmar Herzog noted:

The First World War disrupted traditional social structures and created an environment in which men and women could explore new sexual experiences

²⁴⁸ National Archives (2014) *WW1 Aftermath- Counting the Cost*. [Online] [accessed 23 July 2012]. http://www.nationalarchives.gov.uk/pathways/firstworldwar/aftermath/counting_cost.htm.

²⁴⁹ Costello, J. (1985) *Love, sex, and war: changing values, 1939-45*. London: Collins, p.17.

²⁵⁰ Freud, S. (1915) *Thoughts for the Time of War and Death*. Reprinted in Freud and Rickman. (1939) *Civilization, war and death: selections from three works by Sigmund Freud*. London: Hogarth Press.

²⁵¹ Cook, M., Trumbach, R., & Mills, R. (eds.) (2007) *A Gay history of Britain: love and sex between men since the Middle Ages*. Oxford; Greenwood World Pub., p.148.

made possible by mass mobilization and separation from the restrictions imposed by traditional institutions.²⁵²

Lancashire did not escape the initial enthusiasm for war with Germany, a marked feature of 1914. Lord Derby in August 1914 launched a recruitment tactic in Lancashire that proved very successful, the raising of over twenty-two 'Pals Battalions' in the county for the war.²⁵³ Over two days, 1500 Liverpoolians joined the new battalions that made possible the creations of four such Liverpool 'Pals' battalions of over 4,000 men (i.e. 1st, 2nd, 3rd & in October 1914 the 4th City of Liverpool Battalions of the King's Liverpool Regiment (89th Brigade, 30th Division).

²⁵⁴ In the first months of the war such jingoist zeal had profound effects on the musculature and no doubt energy levels of Lancashire men and lads as noted by

Roberts:

Some of the men joining the forces were delighted to find that it meant a full stomach – 'meat every day!' as the recruiting sergeants had truly said...In a few months of hostilities many local recruits returning on their first 'furlough'... astonished us all. Pounds – sometimes stones – heavier, taller, confident, clean and straight, they were hardly recognisable as the men who went away.²⁵⁵

²⁵² Herzog, D. (ed.) (2009) *Brutality and Desire: War and Sexuality in Europe's Twentieth Century*. New York: Palgrave Macmillan, p. 5.

²⁵³ The pals battalions of World War I were specially constituted battalions of the British Army comprising men who had enlisted together in local recruiting drives, with the promise that they would be able to serve alongside their friends, neighbours and colleagues ("pals"), rather than being arbitrarily allocated to battalions. [Maddocks, G. (1991) *Liverpool Pals : A history of the 17th, 18th, 19th and 20th (Service) Battalions, the King's (Liverpool Regiment), 1914-1919*. London: Leo Cooper & Stedman, M. (1994) *Manchester Pals : 16th, 17th, 18th, 19th, 20th, 21st, 22nd & 23rd Battalions of the Manchester Regiment : a history of the two Manchester brigades*. London: L. Cooper.] Perhaps the most famous Lancashire example of such volunteerism by Lancashire men was the formation of the Accrington Pal's the smallest town in England to raise such a body of men. Turner, W (1988) *Accrington Pals*. Barnsley: Pen and Sword. Jackson, A (2013) *Accrington's pals : the full story : the 11th Battalion, East Lancashire Regiment (Accrington Pals) and the 158th (Accrington and Burnley) Brigade, Royal Field Artillery (Howitzers)*. Barnsley: Pen & Sword.

²⁵⁴ Not to be out-done in such patriotic endeavor the Lord Mayor of Manchester raised four battalions in the same August, 1st, 2nd, 3rd and 4th City of Manchester 'Pals' battalions of the Manchester Regiment (90th Brigade, 30th Division). That is approximately twenty-thousand men volunteering from just two Lancashire conurbations in only four months.

²⁵⁵ Roberts, R. (1971) *The Classic Slum: Salford Life in the first quarter of the century*. Suffolk: Penguin, p 189.

Perhaps it would not be unexpected if these young men and lads with their newly emerging be-muscled and energised bodies, were encouraged and emboldened to seek out opportunities to exercising their more carnal wants.

This expanding knowledge of sex allied to the wartime encouragement of prostitution, together with the practical and emotive validation of sex afforded by the wartime sexualised environment, cannot simply have targeted and excited one particular kind of sexual desire. It seems clear that the wide diversity of human sexual desire was excited, including inter-male desire which is certainly reflected in the 'homoerotic' war poetry of the time.²⁵⁶ Indeed, an immediate consequence of World War One among wealthy young men, not least those attending the elite universities of Oxford and Cambridge, was that it became fashionable for young men of college age – that is military age – regardless of their ultimate sexual orientation to dabble in homosexuality'.²⁵⁷ It is this more informed, and thereby sexualized, context that provides the historical background and terrain in which to read the committal figures for inter-male sex during these inter-war years.

The Armistice signalled the return to full peacetime operation of the Criminal Justice System.²⁵⁸ However, before the War ended, post-war tensions and wartime

²⁵⁶ Brearton refers to; '*...the homoerotic iconography of first world war poetry*'. Brearton, F. (2007) *A War Friendship Robert Graves and Siegfried Sassoon*. In Kendall, T. (ed.) *The Oxford handbook of British and Irish war poetry*. Oxford: Oxford University Press, p.312.

²⁵⁷ Edsall, N. (2003) *Towards Stonewall: Homosexuality and Society in the Modern Western World*. University of Virginia Press: Charlottesville & London, p.195.

²⁵⁸ World War One did not mark the end of hostilities for the British Empire, only a bloody high-point. The manpower of Britain and its Empire were involved in a range of smaller scale wars all through the inter-war period including: the British invasion of the USSR the 'North Russia campaign' (1918, to 1920), Estonian War of Independence (1918–1920), Latvian War of Independence (1918–1920), The

experiences combined with the raise of a new wave of industrial militancy, which greatly encouraged the development of syndicalism within police ranks. The National Union of Police and Prison Officers that had grown clandestinely during the war years called its first successful strike in August 1918, demanding better pay and conditions, including 'war bonuses'. The Government response was swift, establishing the Desborough Committee the following year that both addressed material grievances and also recommended the outlawing of an independent police union. The importance of a loyal police force to the government is reflected in the swiftness that the Desborough Committee investigated and made recommendations, which by July 1919 were being reported in the press:

[Desborough has proposed] in its first Report to fix a standard of pay, pensions, and allowances for all the forces, large and small. Constables are to begin with 70s a week, rising to 90s in ten years, with additions for good conduct and efficiency. Sergeants are to start at £5 a week. All ranks are to have free house; or- quarters, or- allowances in lieu of them. A normal eight-hour day is to be observed, with extra pay for overtime. The constable's boot allowance is fixed at eighteen pence a week, which seems- moderate in view of the massive proportions of the policeman's boot. After twenty-five years' service a policeman may retire with a pension equal to half his pay. The State is to contribute at least half of the cost of the police. The Committee recommends the formation of a national representative body within the Police Force, to ensure that grievances may be discussed and remedied. The Home Secretary has introduced a Bill enabling him to affect the reforms proposed by the Committee. The Bill authorizes the establishment of a Police Federation for all ranks below that of Superintendent, and forbids police officers, on pain of dismissal, to become or to remain members of any Trade Union. It is important that this measure should become law without delay.²⁵⁹

The Government again moved with urgency, and Parliament enacted the Desborough recommendations into law by the Police Act of 1919 (9 & 10 Geo. 5,

Irish War of Independence (1919 to 1921), [Third Anglo-Afghan War](#) (May 1919– August 1919), Somaliland campaign (1920), Adwan Rebellion (1923), Ikhwan Revolt (1927–1930), & Great Arab Revolt in Palestine (1936–1939). However, what is important to note with such relatively small 'inter-war' conflicts is that they avoided opponents whose technology and industry required any large scale mobilizations of the population and thereby limited their social impact at home.

²⁵⁹ *The Spectator* (1919) 18th July, p. 3.

c.46). A key element of this law was to establish the Police Federation as the only legitimate representative body and crucially, without the power of industrial action to challenge. It quickly replaced the independent trade union, the National Union of Police and Prison Officers. The reaction of that union was to call a second strike in August 1919 that met with an enthusiastic response in Liverpool, unlike the sporadic responses among other police forces nationwide. The following four-day police strike in Liverpool by large number of police resulted in the army being called in to intervene and invited much newspaper coverage. The results of the 1919 police strike were a victory for the Government marked by the demise of independent trade union representations, and the dismissal of those Liverpool police officers involved.²⁶⁰ The police were now even more tied to their employers' interests, not simply economically: any effective challenging political commentary or protest, in general or specifically to certain operational issues (e.g. standing? for hours in the toilet cleaner's room of public conveniences spying on males urinating) was efficiently silenced.

However, a section of the 1919 Police Act also had far-reaching implications for the targeting and categorisation of prosecution selected to charge alleged criminals. Firstly, the greater centralisation of the national coordination and stewardship of crime detection by the Home Office was formally endorsed. Secondly, in a further weakening of local government control of 'their' police forces, was the extension of a wartime provision afforded by the County Chief Constable to all Borough Forces,

²⁶⁰ Bean, R. (1980) 'Police Unrest, Unionization and the 1919 Strike in Liverpool.' *Journal of Contemporary History*, 15 (4) pp. 633-653. See p. 647. Thomas, E. (1986) *Liverpool Police Strike 1919*. Ph.D. University of Liverpool.

with the exception of London. The Chief Constable of each local force was afforded operational and thereby significant political independence from the politicians. However, the local Watch Committee still retained a governance function for day-to-day operations and longer term policies of selecting out and targeting certain crimes in the gift of the senior police officers, albeit 'supported' to a greater extent by the officials of the Home Office.²⁶¹ Therefore, the prosecution figures for the inter-war period can be read as resulting from the operational priorities of the police managers in any one locale rather than the outcome of the interests of local politicians strongly influencing and even dictating policing operations. At the start of this period, the post-war police forces not only enjoyed much better pay and conditions, their managers also enjoyed greater operational independence. They had the benefits of wartime experiences that for many most probably included greater sexual awareness, an insight that they could now bring to the task in hand: the selective implementation of the criminal law. As Table 4.2 suggests, the raw evidence of incidence during this period marks a limited, but notable increase in the prosecution of inter-male sex crime. An increase that can be read as a direct consequence of the greater operational independence afforded senior police by the curtailment of the influences of local politicians on the local Watch Committees. See 4.2, below.

²⁶¹ Coady, C. (2000) *Violence and police culture*. Carlton, South, Vic.: Melbourne University Press, p.22.

Table 4.2 Comparative overview of total Lancashire sample of indictable prosecutions and the total number of inter-male sex related behaviours identified therein 1919-1939 in five year totals.²⁶²

	Total number of inter-male sex related prosecution [DB2:Catogiores:3-6]	Total number of Assize & Quarter Sessions <i>Calendars</i> sampled	Total number of all criminal prosecutions as listed in the Lancashire <i>Calendars</i> sample
1919-1929	182	457	6686
1930-1939	128	328	8232

These figures, together with the cusum analysis, see *Table 4.1 Cusum graph incidence of committals for inter-male sex 1919-1939*, show both an increase in total incidence of committals, together with a significant departure from the more regular and steady pattern of the previous decades.

What remains consistent with previous decades during this period were the categories of offences being used to seek and obtain committals of inter-male sex related behaviours. In the decades leading up to World War One and the two decades of relative peace that followed, the substantive indictable charges remained the same: 'Buggery', 'Attempted Buggery', 'Gross Indecency', 'Indecent Assault', including inter-male sex behaviours involving 'lad(s)' less than sixteen years of age. Table 4.3 sets out the incidence of the usage of such charges to commit inter-male sex during this inter-war period, which are the same charges used in the decades immediately prior to World War One.

²⁶² Lancashire Committals of inter-male sex (1850-1970) Data Base.

*Table 4.3 Incidence and category of all Lancashire inter-male sex related committals (1919-1924).*²⁶³

	Buggery [Cat. 3]	Att. Buggery [Cat. 3.2]	Gross Indecency [Cat. 4]	Indecent Assault [Cat. 5]	IMS with a minor [Cat. 6]	Totals
Total for the period 1919-1939	56	29	174	42	9	310

What these figures suggest is that the aftermath of war had brought with it an increased enthusiasm by Lancashire prosecuting agencies to effect a marked step-change in the number of committals being sent for trial at the senior criminal courts. There are two main practical features of this increase in the incidence of committals during this period. The first is that more locally based magistrates' courts were sending such cases for trial at the senior criminal courts of Lancashire. Secondly however, committals originating from one Lancashire location distort this county-wide picture; Liverpool magistrates were consistently generating disproportionately large number of such committals. Indeed, they accounted for nearly half of all Lancashire committals within this sample. The reasons for this Liverpool focus although regrettably outside the reach of this project, will hopefully serve as a starting point for future investigation.

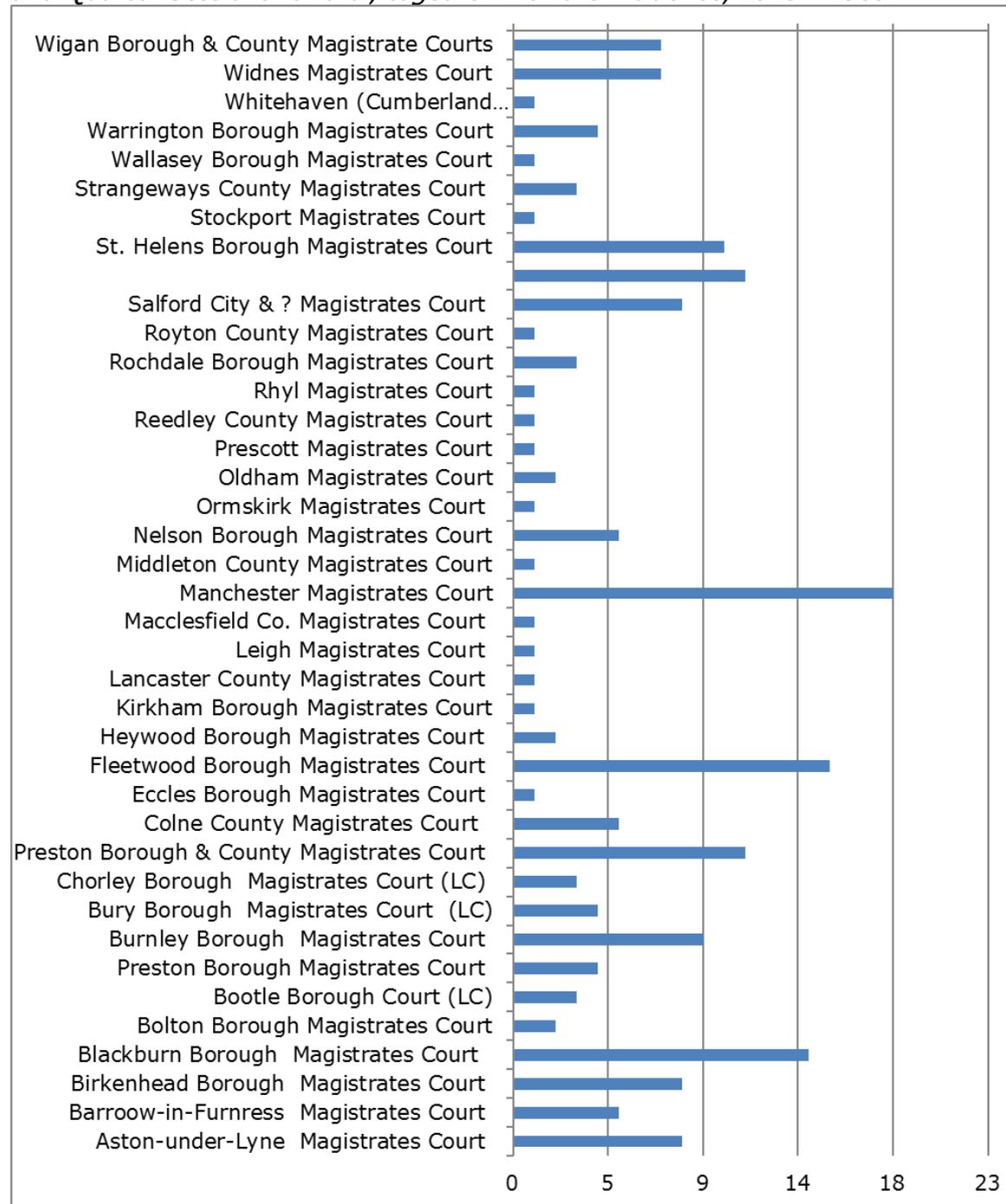
Nevertheless, the general finding noted in Chapter Three is a remarkable development: during the period 1850-1918, only a handful of Lancashire magistrates committed inter-male sex cases to trial. As argued above, most of the prosecution agencies did not prioritise the policing of inter-male sex crime, or if they did, they did not consider those behaviours sufficiently serious as to warrant seeking trials at

²⁶³ Lancashire Committals of inter-male sex (1850-1970) Data Base.

the senior courts. By the period 1919-1939, this apparent reticence to seek the committal of inter-male sex cases appears to have been in decline. The expansion in the geographical range of magistrates' courts committing such cases is shown in

Table 4.4.

Table 4.4 Magistrates' courts committing inter-male sex cases to the courts of Assize and Quarter Sessions for trial, together with the incidence, 1919 - 1939.²⁶⁴



²⁶⁴ Lancashire Committals of inter-male sex (1850-1970) Data Base.

When this table showing the geographical spread of magistrates' courts, Table 4.4, is compared to the location of established Lancashire police forces operating in 1935, it would appear reasonable to suggest, if only because of geographical proximity, that most, if not all, police forces were responsible for at least a couple of such cases during the inter-war period.²⁶⁵

This comparison therefore suggests that a majority of Lancashire criminal prosecution agencies were by this period engaged in some form of inter-male sex policing up to, and including, the committal stage. This by definition marks the emergence of a more common attitude, in that such committals represented an agreement by police managers and the civil officials staffing governing bodies to underwrite the significant cost involved in the committal of such cases to the senior courts for trial. This at a time when the police, along with other public agencies, were subject to increased demands for savings as the effect of the global depression was felt.²⁶⁶

²⁶⁵ Lancashire Police forces operating during the 1930s: (i.e. Reported size of the establishment shown in brackets):- Lancaster Constabulary (2,150), Accrington Borough Police Force (52), Ashton-Under-Lyne Borough Police Force (61), Bacup Borough Police Force (28), Barrow-in-Furness Borough Police Force (89), Blackburn Borough Police Force (169), Blackpool Borough Police Force (133), Bolton Borough Police Force (202), Bootle Borough Police Force (100), Burnley Borough Police Force (118), Clitheroe Borough Police Force (15), Lancaster City Police Force (53), Liverpool City Police Force (1,725), Manchester Borough Police Force (1,395), Oldham Borough Police Force (172), Preston Borough Police Force (144), Rochdale Borough Police Force (117), St Helens Borough Police Force (141), Salford Borough Police Force (330), Southport Borough Police Force (114), Staley Bridge Borough Police Force, Warrington Borough Police Force (100), Wigan Borough Police Force (109), [HM Home Office (1935) *Reports of His Majesty's Inspectors of Constabulary for the year ended 29th September, 1935 (Counties and Boroughs)*. Session: 1935-36, Paper Series: House of Commons Papers: Reports of Commissioners, Page Number; (43), Volume/Page; XIV.339, Collection: 20th Century House of Commons Sessional Papers, CH Microfiche Number: 144.148 pp.12-13.

²⁶⁶ Taylor, H. (1999) 'Forging the Job: A Crisis of 'Modernisation' or Redundancy for the Police in England and Wales 1900-1939.' *British Journal of Criminology*, 39, pp. 113-136.

The work of Taylor offers an explanation that helps to understand this significant change in the prosecution, and thereby policing of inter-male sex, during this period. In his study of the decades after World War One he details police endeavours to justify and re-invent their role and notes the increased prioritisation of certain crime categories, including motoring offences.²⁶⁷ Although Taylor does not include inter-male sex crime in his list of the categories of crime prioritised for political ends during this period, it would clearly be a candidate for consideration.

This attitudinal shift in the recalibration of the seriousness of offences highlighted by Taylor marks an important development from the pre-World War One period. After 1918, inter-male sex would seem, by the overall increase in the incidence of such committals, to be viewed by the police and magistrates as requiring more targeted arrests or severe charges, or both. Again, caution needs to be exercised when assessing the findings of the sampled *Calendar* evidence. That conclusion appears remote to most Lancashire police forces outside of Liverpool. Only a handful of such cases being committed from each of the local magistrates' courts named in the *Calendars*. However, even a small increase originating from locales that had no previous record of such committals (1850-1918) suggests both an increased willingness by magistrates and the local Lancashire police force managers to invest time and public money into prosecuting such behaviour.

However, Table 4.3 above only accounts for approximately half of the committals in this extensive sample of *Calendar* data from the period, approximately one hundred

²⁶⁷ Taylor, H. (1999) 'Forging the Job: A Crisis of 'Modernisation' or Redundancy for the Police in England and Wales 1900-1939.' *British Journal of Criminology*, 39, pp.113-136.

and eighty-five. The other half, the remaining one-hundred and fifty-nine committals, originated from one urban centre, today part of the modern county of Merseyside, recorded in the *Calendars* as 'Liverpool'. In this Lancashire sample between 1919 and 1939, the *Calendars* record 'Liverpool', 'Liverpool Borough' and 'Liverpool City' magistrates' courts committing one-hundred and fifty-two inter-male sex cases to the senior criminal courts.

The Liverpool exception

The decisions by police managers and their governing bodies in Liverpool to prioritise, and thereby apparently effect, a dramatic and disproportional number of committals for inter-male sex during this period which would again appear to strengthen a key argument of this thesis. Namely, that policing and prosecution are a capricious crusade, which are not part of a county-wide, nor much less, a national, system. While a port city no doubt develops a large service industry to meet the various sexual demands of tens of thousands of travellers and sailors, the inter-male sex cases earmarked for committal appear not to target such commercial enterprises. In the cases originating from Liverpool, only one male gave his occupation as 'sailor', appearing in 1930: Ernest (49); 'Sailor' 'Particulars of the Offence; Indecent assault on male person and gross indecency'.²⁶⁸ The *Calendar* evidence also details that sixty-seven of the males committed for inter-male sex behaviours had previous criminal convictions, of which only seven related to offences

²⁶⁸ Liverpool Assize Calendar, 1930.04.26., CE# 002 [LCA 347 QUA 3/6 Calendars of Prisoners (Jan 1930 to Nov. 1939)].

outside of Merseyside.²⁶⁹ This would point towards the prosecution of males in Liverpool being primarily directed at the indigenous male population with little evidence to data available, to suggest the reverse. Even the committal of 'sailors' does not discount the possibility that these males were also Liverpudlians or Scousers,²⁷⁰ in that large numbers of the local male working-class population also would have had seafaring experience especially when younger.²⁷¹

There is also little within the findings to suggest that the targeting of the large number of committals for inter-male sex emerging from Liverpool during this period was aimed towards the sale of male sexual services. There is simply no mention of committals for 'importuning' or 'soliciting' or other references to male prostitution. The *Calendar* evidence does testify to the existence of the availability of such sexual services by males for males in Liverpool but only once during this period. This case was listed under the 'previous offences' column of the *Calendars*, and it appears

²⁶⁹ Malcolm (37) Accountant, under '*Previous Convictions*'; includes a reference to court at 'Westminster' [Liverpool Assize Calendar 1920.01.26., CE# /032. LCA 347 QUA 3/5 Calendars of Prisoners (Jan 1920 to Oct. 1929)], George (44) Laborer, '*Previous Convictions*'; includes a reference to court(s) at: 'Somerset' and 'Salford'. [Liverpool Assize Calendar 1920.10.25., CE# 004. LCA 347 QUA 3/5 Calendars of Prisoners (Jan 1920 to Oct. 1929)] Reginald (28) porter, '*Previous Convictions*'; includes a reference to court(s) at: 'Westminster'. [Liverpool Assize Calendar 1922.06.19., CE# 015. NA HO 140/372 Calendar of Prisoners by County - Cos Lancs., - Lincoln Note: 1 Volume (1922)], James (17) Butler, '*Previous Convictions*'; includes a reference to court(s) at: 'Edinburgh' & 'Marlborough Street'. [Liverpool Assize Calendar 1924.10.27., CE# 043. LCA 347 QUA 3/5 Calendars of Prisoners - bound volume (Jan 1920 to Oct. 1929)], William (61), '*Previous Convictions*'; includes a reference to court(s) at: 'Glasgow Sheriff's Court', 'Edinburgh' & 'Wigan' [Liverpool Assize Calendar 1927.01.24 CE# 021. NA HO 140/402 Calendar of Prisoners by County - inc.; Lancashire Volume (1927)], Harry (54) Seaman, '*Previous Convictions*'; includes a reference to court(s) at: 'Maidstone' [Liverpool Assize Calendar 1933.01.30., CE# 020 LCA 347 QUA 3/6 Calendars of Prisoners - bound volume (Jan 1930 to Nov. 1939)], John (45), '*Previous Convictions*'; includes a reference to court(s) at: 'Marlborough St'. [Liverpool Assize Calendar 1938.10.24., CE# LCA 347 QUA 3/6 Calendars of Prisoners - bound volume (Jan 1930 to Nov. 1939) Liverpool Assize].

²⁷⁰ Generic terms for inhabitants of the City of Liverpool and its environs.

²⁷¹ Lane, T. (1987) *Liverpool Gateway of Empire*, London: Lawrence & Wishart, p.148. Ayers, P. (2004) 'Work, Culture and Gender: the making of masculinity in post-war Liverpool', *Labour History Review*, 2 (69) p.156.

that the crime was assessed by the prosecution agency as being a minor offence subject to summary justice, the business of the magistrates' courts:

Peter (37) labourer; 'Particulars of the Offence, attempting to procure the commission of an act of gross indecency with a male person.' Listed under 'Previous Convictions; 3 months Liverpool City PS, 11.5.1923, soliciting for an immoral purpose, Fine or 1 months Liverpool City PS, 20 March 1926 soliciting for an immoral purpose'.²⁷²

Therefore, a large and busy city-port in this period such as Liverpool had undoubtedly a flourishing commercial sex industry, larger than might be expected of a land-locked city and a significant itinerant population. However, the findings suggest that this was not the main reason why so many inter-male sex committals originate from here. An answer to this apparent conundrum is also provided by the *Calendars*, which suggest a specific police tactic in operation in Liverpool that is not evidenced in the listing regarding committals from elsewhere in Lancashire.

As noted in the previous chapter, there is a long evidenced tradition and common ubiquity in Lancashire, as no doubt beyond, of known and established meeting places for males to obtain quick, anonymous sexual encounters with other males. It is a reality that not simply pre-dates and is a feature of this period, but also one that is a thriving aspect of present Lancashire life. There are few *Calendar* references to a specific location where the alleged crime was committed beyond the name of a district, town or village. However, there are handfuls of exceptions, all of which identify a public lavatory. Indeed 'public urinal' is the most common description used, which suggests the most basic of private gendered facilities, a common space in which to urinate without any individual, private, closeted space, e.g. W.C. Seven

²⁷² [Liverpool Assize Calendar 1927.10.24. CE# 032. NA HO 140/402 Calendar of Prisoners by County - Inc. Lancashire Volume (1927) Liverpool Assize 32].

examples of this type of location have been identified for the period 1919-1939, with a further four being listed in the previous three decades in the *Calendar* evidence under 'Particulars of Offence' and 'Previous Offences'. What they all have in common is that they all originate from the local magistrates' courts.²⁷³ This is clearly not conclusive proof of a specific tactic of targeting semi-private meeting places where males sought out sex with other males might be found, but it does at least promise an intriguing suggestion worthy of further investigation, though unfortunately

²⁷³ Calendar evidence that includes reference to public lavatories or 'urinal' as the location of the inter-male sex crime:-

Those cases listed in the period 1890s-1918: (4 cases) 1892 CONNOR, John (22) &, Samuel Fredrick (26), 'Particulars of the Offence; At Liverpool on the 2nd October 1892 in a public urinal unlawfully did commit an act of gross indecency with each other'. [Liverpool Assize Calendar 1892.12.05., CE# 036. NA HO 140/153 Calendar of Prisoners by County - Cos Lancs. - Lincoln Note: 1 Volume (1892) Liverpool Assize], 1907 Thomas (30), '*Particulars of the Offence; Gross indecency with a male person at Liverpool on the 11th May 1907*'. Listed under '*Previous Convictions; Liverpool PS. 20. Aug 1906 (indecent conduct in urinal)*'. [Liverpool Assize Calendar 1907.07.13., CE# 004. NA HO 140/257 Lancashire Calendars of Prisoners (1907)], 1914, Robert (49), '*Particulars of the Offence; Gross indecency at Liverpool on the 11th December 1913*'. Listed under '*Previous Convictions; 2CM Liverpool Police Ct. 17.3.1908 (indecent conduct in urinal), 2CM Liverpool Police Court 21.07.1908 (indecent conduct in urinal)*'. [Liverpool Assize Calendar 1914.01.26., CE# 012. NA HO 140/313 (1914)].

Those cases listed in the period 1919 to 1939: (7 cases): 1914 Alfred (40), '*Particulars of the Offence; Gross indecency with a male person at Liverpool and indecent assault upon a male person on the 19th August 1914*'. Listed under '*Previous Convictions; 2CM Liverpool Police Court 30.1.1893 (indecent conduct in urinal) as Alfred D Miller*'. [Liverpool Assize Calendar 1914.10.26., CE# 006. NA HO 140/313 (1914) Liverpool Assize], 1922, Patrick (55), '*Particulars of the Offence; Gross indecency*'. . Listed under '*Previous Convictions; 1 month or fine Liverpool PS 15.Jan 1912 indecent conduct in urinal...2 CM or fine Liverpool City Ps 22 April 1912 indecent conduct in urinal... 2 CM or fine Liverpool City PS 19.10 1912 indecent conduct in urinal*'. [Liverpool Assize Calendar 1922.06.19., CE# 014 HO 140/372 Calendar of Prisoners by County - Cos Lancs. - Lincoln Note: 1 Volume (1922)], 192, Robert (58) '*Particulars of the Offence; Gross indecency with male person on the 28th Feb. 1925*'. Listed under '*Previous Convictions; 1 CM or fine Liverpool City PS 16th August 1906 (indecent conduct urinal)*' [Liverpool Assize Calendar 1925.04.20., CE# 007. LCA 347 QUA 3/5 Calendars of Prisoners - bound volume (Jan 1920 to Oct. 1929)], 1922, Patrick (55) '*Particulars of the Offence; Gross Indecency*'. Listed under '*Previous Convictions; 2 CM or fine Liverpool City Ps 22 April 1912 indecent conduct in urinal. * 2 CM or fine Liverpool City PS 19.10 1912 indecent conduct in urinal*'. [Liverpool Assize Calendar 1922.06.19., CE# 014. NA HO 140/372], Douglas (32) '*Particulars of the Offence; Gross indecency with another male*'. Listed under '*Previous Convictions; Fined Liverpool 7.9.1910 (indecent behaviour in urinal)*' [Liverpool Assize Calendar 1921.04.04., CE# 002. Source LCA 347 QUA 3/5 Calendars of Prisoners - bound volume (Jan 1920 to Oct. 1929)], 1926, Thomas (50), '*Particulars of the Offence; Gross indecency with male peers on the 5 June 1926*'. Listed under '*Previous Convictions; Fine or 1 month Liverpool City PS., 25 August 1925 indecent conduct in urinal*'. [Liverpool Assize Calendar 1926.06.12., CE# 019. CE# NA HO 140/396 Calendar of Prisoners by County - Cos Lancs. - Lincoln Note: 1 Volume (1826) Liverpool Assize], 1923, Herbert (47), '*Particulars of the Offence; Buggery and Gross indecency*'. Listed under '*Previous Convictions; Fined or 1 CM Liverpool City Ps 11th May 1918 (indecent conduct in public urinal)*'. [Liverpool Assize Calendar 1923.01.29., CE# 040. Source LCA 347 QUA 3/5 Calendars of Prisoners - bound volume (Jan 1920 to Oct. 1929) Liverpool Assize].

beyond the bounds of this investigation. If proven to be the case, it would help to explain how the policing and prosecution agencies of Liverpool managed to make so many arrests, though the motivation to pursue inter-male sex crime remains a source of speculation. What is clear is that the agencies involved were prepared to carry the cost of policing and pursuing the most expensive categories of prosecutions into the showcase courts of Assize and Quarter Session.

Also worthy of note is that police indictable prosecutors for this period explicitly stated 'urinal' as the place of assignation in the summary description of the case. Also of note is that the charge in each case was the lesser offence of 'indecent conduct in urinal' and not the more serious one of 'gross indecency'. Given the wide degree of tolerance obtained by the ambiguity of the crime of 'gross indecency', it appears reasonable to assume that the more serious charge could have been used but was not. This again suggests that the actual offence chosen with which to charge a person of an inter-male sex crime was highly flexible and thereby open to both a wide variety of interpretations, including operational and, thereby political, considerations. The *Calendars* reported the story the police and prosecution service wished society to read but that was not necessarily, nor perhaps could ever be, a true reflection of the reality of crime, inter-male sex or otherwise.

One explanation of the apparent zeal for the Liverpool police and prosecution in the area is provided by Brogden in his study of Merseyside policing during the period. He suggests that from 1910 there was a more explicit 'moral' agenda being pursued against sexual behaviours, which directed the policing and prosecution service of this

Lancashire port-city.²⁷⁴ The committal figures do nothing to undermine such claims.

It would again support the suggestion that the Merseyside police forces, the managers and governing bodies were sufficiently determined to make the prosecution of significant numbers of arrests for inter-male sex during this period.

Given the 'Liverpool' bias in the sample, it might be helpful to provide a more balanced reading of the apparently less dynamic policing and prosecution of inter-male sex from another Lancashire force at this time. The *Occurrence Books of the Lancashire Constabulary* (i.e. the largest force in Lancashire that operated in all parts of the county)²⁷⁵ provides a slightly different view of policing and prosecution of the more public forms of inter-male sex during this period. The first example is of a case that appeared before the magistrates who convened in the small Pennine moorland village of Darwin in August 1929 to try two males, James (22) 'Collier', and Willie (19) 'Weaver', who were jointly charged with 'Indecent Assault on Male Person'. This summary trial returned a verdict of case proven with the sentence of being 'bound over' for a year and paying £5 towards court costs.²⁷⁶ No further information is provided of the 'male person' who was the subject of the indecent assault but it would appear that coercive inter-male sex was acknowledged and taken sufficiently seriously by the Lancashire Constabulary to result in a charge.

²⁷⁴ Brogden, M. (1991) *On the Mersey Beat*. Oxford: OUP, p.117.

²⁷⁵ The HM Inspector of Constabulary reported to Parliament in 1935 that the Lancashire Constabulary had an establishment of 2,150 police officers; the nearest Lancashire police force in size was listed as being the Liverpool City Police force with 1,452 officers followed by the Manchester City Police force with 1,157. [*Reports of His Majesty's Inspectors of Constabulary for the year ended 29th September, 1935 (Counties and Boroughs), Session: 1935-36, Paper Series: House of Commons Papers: Reports of Commissioners, Page Number; (43), Volume/Page; XIV.339, Collection: 20th Century House of Commons Sessional Papers, CH Microfiche Number: 144.148. pp.12-13.*]

²⁷⁶ Lancashire Constabulary (1921-1951) *Occurrence Books - Darwin - Registers of offenders (mostly Darwin area) with photos and index 1921-51, Vol. 1., 1924-1936*, p. 34. LA (acc.6451).

However, of note, is the minor summary nature of the charge employed for a proven case of coercive inter-male sexual assault, together with the apparent leniency of the sentence handed down by the magistrates.

The behind-the-scenes negotiation of the actual charge which a 'prisoner' would eventually face is revealed in the case of Arthur (40) a 'Weaver' of Clayton-le-Moors, Lancashire. The *Occurrence Book* entry records he was arrested on Saturday 24 April 1920 for the crime of 'Gross indecency with another male person in Black Nyndburn Road, about 10:15 pm'. However, two days later, when Pilkington appeared at the local magistrate's court before Mr E Watch Esq., the record notes that the original charge had been, 'Altered to committing a nuisance contrary to public decency with the consent and on the application of prisoner's solicitor', a bylaw covering a multitude of minor common nuisances, certainly not sexual behaviour.²⁷⁷

The handful of references identified in the *Lancashire Constabulary Occurrence Books* referring to arrests related to inter-male sexual behaviour in public toilets suggest that such cases were not automatically read by the most Lancashire Constabulary as being of such a serious threat to the community that a committal was required. The following two examples from the 1920s Occurrence Books for the Lancashire town of Accrington highlight such variable police treatment:

[14 February 1924,] 'Indecent conduct'; Walter Freely (PC 6), acting apparently on a complaint from a member of the public (Frank Walsh) a policeman, arrested Stephen (69) for 'Indecently exposing his person in a public urinal in Peel Street about 10:50 am of Thursday 14th February' in the town of Accrington, Lancashire. [The next day at the local Magistrates Court

²⁷⁷Lancashire Constabulary. (1920) *Occurrence Books - Church Section - ACCRINGTON Division (Boro. Police) - Reg., Charges 1920*, Entry 87 dated 24th April 1920. LA PLA 25.32 Occurrence Book.

before Mr W Sterling Esq. & Mr J Barlow Esq., Freely was convicted of the misdemeanour of] Indecent exposure, fined 20/- or 14 days [and also] ordered to pay 5/- [to] witness.²⁷⁸

[16 February 1927] 'Indecent conduct' 12.25 pm. Inspector Todd reports Peter (28) a Cashier for the above offence [i.e. petty ambiguous misdemeanour] at 12:25 on the 16th August 1927. The inspector says – at about 5.40 pm this date I saw the above named at the Police Station and I said to him, I received a report that you followed a man into the urinal on the Market ground at 12.25 pm this morning and that when he was making water you got hold of his person. He replied 'not me' I was in Blackburn that night'. I said you were in the Market ground at 12.30 pm. you were seen by a Constable'. He replied 'I was there I admit that, but the complaint is all false.' I told him he would be reported. The record details the outcome of this investigation, 'No Charge'.²⁷⁹

What is noteworthy about these cases is the suggestion of a police force deliberately targeting the local public toilets themselves, which could have been a response to public complaints rather than an example of an independent policing initiative to focus on inter-male sex behaviour. The evidence offered by this handful of cases identified in the *Lancashire Constabulary Occurrence Books* was that the police were not seeking to obtain the severest of sentences by committal to the most senior criminal courts. Indeed, given the ambiguity of the offence of 'gross indecency' and its increasing appearance in the *Calendars*, it would appear reasonable to suggest that some or all of above cited cases could have been prosecuted and committed as such. However, the fact remains that the local managers of the Lancashire Constabulary did not choose that option in these cases, instead choosing to use a petty nuisance charge that did not immediately advertise the inter-male sex dynamics of the offence. This is not to suggest that the Lancashire Constabulary did not sometimes decide to seek the committal of such cases. The locations from which

²⁷⁸ Lancashire Constabulary. (1924) *Occurrence Books - Church Section - ACCRINGTON Division (Boro. Police) - Reg., Charges*. Entry 8 dated 14 February 1924. LA PLA 25.36 Occurrence Book (1926-29).

²⁷⁹ Lancashire Constabulary. (1927) *Occurrence Books - Church Section - ACCRINGTON Division (Borough Police)*. Entry dated 16 February 1927. LA PLA 25.1 Occurrence Book (1926-29).

inter-male sex committals originated, discussed above, together with cases detailed in the *Occurrence Books*, demonstrate that most, if not all, Lancashire Police forces did commit inter-male sex cases.

It is argued then, that the different treatments afforded to inter-male sex by the Constabulary, as detailed in their *Occurrence Books*, were not radically divergent from that of other Lancashire police forces, even Liverpool's. The decision making process appears far from being 'automatic' or even one seeking the most severe implementation of the criminal law. The various Lancashire police managers and governing bodies clearly worked within the contingent demands and realities of their time. The evidence appears to suggest that similar to Manchester in the late-eighteenth and early-nineteenth centuries, local semi-public meeting places where inter-male sex was available and not uncommon, in the inter-war period, attracted teenagers and old aged pensioners alike. The police forces of Lancashire must have been aware of such locations but clearly outside of Liverpool, they appear not to have viewed their targeting a priority, they would respond to public complaints, but even then, they would not administer punishments to the full extent of the law. These conclusions appear not to be specific to this inter-war period or before, and the degree to which continuities are evident is reflected in the Wolfenden Report published in 1957:

[The suggestion of any nation-wide 'witch-hunt...against homosexuals']. The absence of uniformity in police practice which we have mentioned is enough to disprove this suggestion. It seems to us that in some areas, it may be in most – the police deal with only with such matters as obtrude themselves on their notice, not going out of their way to substantiate suspicions of covert irregular behaviour. What we have found is that there may from time to time arise particular local campaigns against this kind of offence, either as the

result of a deliberate drive by the police or by reason of police public indignation.²⁸⁰

The scale of the disparity between the committal figures for Liverpool and the rest of the county during this inter-war period also invites an important speculation.

Namely, that if all the Lancashire policing forces, supported by their local magistrates, had wished to focus specifically on committing more inter-male sex cases to the senior criminal courts for conviction then the total incidence for this period could have been exponentially greater.

Another important feature of Lancashire committals during this period that marks it out as significant relative to earlier decades, is the composition of the cases being prioritised for such trials. In the decades before 1914, the most common type of inter-male sex committal was of nominally coercive inter-male sex crime. That is, prior to the outbreak of World War One, the majority of committals had been singular. These singular committals had a standard format: one male (i.e. the perpetrator/accused) was variously indicted with planning (i.e. conspiring) attempting (i.e. undertaking but not executing) or realizing (i.e. committing a criminalised act) an unwanted or coercive behaviour on another male (i.e. the victim[s]). As far as the criminal justice system is concerned, by definition the 'victim' was not a willing participant in the sexual behaviour. However, from the start of this longitudinal survey, a second albeit much less common type of committal occurred: the joint committal, usually involving two males charged with identical or similar sexual behaviour and committed together for trial at a senior criminal court.

²⁸⁰ Secretary of State for the Home Department and the Secretary of State for Scotland. (1957) *The Report of the (Home Office) Committee on Homosexual Offences and Prostitution*. London: HMSO, Para. 130, p.48.

Given the motivational vagaries of human actions, it is not impossible to read a coercive element in joint-committals, not least when involving the emotive subject of sexual relations. Nevertheless, it would seem reasonable to suggest that a significant degree of mutuality was involved in such joint-committal cases.

However, a remarkable factor in these findings is that of all of the one-hundred and eighty-two males arrested for such 'consensual' crimes the majority, one-hundred and fifteen, were first-time offenders; they had no record of previous criminal conviction entered into the appropriate *Calendar* column. Of those defendants who did have previous criminal records, fifty-seven were of minor summary offences.

Thirty-one with non-sex related previous convictions included for example:

Joseph (17) Hairdresser and Patrick (64) Labourer, committed together in April 1929 to the Liverpool Assize charged with 'Gross indecency'. The calendar also notes that both had Previous Convictions; [Joseph] for; 'football in the street' a month earlier on 5th March 1929,²⁸¹ and [Patrick] of a crime with a political flavour 'stealing election posters'; and 'theft food' in 1912.²⁸²

Among those committed for joint or consensual offences recorded as having a previous conviction, thirty had sex-related crimes included in their records. For example, James a seventeen-year-old, was committed to November to the Liverpool Assize jointly charged with William with 'Gross indecency with male person on the 15th Oct 1924'. There were no previous offences listed for William suggesting that it was his first offence. However, in the Previous Convictions *Calendar* column for James was the following exhaustive entry:

²⁸¹ Liverpool Assize Calendar 1929.04.08., CE# 014. [Source, LCA 347 QUA 3/5 (Jan. 1920 to Oct. 1929)].

²⁸² Liverpool Assize Calendar 1929.04.08., CE# 015. [Source, LCA 347 QUA 3/5 (Jan. 1920 to Oct. 1929)].

Fine or 20 days Edinburgh PS 6th June 1923 (theft of an attaché case from hotel; obtaining board and lodging by fraud - 2 charges) 6 CM Marlborough Street PS 22 Aug 1923 (importuning male persons for immoral purposes) 3CM Liverpool PS 18 July 1924 (stealing wrist watch) ²⁸³

Another example of this feature of the 'consensual' committals is previous non-violent inter-male sex crime by the case of James (34), 'Miner', who with David (22), 'Labourer', was committed to the Liverpool Assize a few months before the outbreak of war in June 1939 jointly charged with 'Buggery, Gross indecency'. David had no previous conviction but James's previous convictions included:

...CRO 19646/31 Fined or 14 days St Helens PS 4 March 1920, indecent exposure, 14 days; HI Uxbridge PS 28 Oct 1931, indecent exposure, Fined or 28 days and BO 12; CM St Helens PS 17 June 1935 (assault and breach of the peace). 14 & 14 days HL consecutive; St Helens Petty Sessions 3 April 1936, indecent exposure, two cases;' [also includes twenty-two summary cases for gaming, drunkenness] .²⁸⁴

The findings of this study also suggest that one-hundred and twenty-nine other singular committals (i.e. related to actual or nominal coercive inter-male sex) during this period had a similar division between first time offenders and repeat offenders. That is, among the singular convictions, seventy-three of the males had no previous convictions noted and of the remaining fifty-six, twenty-seven had a range of non-sexual petty offences listed and twenty-nine with previous offences related to sexual crime. The notable commonality between the singular and joint cases are the number of 'first time' offenders involved and the types of petty crime committed by those with a record of previous non-sex related crime. However, a significant divergence is noted within the sample among those with previous offences related to 'sexualised' crime between those defendants facing joint 'consensual' and those

²⁸³ Liverpool Assize Calendar 1929.04.08., CE# 014. [Source, LCA 347 QUA 3/5 (Jan. 1920 to Oct. 1929)].

²⁸⁴ Liverpool Assize Calendar 1939.06.12., CE# 005 & 6. [Source, LCA 347 QUA 3/6 (Jan. 1930 to Nov. 1939)].

charged with singular coercive committal charges. The males in this category appear to have a monopoly in their listings of previous offences of either past coercive sex or practices and behaviours suggesting the more extremes of poor socialisation. For example:

Arthur (20), 'Carter' faced trial at the April Liverpool Assize 1934 charged with; 'Buggery' Indecent assault on a male person'. Listed under 'Previous Convictions' is 'Industrial School & POA Liverpool City PS 2 July 1926 indecent assault (girl 6 yrs.) 2 cases.'²⁸⁵ [i.e. Suggesting that the assault on the girl occurred when he would have been approximately 14 years old in 1926].

John, (45) 'Labourer' faced trial at the November Liverpool Assize 1938 charged with 'Indecent Assault on male person'. Listed under 'Previous Convictions: 3CM Marlborough St PC 13 Nov. 1912, Soliciting for immoral purposes as Jack Gibson; Fined or 11 days Liverpool City PS 16 March 1923, Offensive behaviour; Fined or 1 & 1 CM consecutive; Liverpool City PS 5 May 1924, offensive behaviour, 2 cases; Fined or 1 CM Wallasey PS 10 Sept. 1925 (indecent with male); 2 CM HL Liverpool City PS 20 Sept. 1928, indecent assault male as Arthur Sern; 3cm Liverpool City PS 1 Feb 1930, exposing young person in manner likely to cause unnecessary suffering as Fred); Fined o 1CM Liverpool City PS 28 Feb 1931, offensive behaviour as George; 3CM HL Liverpool City PS 23 Jan 1932 (Suspected person loiter as Harry Artell). 3CM HL Liverpool City Ps 16 Dec 1936, indecent assault male'.²⁸⁶

However, also worthy of note is the large number of males (fifty-five) committed for inter-male sex who had previous convictions for sex related offences, both singular and consensual. This suggests that they were either very obvious criminals dismissive of getting arrested, were very unlucky or were the subject of specific targeting by the policing agencies. Such a large number of past offenders among those committed during this period for inter-male sex crime, certainly suggests some trend was at work but regarding that the *Calendar* evidence is largely silent.

²⁸⁵ Liverpool Assize Calendar 1934.06.04., CE# 006. [Source, LCA 347 QUA 3/6 (Jan. 1930 to Nov. 1939)].

²⁸⁶ Liverpool Assize Calendar 1938.10.24., CE# 030. [Source, LCA 347 QUA 3/6 (Jan. 1930 to Nov. 1939)].

As noted and discussed in Chapter Three, these consensual or joint committals had been a feature of Lancashire committals since the 1850s. However, they had only become a more regular feature of committals from the 1890s.²⁸⁷ An important finding of this study is that following World War One, joint-consensual committals for inter-male sex not only continued the previous slow increase but became the ascendant form of committals within this sample.²⁸⁸ This quick turnabout again suggests not the hand of random caprice, but the hand of man. That is, the essential ingredient in any such committals appears to be not whether someone had committed a criminal act but the presence of political will to implement such laws. These developments occurred when the police enjoyed much greater operational independence from the local Watch Committee, and thereby local government, following the 1919 Police Act. This would suggest the origin of at least the operational decisions that actioned and financed these developments in the treatment of inter-male sex behaviours. What role the Home Office and government of the day played in these developments, not least with their new national coordination and support role to local police forces, is an intriguing question, albeit regrettably beyond the bounds of this study.

²⁸⁷ These 'joint' committals had mostly but not exclusively been for the offence of 'gross indecency' introduced in 1885. Although the Criminal Law Amendment Act of 1885 provided an easier means of obtaining conviction (i.e. the ambitiously catch-all crime of 'gross indecency') joint-cases as shown were already a small but well established part of prosecutions of inter-male sex cases. It is perhaps important to rehearse the point that 1885 did not act as a starting-gun for joint-committals for the offence of 'gross indecency', it took the police and prosecution service nearly ten years to adopt the offence and apply it in such a manner.

²⁸⁸ For the period 1850-1889 of the two-hundred fifty committals only twenty-six (roughly 1 in 6) related to joint-committals involving inter-male sex. Towards the end of the period, for the years 1890 to the outbreak of the 'Great War', the three-hundred and five inter-male sex related committals included one hundred and forty-seven males charged jointly. The sample ratio had risen to approximately 1 in 2. Clearly the political will was growing among those in Lancashire seeking the prosecution of inter-male sex to target such joint and ostensive consensual behaviours.

The political will to privilege the prosecution of 'joint-consensual' over singular coercive indictments appears to have become the dominant agenda. During the inter-war years, joint-committals of males for inter-male sex overtook singular committals as the most common inter-male sex cases tried by Lancashire Assize and Quarter Sessions. Nearly two in every three Lancashire committals in the inter-war years related to adult consensual inter-male sex crimes.²⁸⁹ In no one year during this period, did the number of males being committed singularly outnumber the total number of males being committed jointly.

Table 4.5 Comparative rates for singular and joint inter-male sex related committals 1919-1939.²⁹⁰

Year	Number of males committed for Singularly for Committals	Number of males committed as part of Joint Committals
1919-1924	41	50
1925-1929	42	50
1930-1934	22	40
1935-1939	25	40
Total for the period 1919-1939	130	180

A most basic observation prompted by such a stark comparison is that the police were not only arresting more males engaged in consensual sexual behaviour, but by pre-war standards, were also prioritising coercive sexual behaviour at a rate not previously seen. Unless 1919 promoted a frenzy of public demonstration of inter-male sex behaviours, previously unknown, any significant increase in committals for such behaviours required organisation and the political will to finance such action. However, the policing and prosecuting crime when there are victims and evidential loss or harm realised can be and is often not a simplistic exercise. However, when

²⁸⁹ Three hundred committals for inter-male sex have been identified, of which one-hundred and eight are described in the Calendars as being joint committals involving two or more males. [Lancashire Committals of inter-male sex (1850-1970) Data Base].

²⁹⁰ Lancashire Committals of inter-male sex (1850-1970) Data Base.

seeking to police covert consensual behaviour in which there is no victim and therefore no complainant or material loss the problems are further compounded. Yet the *Calendars* suggest that it was this type of problematic crime, especially in Liverpool, was targeted for investigation, arrested and on which spending of significant public funds was lavished to prosecute in the most senior criminal courts of Lancashire.

The committals made in 1922 (a year with one of the largest number of such cases within this sample) provides a useful example of this trend. Inter-male sex related Lancashire committals for 1922 exemplify developments both in the policing and committal policy. Analysis of the committals in this year indicates that twenty-two well over half of those thirty-three committals were joint prosecutions suggesting mutual consensual acts.²⁹¹.

How can such apparently rapid changes in not simply the incidence but the composition of inter-male sex crime, have occurred during the span of twenty years, given the almost snail-like change in the decades before World War One ? For example, the trend towards privileging the indictment of consensual or joint committals for inter-male sex as noted above appears with some regularity from the 1890s. However, the sharp turnaround from a significant minority of such cases

²⁹¹ Liverpool Assize Calendar 1922.01.30., CE# 003 & 004. NA HO 140/372 (1922). Manchester Assize Calendar 1922.02.20., CE# 009 & 010 MA HO 140/372 (1922). Manchester Assize Calendar 1922.05.08., CE# 017 & 018. NA HO 140/372 (1922). Manchester Assize Calendar 1922.05.08., CE# 037 & 038. NA HO 140/372 (1922). Liverpool Assize Calendar 1922.06.19., CE# 05 & 06. NA HO 140/372 (1922). Liverpool Assize 1922.06.19., CE# 014 & 015. NA HO 140/372 (1922). Manchester Assize Calendar 1922.07.10./, CE# 010 & 011. NA HO 140/372 (1922). Manchester Assize Calendar 1922.07.10., 029 & 030. NA HO 140/372 (1922). Preston Co. Q.S. Calendar 1922.10.01., CE# 043 & 044. LA QJC/46 (NW various 1922). Liverpool Assize Calendar 1922.10.30., 01 & 02. NA HO 140/372 (1922). Preston Co. Q.S. Calendar 1922.10.30., CE# 073 & 074. NA HO 140/372 (1922).

before 1914 to a clear majority by 1919, appears to demand some further explanation. Not least, a Criminal Justice System in which expenditure was a constant and pressing concern raises the question as to why there was so much public money spent sending victimless crimes to the most expensive and senior courts.

Why did the police forces of Lancashire start to increasingly arrest and subject couples engaging in apparently semi-covert, consensual inter-male sex behaviours to one of the most serious of criminal charges, 'gross indecency'? This development appears to have been pioneered in Lancashire by Liverpool police and magistrates and copied, albeit to a much lesser degree, by other Lancashire forces including those of the neighbouring conurbations such as Manchester and Salford. The definitive answer as ever is no-doubt the combination of a number of factors. It is possible to identify a number of trends within the context of the period that together cannot have failed to have had an influence on these developments in the prosecution of inter-male sex. That the senior police officers of each local force now enjoyed a significant degree of formal operational independence suggests that the local government elites power to directly control policing where at least more apt to be restrained.

Perhaps the most straightforward explanation to account for the increase committals of inter-male sex behaviour was that there was an increased incidence of such behaviour at during this period. That is, the police were simply responding to a new crime wave, especially in cases involving quick, anonymous, consensual, mutual

male masturbation in known meeting places for such behaviours. For this argument to be plausible, it would be necessary to explain the highly significant differential between committal rates in Liverpool compared to the rest of the county. That is, either Liverpool males were somehow significantly more sexually permissive, adventurous and successful in obtaining inter-male sex than their fellows in the rest of the county, or the converse argument would be that the vast majority of Lancashire males outside of Liverpool were so sexually unadventurous and undesirous of such sexual activity that few engaged in this criminalised behaviour thus explaining the lack of arrests. However, as scholars from various disciplines and ages from Hume to Sagan have repeatedly and rightly noted, *extraordinary claims require extraordinary evidence*.²⁹² What could be more extraordinary than suggesting the males of one English city are significantly and even expediently more sexually 'randy' than their neighbours?

A similar argument to simplistically explain the wide difference in committal rates for inter-male sex would be that the Liverpool Police were better at arresting miscreants than those in the rest of Lancashire. Again another extraordinary claim that can only be based on partial evidence in that the rates of summary prosecutions for inter-male sex in Lancashire, are as yet unknown. Police forces are after-all human agencies and as such subject to the caprice of the human condition. Too many dangers are entailed in seeking to read into the topic of criminalisation in general

²⁹² Hume, D. (1748 reprinted 2007). *An Enquiry concerning Human Understanding*. Oxford: Oxford University Press, pp. 79 – 95. Marcello T. (1978) *On the Extraordinary: An Attempt at Clarification*, Vol. 1, No. 1, p. 11. [On-line] [Accessed 12th November 2015] <http://www.tricksterbook.com/truzzi/ZeteticScholars.html> and 1978.

simplistic cause and effect relationships as highlighted by specialist historians of the subject such as Taylor and Williamson cited above.

That more men might have been seeking out and prepared to enjoy sex with other males in private locations, following the excitement of their sexual desires caused by war, cannot be dismissed, although it might be unhelpful to suggest to radical shift in sexual cultures. However, the connection between actual levels of a particular sort of behaviour and related arrest and prosecutions is as already discussed, a problematic if not downright misleading measure. Given the private, unrecorded and often anonymous nature of such behavior, any attempt to prove or disprove such measurement is hard to imagine.

It seems clear that the five years of war immediately prior to this period did shift, accelerate and excite male and female attitudes towards the access and experiences of sex. The War in general, led to economic, political and social changes and raised expectations for a better life to follow most evident in the promise of 'homes fit for heroes'.²⁹³ However, after the War, the common, grim reality for those who survived was a return to the poverty that provided the backdrop and context of most people's lives. Millions of people returned to life in substandard, often insanitary, dwellings with minimum space and personal privacy that continued to be a feature of

²⁹³ For discussion of this and the wider history of inter-war see: Hobsbawn, E. (1994) *Age of Extremes: the short twentieth century 1914-1991*. New York: Oxford University Press. McKibbin, R. (2000) *Classes and Cultures: England 1918 -1951*. Oxford: Oxford University Press. Addison, P. and H. Jones, H. (eds.) (2005) *A Companion to Contemporary Britain 1939-2000*. Malden, MA: Blackwell. Dauntton, M. (2007) *Wealth and Welfare: An Economic and Social History of Britain, 1851-1951*. Oxford & New York: Oxford University Press. Clarke, P. (2004) *Hope and Glory: Britain 1900-2000*. London & New York, N.Y.: Penguin.

The practical criminalisation of inter-male sex 1850-1970: A Lancashire case study.

Lancashire cities, such as Liverpool and Manchester, for many decades to come.²⁹⁴

However, as Herzog and others have noted, there was increased awareness, and indeed more practical experience, of sex among the general population than before.

There is certainly tangible evidence to suggest that there was a wider debate abroad concerning male-female sex, particularly about enjoying sex without fear of conception. This was the period when the work of pioneering birth control campaigners such as Marie Stopes came to the fore.²⁹⁵

Moreover, millions of men had found emotive and possibly physical, erotic fulfilment or imagined that potentiality, among their comrades-in-arms. Perhaps it is a cruel tribute to the success of the dominant pre-war sex regime that over one-and-a-half million service men, and an unknown number of women and wives, contracted a sexually transmitted disease during the War or after, from returning service men.²⁹⁶

²⁹⁴ For example: the large Victorian 'slums' that made-up the majority of homes in the inner-city ward of Hulme, Manchester were not finally removed and replaced with new modern housing until the late 1960s and 'at the time represented which was the site of the biggest slum clearance in Europe'. Editorial (2014) 'Super campus to regenerate slum town.' *World Architecture News*. [Online] [Assessed March 2015] <http://www.worldarchitecturenews.com/project/2009/11955/john-mcaslan-partners/manchester-metropolitan-university-birley-fields-campus-in-hulme.html#sthash.z5wgvAKg.dpuf>.

²⁹⁵ March 1918 saw the first publication of 'Married Love or Love in Marriage' by Dr. Marie Carmichael Stopes [Stopes, M. (1918) *Married Love: a new contribution to the solution of sex difficulties*. London: Fifeild.] Soon after that publication Stopes opened the 'Mothers' Clinic' in North London on 17 March 1921, that offered mothers birth control advice and taught them birth control methods and dispensed Stopes' own "Pro-Race" brand cervical cap. We have evidence that sex as a recreational activity was now a common practice as Eustace Chesser's 1930s survey confirmed; married women living in Manchester that 30% of married couples used practice anal sex as a means of birth control. [The 30% incidence of anal sex between Manchester husbands and wives in this period was simply a means of birth control, in part a product of the returning soldier's better understanding of the reproductive process, personal taste or a reflection of longstanding contraceptive practice cannot be known. Source; Chesser's survey of Manchester wives in 1930's: cited by Davenport-Hines, R. (1990) *Sex, death, and punishment: attitudes to sex and sexuality in Britain since the Renaissance*. London: Collins, pp. 323] That is not to suggest that non-reproductive sex had not been practiced prior to this period but the war years and the sexual awareness and knowledge gained thereby certainly appears to have brought the topic of sex to public attention in a way that would have been problematic before the war.

²⁹⁶ It is noteworthy that even scholarly works about human sexuality were banned before the war perhaps most famously the work of Havelock Ellis and learned tomes that did avoid censorship such

It is highly problematic to translate a reading of such increased sexual practice and self-awareness into a more tangible reading of diverse sexual arrangements emerging after the war, but its influence cannot be discounted.

Another factor was the shift in the way the principle prosecution agency, the local police forces, sought to justify their role in the new post-World War One period.²⁹⁷

Local police forces seeking to create and justify a new role in the post-war world did need not to look for new targets. Rule breaking is part of the capricious human condition and therefore the police had a wide range of candidates. The only consideration was not to trespass on the self-interest of their political paymasters. That as shown given the immediate post-war police reforms meant assuaging and pleasing national rather than local government to which the increased opportunities for sexual adventure and education of the war years had not gone unnoticed.

However, whatever the personal priorities of Lancashire police forces and individual police officers with regard to the arrest and prosecution of inter-male sex offenders, they would have been unable to pursue this goal without the support of those who held the purse strings. Moreover, police forces were also subject to direction, and it

as 'The Sexual Life of Our Times' by Ivan Bloch published in 1909 carried a disclaimer that it was not intended for public consumption. This self-censorship can also be seen in the work of many legal and medical text of the time dealing with inter-male sex being written in Latin as in all the English translations of 'Psychopathia Sexualis' by the leading German clinical specialist Richard von Krafft-Ebing. Original publication Krafft-Ebing, R. (1886) *Psychopathia sexualis : eine klinisch-forensische Studie*. Stuttgart: Enke. First English Publication (1892) *Psychopathia sexualis : with especial reference to contrary sexual instinct : a medico-legal study*. Special Edition.

²⁹⁷ Taylor's reading of a police forces seeking out a justification of their role might help account for the increased prioritization of policing inter-male sex crime but it can only be a factor given that it occurred within an historical context in which sex and sexuality had been increasingly a topic of public debate. Taylor, H. (1999) 'Forging the job: a crisis of 'modernization' or redundancy for the police in England and Wales, 1900-39.' *British Journal of Criminology*, (1999) 39 (1) pp. 113-135.

is clear that a key influence that led managers and governing bodies of local civic leaders to prioritise and fund the apparent significant rise in the committals of inter-male sex was the lead provided by Parliament.

Political leaders cannot but have been influenced by the greater awareness of sexual diversity generated by the war. Sexual regulation was certainly on the agenda of politicians, and not least parliamentarians. Many of the European legislators who had participated in World War One were gripped by the more democratic mood of the immediate post-war period: the establishment of nine new democratic European States; the extension of the enfranchisement of women in the newly constituted republics of Weimar and the USSR, together with the establishment of the new International body — the League of Nations.²⁹⁸ Few legislators appeared willing or even interested to considering existing laws, or lack of laws, criminalising consensual inter-male sex. The exceptions being the USSR, whose new constitution excluded the Tsarist-era buggery laws, and the British Legislature, which was unique among its major European neighbours in that it sought to extend the criminalisation of inter-male sex.²⁹⁹

²⁹⁸ Under the Treaty of Versailles nine new European nation states were set up: Estonia, Latvia, Lithuania, Poland, Finland, Czechoslovakia, Austria, Hungary and Yugoslavia.

²⁹⁹ The First Russian Soviet criminal code enacted in 1921 contained no discriminatory criminalisation of inter-male sex and the Folketing (Danish Parliament) removed such laws in 1933. The former 'enemy' state of Germany witnessed one of the most dynamic campaigns for 'homosexual' decriminalisation. That would have most probably have been successful but for the victory of the Nationalsozialistische Deutsche Arbeiterpartei (NSDAP) in January 1933. Other large European countries such as France and Italy appear to have maintained and shown further interest in changing the long established criminal codes that had long removed explicit discriminatory laws against consensual inter-male sex.

During the war, the British Government itself exploited taboos about inter-male sex by threatening to 'out' a prominent Irish nationalist, Rodger Casement.³⁰⁰ At least one parliamentarian, along with fellow 'patriotic' journalists, also lost little time in using similar taboos to produce 'homosexual' propaganda to promote enmity against the German 'enemy'.³⁰¹ The work of Billing and others in promoting such propaganda might appear marginal to national thinking, if not a similar hostility and similar views in that vein were not repeatedly expressed in Parliament of the period. In 1921 a bill was introduced and debated in Parliament proposing to extend the provisions of the 'catch all' crime of 'gross indecency' (i.e. Section 11 of the Criminal Amendment Act 1885) to all inter-female sexual behaviours. The bill was discussed and passed a number of the debate stages, before running out of parliamentary time and therefore not being enacted. The support the Bill enjoyed in both Houses of Parliament suggests the uniform hostility that same-gendered sexual behaviour enjoyed within the British ruling elites.³⁰²

³⁰⁰ This was part of its long battle against Irish independence and thereby the break-up its sovereign territory, the British government's threat of 'homosexual blackmail' was aimed at and succeeded in effectively undermining a the campaign to obtain a reprieve for Roger Casement (Human Rights Advocate and Irish Nationalist hanged for treason in Pentonville Prison, London 3 August 1916). The British Government had in its possession Casement's 'Black Books' detailing his sexual relations with other males over a number of years. However, a fascinating aspect and insight afforded by this case and the power of the taboo about inter-male sex among the ruling elites of the period. Jaeger, E. (2011) "Roger Casement: How Effective Was the British Government's Smear Campaign Exposing the Homosexual 'Black Diaries'?" *Éire-Ireland*. 46 (3&4) pp. 132-169. Many Nationalist supporters were so appalled at the suggestion that one of its prominent political martyrs might have had and even enjoyed sexual relations with other males that they accused the British government of manufacturing the evidence. A contention that is still alive see: Ezard, J. (2002) 'Sex diaries of Roger Casement found to be genuine'. *The Guardian*. 13 March. McCormack, W. J. (2002) *Roger Casement in Death, or, Haunting the Free State*. Dublin: Dublin Press. Dudgeon, J. (ed.) (2002). *Roger Casement: The Black Diaries: with a Study of His Background, Sexuality and Irish Political Life*. Belfast: Belfast Press.

³⁰¹ Stoney, B. (2004) *Twentieth Century Maverick: The Life of Noel Pemberton Billing*. East Grinstead: Manor House Books. White, A. (1916) 'Efficiency and Vice' *English Review*, 22, pp.446-452. Cited by Davenport-Hines, R. (1990) *Sex, death, and punishment: attitudes to sex and sexuality in Britain since the Renaissance*. London: Collins, p.148).

³⁰² On Thursday, 4th August, 1921 the British House of Commons debated a Preliminary Bill sent from the Lords entitled the 'Criminal Law Amendment Bill [Lords]'. Confirmation of the linkage between same sex sexual relations and the moral and physical downfall of a nation and empire was set down without any dissent on the floor of the Commons. Frederick Macquisten MP (1870-1940, Conservative

A limited upsurge of arrests and prosecutions of inter-male sex along with other sexual activities might be interpreted as a sign of the weakening of the moral fibre but was also something that was being challenged. A political signal that the Home Office with the new oversight role of all local police forces enacted to it by the 1919 Police Act (9 & 10 Geo. 5, c.46) would perhaps have not raised objections. However, the criteria, as ever, would no-doubt have been the cost. If a stepping-up of action in this area could be achieved cheaply, then neither the national nor local exchequers would, at least in principle, might be expected to interfere.

There are a number of reasons for the ruling elite's hostile attitude towards sexual diversity that including deeply authoritarian reading as highlighted by Davenport-Hines. He has advanced a psychological explanation as to why a more repressive, rather than a more tolerant, approach might be expected:

The dangers of wartime produced in many people a rigid mental outlook and a need for strong regulatory institutions...Nationally and privately there was a vigilance for signs of disorder – political, economic and emotional – and many people willingly surrendered themselves to the grip of steel-hard conventions of thought. It is of little surprise, then, that there was a new sensitivity, and

Party MP Glasgow Springburn) opening the debate on the 1921 parliamentary Bill seeking to extend criminalisation to include sex between females in doing so rehearsed the arguments promoted by Billing and his colleagues regarding the link; 'I believe that the time has come when seeing that we are going to make an alteration in the law to deal with a question of morality with which it is necessary to deal, this matter, on account of its civil and sociological effects, this horrid grossness of homosexual immorality should also be grappled with. This is the far more deep-seated evil, and it is only right that this House, which has the care of the law and to a large extent the morals of the people, should consider it to be its duty to do its best to stamp out an evil which is capable of sapping the highest and the best in civilisation.' However, what is also worthy of special note is a theme that is first noted by Frederick Macquisten in his opening speech and echoed by other MP's contributing to the debate: the link between 'homosexual' sex and the decline of empire: '... and when they [moral weaknesses] grow and become prevalent in any nation or in any country, it is the beginning of the nation's downfall. The falling away of feminine morality was to a large extent the cause of the destruction of the early Grecian civilization, and still more the cause of the downfall of the Roman Empire.' What is of note is that in the parliamentary division on this clause of the bill it was carried one-hundred and two votes to twenty-four against. [Hansard (1921) *Commons Sitting of Thursday, 4th August*, [Online] [Accessed 3 March 2012] http://gateway.proquest.com/openurl?url_ver=Z39.88-2004&res_dat=xri:hcpp&rft_dat=xri:hcpp:rec:CDS5CV0145P0-0009].

heightened fears, about sexual acts which made nonsense of stereotypes of male aggression and social order.³⁰³

Perhaps given the more sexualised historical context of the period the opinions, actions and moral leadership of the local and national ruling elites, not least those directing policing and prosecution policy, is one of the more important considerations helping to account for the increased targeted policing and committals for inter-male sex. The regular reporting of such trials in the local newspapers of Northern England, as Helen Smith has noted, also resulted in the issues of inter-male sex being regularly highlighted and disseminated among the mass of the reading public throughout the inter-war years. Such reporting might also have authenticated such acts; in so doing encouraging further inter-male sex crime. A report about an offence in a specific public location might also advertise a place where other males could be found looking for similar 'criminal' experiences. Lord Ellenborough's early nineteenth century warning that talking about a taboo helped to remove its potency was slowly being broken down by the circumstances of the period.³⁰⁴

In comparison to earlier decades, there appears to be a small, but discernible, increase in the willingness of policing agents to arrest and seek committal of inter-male sex crime cases to trial at the senior criminal courts and for the magistrates to agree. Table 4.4., sets out the names of those local magistrates' courts that

³⁰³ Davenport-Hines, R. (1990) *Sex, death, and punishment: attitudes to sex and sexuality in Britain since the Renaissance*. London: Collins, p.148.

³⁰⁴ See Chapter Three: 1st Lord Ellenborough and Lord Chief Justice of England (1802–1818) 'Public morals had suffered enough from the 'Remarkable Trials' at Lancaster, but 'the knowledge that so widely extended a conspiracy against nature exists in point of fact' along with awareness of the 'generality and notoriety of the crime', which further prosecutions would generate, threatened to 'diminish much of the abhorrence which it is to be wished should always belong to it'. See Cocks H. (2006) 'Safeguarding Civility: Sodomy, Class and Moral Reform in Early 19th century England', *Past & Present*, 190, February, p.143.

committed such cases to the courts of Assize and Quarter Sessions, together with the incidences recorded over the period 1919-1939. The *Calendars* for this period are more complete in the recording of the committal court, but blanks still do appear. There appears to be no common protocol for the notation recording the actual type of magistrate's court, e.g. 'County' or 'Borough', but with few exceptions location is noted.³⁰⁵

A rare insight into the relative leniency that Lancashire police forces could and did afford inter-male sex crime is provided by the evidence recorded in a remarkable set of documents known as police *Occurrence Books*. These police records of 'occurrences', (i.e. public complaints and criminal behaviours) were kept in each police district or station. What these records demonstrate and confirm is that in both rural areas and towns inter-male sex crime during this period is uncommon. However, this record also suggests that the Calendar record of inter-male sex crime *Calendars* represents only a proportion of the total arrests for such behaviour. The following three examples drawn from the *Occurrence Books* all relate to the small industrial town of Accrington, a relatively remote industrial town in the Lancashire Pennine Hills. They support the argument that inter-male sex crime did not automatically result in committals or comparatively harsh sentencing. These examples also again illustrate the point noted regarding the earlier period, that the definition and framing of a criminal charge was and remains, an inexact process dependent on a range of factors.

³⁰⁵ The previous inclusion of the name of the committing magistrate is increasingly omitted in favour of the name of the court, this shift did not affect the methodology or findings of this investigation.

An *Occurrence Books* entry in 1920 noted an arrest by police constable Harold Paintin (PC 36) of Arthur a 40-year-old weaver on: '24th April Saturday 10:15 pm [arrested for] Gross indecency with another male person in Blackburn Road'.³⁰⁶ However, by the time the case appeared in the local magistrate's court the police managers had redefined the charge from a statutory one relating specifically to inter-male sex (i.e. Section 11 of the 1885 Criminal Amendment Act) that might involve a costly trial at a senior criminal court to one of petty nuisance using a local by-law. The *Occurrence Book* noted this significant shift: 'Alteration to committing a nuisance contrary to public decency with the consent and on the application of prisoner's solicitor'³⁰⁷ Thereby the need to prepare for a highly public trial at a senior criminal court pressing a charge for 'gross indecency' (i.e. maximum 1885 Criminal Amendment Act), and a possible maximum sentence of two years was negated. Instead, Arthur was tried two-days later at the local magistrate's court and pleaded guilty to a by-law infraction and paid the fine of £20.

On Friday 9 September 1927 an Occurrence Books entry recorded that:

PC 19 E. Dewhurst reports Walter Chadwick, 28 [year-old] single man ... and John Wilson, 17 [years-old] Grammar School boy... I along with PC Addyman, kept the urinal behind the Town Hall under observation and at 9.35 pm the two above named went into the urinal from the Fish Market side and stood with their backs against the wall and they having a short conversation a man passed the urinal they each stepped forward into a stall. They then stood back and [John] stood behind [Walter] put his right hand in front of [Walter] and got hold of his person and commenced to rub it. [Walter] then put his right hand behind him and got hold of [John's] person and commenced to rub it. We watched them for a few seconds and then went into the urinal as we entered the above named separated in a hurry and each stood in a stall. PC

³⁰⁶ Lancashire Constabulary. (3.01.1906 to 31.12.1919) *Occurrence Book, Church Division, Clitheroe Section, Register of Charges*. Entry 34 [LA- PLA 28/4]

³⁰⁷ Lancashire Constabulary. (1st October 1918 – 30th May 1931) *Occurrence Books, North Lonsdale Division - Church Section - Charge Book*. Entry 87, dated 24th April 1920. [LA PLA 23/2]

Addyman got hold of [John]. I said to them "We are going to take you to the police station for indecent conduct," they made no reply. We brought them to the Police Station where they were seen by the inspector Walling who told them they would be reported. They were then allowed to go home.³⁰⁸

Two weeks later, the case was prosecuted at the local magistrate's court, where both men were found guilty and each fined £5. The relatively low sentence again suggests that they were charged with infraction of a local by-law and not the statutory offence of 'gross indecency'.³⁰⁹

There are also cases when the police do not appear keen to pursue public reports of inter-male sex. On 11 October 1927, Patrick a labourer from Liverpool walked into the police station for the Church Section of the Lancashire Constabulary to report the statutory crime of 'Gross Indecency with male person':

Det. Sargent G Sharples reports that at 5:45 pm today Patrick, 36 Lodge Lane, Liverpool general labourer came to this office and reported that the above named offence had been committed on him this afternoon on Hapton Moors, Church County Police were communicated with and Detective Albert Kersely came here and obtained a signed statement from the complainant which I have typed. Specimen in Clerks office File No. 5109. [See file no. 5109. No proceeding, not committed in this district].³¹⁰

In this case, territorial considerations appear to have influenced the decision not to proceed with the allegation. In other examples, the police could and did press for prosecutions in the most senior courts. An occurrence book entry for the Darwin section of the Lancashire Constabulary for 8 August 1929, details the case of Frank, a motor mechanic from Blackburn, who was charged and prosecuted by the police at

³⁰⁸ Lancashire Constabulary. (Dec. 1926 to Apr. 1929) *Occurrence Book, Church Section – Accrington Division (Borough Police)*. Entry dated 9th September 1927 [LA PLA 25/1] They both appeared at a session of the local magistrates on 21st September 1927. Pleading guilty they both received a fine of £5 each.

³⁰⁹ Lancashire Constabulary. (Dec. 1926 to Apr. 1929) *Occurrence Book, Church Section, Accrington Division (Borough Police)*. Entry dated 9th September 1927. [LA PLA 25/1]

³¹⁰ Lancashire Constabulary. (Dec. 1926 to Apr. 1929) *Occurrence Book, Church Section, Accrington Division (Borough Police)*. Entry dated 11th October 1927, p.175-6. [LA PLA 25/1]

the Lancaster Assize for the crime of: 'Indecency with males [two counts] with 8 other mentioned and taken into consideration.' The entry goes on to note his conviction and sentence to ten months imprisonment (2nd division).³¹¹ These examples from the Occurrence Books certainly help paint a less simplistic reading of how the police managed such behaviour that individuals police officers themselves might find difficult and embarrassing to deal with, or even participated in.

There is certainly scope with the primary records available to conduct a focused sample study of the different treatment afforded to similar inter-male sex acts. This would provide further insight into the local criteria that might have informed an apparently wide divergence in the interpretation and thereby reading of the seriousness or otherwise of such 'crime'. Important ingredients of these differential treatments of inter-male sex crimes undoubtedly include the particular circumstance and the status of the accused and the accuser.³¹² This dynamic is something that cannot be discounted when seeking to understand some of the considerations at play in the thinking of Lancashire magistrates.

The shifts in the actual categories of inter-male sex related offences cannot be removed from their historical context. The increasing singular usage of the buggery law's to target inter-male sex noticed in the decades immediately prior to the

³¹¹ Lancashire Constabulary. (1924-1936) *Occurrence Book, Darwin, Registers of offenders*. Entry dated: 8th August 1929, p.99. [LA PLA (acc.6451) - Vol. 1 1924-1936]

³¹² As noted by Upchurch in his study of Metropolitan magistrates' approaches to such cases in the mid-nineteenth century. [Upchurch, C. (2009) *Before Wilde - Sex Between Men in Britain's Age*. Berkeley: California Uni. Press]. The 'unfairness' or outright potential for corruption of the lower magistrates courts in Lancashire with has been recently highlighted by an example suggesting such symmetric corruption was in operation in the twentieth century. That is the evidence that £300 could buy a discharge for a serious assault charge before a local magistrate in Liverpool of the 1960's. [Source:

outbreak of war, appears to have continued into this period. Also, there are no buggery committals within the sample referring to zoophilic buggery and only two attempted zoophilic buggery committals: one case in 1921 of a 35-year-old collier indicted by Wigan magistrates, and a second case in 1924 of a 24-year-old Spinner committed from Fleetwood.³¹³

Unhelpfully for this study, *Calendar* listings of buggery and attempted buggery committals increasing were not differentiated; between zoophilic, inter-male, male-female buggery or attempted buggery. Fifty-six committals record only the word 'buggery' or 'attempted buggery' under the 'Particulars of Offence' column. In this study, these committals are referred to as 'unknown' buggery charges, of which there are eighty-three during the sample of Lancashire *Calendars* 1919-1939. This unspecified type of buggery committal (recorded as Category 2 and 2.5 committals in the databases) has been excluded from the subsequent analysis of inter-male sex committals. However, for completeness, Table 4.6 provides an overview of these four categories of buggery offence: unknown type of buggery, attempted buggery, inter-male sex buggery and attempted inter-male sex buggery to provide a reading of incidence. Again for completeness, a 'Possible Maximum' column and calculation has been added to provide a maximum range of such incidence in the event that a significant number of those unknown committals were inter-male sex related, as seems probable.³¹⁴

³¹³ Liverpool Assize Calendar 1921.04.04., CE# 05. LA 347 QUA 3/5 (Jan 1920 to Oct. 1929) & Preston Co. Q.S. Calendar 1925.01.07., CE# 03 LA JAPR/5/21.

³¹⁴ Although the decline in explicit zoophilic buggery charges appears to be a feature of this inter-war period, the lack of any joint-prosecutions and the limited but ongoing zoophilic buggery cases in the post-1939 period suggests that an indeterminate number of these committals were indeed not related to inter-male sex. Another consideration when seeking to categorise all buggery committals of

Table 4.6 Comparison of Buggery committals to provide a reading of the actual and possible range of inter-male sex committals in the sample during the period (1919-1939).³¹⁵

	Buggery (<i>Inter-male sex</i>) [Cat. 3]	Buggery (<i>unknown type</i>) [Cat. 2]	Max. poss. total of IMS Buggery Cases [Cat. 2 + 3.2]	Att. Buggery <i>Inter-male sex</i> [Cat. 3.2]	Attempted Buggery (<i>unknown type</i>) [Cat. 2.5]	Max. poss. total to IMS Attempted Buggery Cases [Cat. 2 + 3.2]
1919-1924	18	15	33	8	2	10
1925-1929	14	12	26	6	5	11
1930-1934	10	6	16	6	7	13
1935-1939	14	17	31	9	18	27
Totals 1919-1939	56	50	106	29	32	61

This study, with regard to the choice between the different offences used to commit inter-male sex, also demonstrates particular trends during this period. As suggested by Table 4.7, the offence of gross indecency maintained and increased its pre-war popularity as the most popular means of obtaining committals against inter-male sex related behaviours. One of the most obvious reasons for such popularity would appear to be that no material evidence was required to obtain a conviction. As previously discussed, only the sincerity of witnesses' 'perceptions' that something 'sexual' had occurred, was about to happen or was being planned was required to convince a jury and obtain a conviction.

unknown type as inter-male sex is that there are a number of committals during this period involving two or more males, suggesting consensual behaviours. However, all of the eighty-two unknown categories of Buggery cases are singular and therefore does invite some suspicion that at least a number are singular zoophilia buggery cases. Further given that incidence is not a singular focus in this thesis only added further weight to the exclusion of these 'unknown' category of buggery cases from the findings of this study relating to inter-male sex committals.

³¹⁵ Lancashire Committals of inter-male sex (1850-1970) Data Base.

*Table 4.7 Incidence of committals by category related to inter-male sex (1919-1939).*³¹⁶

	Buggery <i>Inter-male sex</i> [Cat. 3]	Att. Buggery <i>Inter-male sex</i> [Cat. 3.2]	Gross Indecency [Cat. 4]	Indecent Assault [Cat. 5]	IMS involving a minor [Cat. 6]
1919	1	2	5	1	0
1919-1924	18	8	49	12	4
1925-1929	14	6	59	12	1
1930-1934	10	6	38	8	0
1935-1939	14	9	27	11	4
Total for the period 1919- 1939	56	29	173	43	9

The total actual number of buggery and attempted buggery committals within this sample, for the twenty years of the inter-war period, is eighty-two. This total potential rises to a maximum total of one-hundred of sixty-one committals, if the 'unknown' category of committal were assumed to be inter-male sex related. This compares with the one-hundred and thirty-nine buggery and attempted buggery committals within this sample for the period 1850-1918, discussed in Chapter Three. This total potential rises to a maximum possible of one-hundred of seventy-two committals if the 'unknown' category of committal for this earlier period were all to be in fact inter-male sex related.

Although like is not exactly being compared with like, those two sets of figures include sufficient proximity of primary material to suggest that a significant increase occurred in the prosecution to committal of inter-male sex related crime. However,

³¹⁶ Lancashire Committals of inter-male sex (1850-1970) Data Base.

caution needs to be used when considering the frequency, within this sample, that such cases arise within the general business of the courts of Assize and Quarter Session within the Criminal Justice System. Table 4.8 attempts to provide wider contextualisation of inter-male sex committals within the overall business of the senior criminal courts of Lancashire.

Table 4.8 Comparison between the incidences of inter-male sex related assault committals and all committals (1919-1939).³¹⁷

	Total committals related to inter-male sex.	Total Number of all committals within the Lancashire sample by year
1919-1924	91	3478
1925-1929	92	3208
1930-1934	62	4137
1935-1939	65	4095
Totals for the period	310	14918

The breakdown of the sample between committals for actual or nominal coercive inter-male sex provides a further insight into the policing and prosecution policy of the Criminal Justice System during this period.

What is also of note is that the Lancashire police and prosecution services at this time were affording at least some priority to prosecuting cases of coercive inter-male crime including in the most senior courts. However, given the definition of coercive crime adopted by this study (i.e. singular or serial defendants and a real or at least token victim together with a coercive charge of 'assault') there is an understandable, lack of clarity. That will have to await subsequent focused research to endorse, qualify or helpfully challenge this reading. That is, there are a number of joint

³¹⁷ Lancashire Committals of inter-male sex (1850-1970) Data Base.

committals for buggery and attempted inter-male sex buggery during and before this period which suggest that in practice, the prosecution service understood the potential and actuality of consensuality of such behaviour. Secondly, the wording of the indecent assault committal indicates a coercive act; a conclusion supported by the complete absence in this Lancashire sample of any mutuality in the make-up of such cases.³¹⁸ Table 4.9 below indicates the incidence of such coercive committals compared with the totals of all actual or nominally coercive indictment.

*Table 4.9 Comparison between the incidences of singular (i.e. actually or nominally coercive acts) and specifically coercive inter-male sex related committals (i.e. 'Indecent Assault') (1919-1939).*³¹⁹

	Total singular committals related to actual or nominally coercive inter-male sex. [Cat. 3, 3.2, 5 & 6]	Total Number of all committals specifically for coercive sex i.e. 'Indecent Assault' [Cat. 5]
1919-1924	41	11
1925-1929	42	12
1930-1934	22	8
1935-1939	25	11
<i>Totals for the period</i>	130	42

Finally, the seriousness and priority afforded to the prosecution of inter-male sex behaviour involving males below sixteen years (i.e. a recurrent, but not fixed, benchmark apparently applied by the police and courts) appears limited.

³¹⁸ This is another question highlighted by this investigation that requires further and more specific research to obtain at least a preliminary answer.

³¹⁹ Lancashire Committals of inter-male sex (1850-1970) Data Base.

Table 4.10 Incidence of the committals involving under-sixteen year old 'lads' as defendant or 'victim' (1919-1939).³²⁰

	Committals for inter-male sex involving a male less than 16 years.	Total inter-male sex related committals.
1919-1924	4	91
1925-1929	1	92
1930-1934	0	62
1935-1939	4	65
<i>Totals for the period</i>	<i>9</i>	<i>310</i>

The findings of this study suggest that the Criminal Justice System considered teenage males as both potential perpetrators of inter-male sex crime and 'victims'. This is evident in the case of William, a fourteen-year-old factory worker, who was committed by Blackburn magistrates to stand trial for the crime of 'gross indecency' with another man, the forty-four-year-old Charles, who was also committed at the same time. Both pleaded and were found guilty and imprisoned in 1934.³²¹ A quick review of the *Calendar* information under 'previous offences' also suggests that sex involving prepubescent or pubescent boys under sixteen years of age with men — because of paedophilic, hebephiliac and/or ephebophilic desires — was not systematically always judged sufficiently serious to require a trial at a senior criminal court.³²² This is one of the possible reasons why there are so few committals for

³²⁰ Lancashire Committals of inter-male sex (1850-1970) Data Base.

³²¹ Manchester Assize Calendar 1934.06.25., CE# 18. LCA 347 QUA 3/6 (Jan. 1930 to Nov. 1939).

³²² For example Joseph (19) Carpentry improver appeared at the February Manchester Assize in 1939 charged with, Buggery, Gross Indecency and Indecent assault. Under the heading for Previous Convictions are listed the following: Manchester City Petty Sessions [i.e. magistrates' court] on 5 August 1936 indecent assault on boy, sentence return to approved school. [Manchester Assize Calendar 1939.02.27., CE# 023. LCA 347 QUA 3/6 (Jan. 1930 to Nov. 1939)]. George (44) Labourer was tried at the October Liverpool Assize 1920 charged with gross indecency. The previous convictions listed included: At (i) Wells Quarter Sessions 9th April 1903 for , 'indecent assault on female aged 8 yrs.' Sentence; imprisonment; 7 yrs. Penal Servitude and 12 calendar months (concurrent). (ii) Somerset Assize 30.10.1908 for 'rape, indecent assault on female' sentence, imprisonment; 3 calendar month and licence revoked. (iii) Manchester Magistrates 29.1.1914 for

inter-male sex related behaviour involving a male less than sixteen years of age. Also by this period, the prosecutions of young offenders were being increasingly removed from the adult court system, and therefore the *Calendars'* records, and into a separate youth justice system. However, given this separate category of processing the criminal prosecution of young persons, a number of police agencies sought the most public, protracted and serious charges against a number of teenaged lads, again reflecting the politics and priorities of Lancashire forces.

In conclusion, the upheaval of World War One , and not least the challenge it posed to the dominant sex regime of the period, had released a genie that proved impossible for the ruling elites and others to put back. The more frequent use of the 'gross indecency' charge that maximised the chances of a conviction was the obvious choice for police forces and their political masters to provide an impression that the 'problem' of inter-male promiscuity was being addressed without too much cost to the public purse. However, outside of Liverpool, it appears that the Lancashire Police forces also alert to this new 'moral' danger were content to finance only a token number of committals when in fact they could have sent many more if they had so wished. The policing of inter-male sex in Lancashire during this period, as previously, was a very local matter, and the erratic underlying pattern suggested by the cusum analysis is perhaps a reflection of this uncoordinated, county-wide approach to the

'indecent assault on girl under 16 yrs.' Sentence, 'imprisonment ; 6 calendar month & 3 calendar month (concurrent)' (iv) Salford Magistrates 20.7.1918 for 'indecent assault on girl aged 7. [Liverpool Assizes Calendar 1920.10.25., CE# 04 LCA 347 QUA 3/5 (Jan. 1920 to Oct. 1929)]. Extract from the 'Previous Convictions' Calendar entry for James (53) 'Labourer'. At Liverpool City Petty Sessions 17 Sept. 1936 for 'indecent assault boys', sentence: 'Fined'. [Liverpool Assize Calendar 1936.10.26, CE# 04. LCA 347 QUA 3/6 (Jan. 1930 to Nov. 1939)]. & Extract from the 'Previous Convictions' Calendar entry for, Thomas (53) 'Tug Boat Captain' At Liverpool City PS 2 July 1926 'Indecent assault, girl 6 yrs. old, (2 cases)', sentence: 'Industrial School & POA'. [Liverpool Assize Calendar Source 1938.10.24., CE# 031. LCA 347 QUA 3/6 (Jan. 1930 to Nov. 1939)].

issues of policing and prosecution of inter-sex crime during the inter-war period.³²³

The Attitudes of the Defendants (119-1939)

Very few defendants who were committed for trial at the county's senior criminal courts had their cases dismissed prior to the commencement of the scheduled trial: six in the sample. This represents a significant improvement on the pre-trial dismissal rate for inter-male sex cases in the previous period. This development suggests that the prosecution was improving with regard to putting together such cases and in turn, that more time was being devoted by those services to that end. A second factor would appear to be that the jury was more prepared to entertain inter-male sex buggery cases than was previously the case. This could have been a direct result of better and more convincing cases being committed, making a 'no bill' pre-trial verdict less likely. It might also be in the more sexualised environment of the post-World War One period, that such topics and discourse had lost some of their previous taboos.

However, the suggested improvement in the inter-male sex committal cases being tried at court needs to be assessed relative to the fact that a majority of defendants chose to challenge the charge and plead not-guilty. However, a large number of defendants also chose to plead guilty, suggesting that a significant number of cases were competent and described adequately with evidence supporting the committal as set out in Table 4.11.

³²³ CUSUM (or cumulative sum control chart) is a sequential analysis technique developed by E. S. Page of the University of Cambridge. It is typically used for monitoring change detection. Langley, R. (1968) *Practical Statistics: simply explained*. New York: Dover Publications.

*Table 4.11 The pre-trial adjudication and defendant's plea to indictments to the Lancashire Assize and Quarter Session Courts (1919-1939).*³²⁴

	Committal not tried 'thrown-out'*	PLEA - Not Guilty	PLEA - Guilty	Plea - Guilty of Lesser charge
1919-1924	1	53	33	4
1925-1929	3	60	27	1
1930-1934	0	37	25	0
1935-1939	2	23	40	0
Total for the period 1919-1939	6	173	125	5

*'Unfit to stand or dead', 'No evidence presented' or Grand jury found 'No Bill' to answer.

The ratio between the defendants guilty and not guilty does not appear to be divergent for all types of charges used to commit inter-male sex behavior, as suggested by the two following tables.

*Table 4.12 Outcomes for committals for inter-male sex Gross Indecency tried at the Lancashire Assize and Quarter Session Courts (1919-1939).*³²⁵

	(d) Plea: Not Guilty	(f) Plea: Guilty	(g) Plea - Guilty of Lesser charge	Total sample of Pleas recorded (d+f+g)
1919-1924	28	20	2	50
1925-1929	39	17	0	56
1930-1934	22	15	0	37
1935-1939	7	21	0	28
Sample Totals 1919-1939	96	73	2	171

³²⁴ Lancashire Committals of inter-male sex (1850-1970) Data Base.

³²⁵ Lancashire Committals of inter-male sex (1850-1970) Data Base.

*Table 4.13 Outcomes for committals for inter-male sex Indecent Assault tried at the Lancashire Assize and Quarter Session Courts (1919-1939).*³²⁶

Sort E: Outcomes for committals for inter-male sex indecent Assault' (42)	(d) Plea: Not Guilty	(f) Plea: Guilty	(g) Plea - Guilty of Lesser charge	Total sample of Pleas recorded (d+f+g)
1919-1924	6	5	0	11
1925-1929	7	4	0	11
1930-1934	5	3	0	8
1935-1939	5	5	0	10
Sample total 1919-1939	23	17	0	40

A more marked willingness to return a guilty verdict is visible among defendants committed as part of joint prosecutions, described earlier as 'consensual' inter-male sex offences, as shown in Table 4.14. Given the limits of the *Calendars*, only speculation can seek to understand this shift in the general pattern of guilty and not-guilty pleas. One suggestion is again that the prosecutions are better put together and evidenced to make not-guilty pleas problematic. However, this fact might be expected to apply more evenly to all such cases. Another possibility is that in the more sexualised post-World War One period, men were more prepared to accept the implications of their sexual desire, or even a few had no wish to deny such attraction, mindful that over one hundred of the men committed during this period were of an age eligible to volunteer and be conscripted into the armed forces during the war years, 1914-18. That is, many of these men had most probably experienced, at first hand, war and all the urgency, reflection and re-ordering of priorities that can and does occasion.

³²⁶ Lancashire Committals of inter-male sex (1850-1970) Database.

Table 4.14 The plea returned of defendants in joint-committals of committals relating to 'consensual' Gross Indecency at the Lancashire Assize and Quarter Session Courts (1919-1939).³²⁷

	Committal not tried 'thrown-out'*	Plea: Not Guilty	Plea: Guilty	Plea - Guilty of Lesser charge
1919-1924	1	27	20	2
1925-1929	0	33	19	0
1930-1934	0	24	16	0
1935-1939	0	13	27	0
Totals for the period 1919-1939	1	97	82	2

The reaction of the court and the pleas returned by the defendants in such cases, when compared with the findings for the decades immediately prior to 1914, suggest that while still more likely to reject such charges, there was an increased chance of defendants identifying with the crime for which they were committed. Why this might be the case is beyond the scope of this investigation. However, the findings of this study does suggest that the local Lancashire police and therein the prosecution services did read the post-World War One years as being a more sexualised environment for inter-male erotic behaviours. However as shown by Helen Smith, defendants while recognising the reality of their inter-male sex actions were not necessarily identifying themselves with regard their sexual desire.

The attitudes of the Jury (1919-1939)

The trends in the verdicts returned by Lancashire juries in trials of inter-male sex cases suggest a similar, if not a more developed, pattern to those changes noted

³²⁷ Lancashire Committals of inter-male sex (1850-1970) Database.

above in the pleas returned for defendants tried for inter-male sex. In the decades prior to World War One, there appeared to be a marked reluctance by juries to return guilty verdicts. This reluctance appears to have been partially revised during the war-years 1914-1918. Table 4.15 sets out the result of the adjudication function of the jury trials of inter-male sex, mindful that only when a defendant was pleading 'not-guilty' would the jury be required to return a verdict.

*Table 4.15 Verdicts returned in prosecutions of IMS Buggery (1919-1939).*³²⁸

Sort (3) Verdicts of inter-male sex committals	(h) Verdict: Not Guilty	(i) Verdict: Guilty	(j.) Verdict: Guilty lesser Charge	(k) No Verdict: (Hung jury)	(l) No Verdict: procedural	Other	(n) Total sampled
1919-1924	22	28	0	3	3	0	91
1925-1929	30	28	2	1	1	5	92
1930-1934	17	20	0	0	0	1	62
1935-1939	7	16	0	1	1	2	66
Total for the period	76	92	2	5	5	8	311

However, distinct trends appear to emerge when the verdicts returned are considered by the charge being tried. For example, in trials of the crime of 'Buggery', of the twenty-seven cases tried, twenty-five were found guilty, and only five 'not-guilty' and two 'guilty' of a lesser charge (i.e. 'Attempted Buggery'). For the eighteen inter-war trials for 'Attempted buggery', fourteen were found 'guilty' and only four 'not-guilty', mindful that to obtain a conviction convincing and material evidence of physical act(s) was required to be proven beyond reasonable doubt in the face of a forceful rejection by the defence. This suggests again that the prosecution service

³²⁸ Lancashire Committals of inter-male sex (1850-1970) Database.

had significantly improved, perhaps the result of increased police resources being invested in such cases. That was most possibly, if this was the case, justified by the increased focus on the real, or invented, serious danger to society that such behaviour posed.

In the trials for 'gross indecency' cases, the success rate of convictions at the hands of the jury is more balanced, as suggested by Table 4.16:

Table 4.16 Outcomes in trials of 'gross indecency' (1919-1939).³²⁹

	(h) Verdict: Not Guilty	(i) Verdict: Guilty	(j.) Verdict: Guilty lesser Charge	(k) No Verdict: (Hung jury)	(l) No Verdict: procedur al	(m) Verdict: clinical	(n) Total number of sampled committals
1919-1924	16	10	0	2	2	0	30
1925-1929	25	14	0	0	0	1	40
1930-1934	15	7	0	0	0	0	22
1935-1939	3	3	0	1	1	0	8
Total for the sample 1919- 1939	59	34	0	3	3	1	100

In such trials, whereby the prosecution does not have to prove that even any physical contact occurred, only that the behaviour in question was or might have led to 'indecency', the prosecution had a much harder job of convincing Lancashire juries to convict. However, as noted, the prosecution service appears to have been more than competent to present and win conviction for case related to behaviours, such as buggery and attempted buggery, that required the accusation and

³²⁹ Lancashire Committals of inter-male sex (1850-1970) Database.

presentation of often difficult to obtain evidence. Another factor might also be the consensual nature of a majority of the gross indecency cases. Whatever the causation, Lancashire juries appeared at best reluctant to share the police and prosecution reading of such alleged inter-male sex acts or related behaviours.

To a lesser extent, the trials of cases of indecent assault also appear not to have enjoyed an overwhelming success at the hands of the Lancashire juries in the inter-war period. Of the twenty-three such trials, a majority of sixteen were found guilty with seven not guilty. Although convictions for this offence were an improvement on those for gross indecency cases, they fared worse than those for buggery and attempted buggery. Therefore, it would appear that Lancashire juries, although apparently more willing to return guilty verdicts in buggery cases, were less inclined to do so in trials for indecent assault and found not guilty a majority of the gross indecency cases put before them.

The Attitudes of the Judiciary (1919-1939)

The longitudinal consistency of the evidence provide by the *Calendars* again provides only a highly limited snapshot of the attitudes of the judiciary presiding and sentencing in the case of successful convictions.

Table 4.17 Comparative Outcomes by Mean, Median, Mode and Range of trials of gross indecency committals 1919-1939.³³⁰

	Outcomes: IMS Buggery Convictions (28)	Outcomes: IMS Buggery Convictions (18)	Outcomes: Attempted IMS Buggery Convictions (9)	Outcomes: Attempted IMS Buggery Convictions (11)
Imprisonment	1919-1929	1930-1939	1919-1929	1930-1939
Count	26	16	7	10
Mean	1.9	2.9	1.0	1.6
Median	1.25	2.50	1.00	0.75
Mode	1	5	1.5	0.5
Range Max	5	6	1.5	4
Range Min	0.25	0.50	0.5	0.5
Outcome: Medical	2	0	1	0
Outcome: Other	0	2	1	1

The impression created by sentencing policies for this period, similar to the decades immediately before 1914, was that the judges chose not to apply the full range of sentencing available to them. The most severe sentence handed down in the case of Buggery was a maximum practical tariff imposed of six years and as low as three months imprisonment. However, with such low incidence care should be taken in not seeking to abstract general trends.

³³⁰ Lancashire Committals of inter-male sex (1850-1970) Database.

*Table 4.18 Outcomes by Mean, Median, Mode and Range of trials of indecent assault committals (1919-1939).*³³¹

	OUTCOMES Gross Indecency Convictions (54)	OUTCOMES Gross Indecency Convictions (42)
Imprisonment	1919-1929	1930-1939
Count	50	41
Mean	0.7	0.8
Median	0.50	0.58
Mode	0.25	0.5
Range Max	3	4
Range Min	0.08	0.01
Outcome: Medical	1	0
Outcome: Other	3	1

The sentencing tariffs imposed for gross indecency again indicate that the presiding judges felt that the case was of sufficient seriousness as to require a custodial sentence. Of note is that the length of sentences passed down altered little through the inter-war years and again, the policy is biased towards the shorter periods of imprisonment.

These findings again suggest the general trend of courts not punishing convictions of inter-male sex with any sustained severity within the context of the period. What is also of note is the near absence of the courts seeking medicated sentencing for such convictions. The judges presiding over these Lancashire courts appear to have not been convinced about the emergent pathologisation of sexual diversity. As might be expected, when a conviction was handed down, the judges undertook their task

³³¹ Lancashire Committals of inter-male sex (1850-1970) Database.

as required by law. However, of note is the apparent paternal humanity exercised in the task of sentencing; the most lenient of sentences were handed to all but one of the youngest boys convicted of inter-male sex crime.³³²

The findings of this investigation for the inter-war period provide a unique picture of the Criminal Justice System's implementation of the criminalisation of inter-males sex between World War One and World War Two. There is certainly enough evidence to suggest that the period witnessed a limited but marked, increase in the incidence and the choice of certain categories of inter-male sex offence over others. Despite the implementation of this newer post-war regime, while even insofar as it appears to have been evidenced within most, if not all, Lancashire police authorities, it was still not common outside of Liverpool to seek the committals of such cases. The findings chime with the findings of the Wolfenden Report published seventeen years after the close of this period. In that each police force enjoyed its own priorities, it can be suggested that any conclusions that focus on systematic county, let alone national, coordinated 'witch-hunts' of inter-male sex behaviour during any of the twelve decades covered by this longitudinal study are highly problematic.

³³² William (14) 'cotton operative', found guilty of, 'Gross indecency', sentence; '4 days prison.' [Manchester Assize Calendar 1934.06.25., CE# 019. LCA 347 QUA 3/6 (Jan. 1930 to Nov. 1939)]. James (16) 'Labourer', found guilty of, 'Attempted Buggery', sentence; 'Bound Over'. [Liverpool Assize Calendar 192904.08., CE# 012. LCA 347 QUA 3/5 (Jan. 1920 to Oct. 1929)]. Richard (16) 'Labourer', found guilty of, 'Buggery and Gross indecency', sentence; 'Bound Over'. [Liverpool Assize Calendar 1932.06.11., CE# 014. LCA 347 QUA 3/6 (Jan. 1930 to Nov. 1939)]. Harry (16) 'Labourer', found guilty of: 'Attempted Buggery and Gross indecency', sentence; 'Bound Over.' [Liverpool Assize Calendar 1938.10.24. CE# 034. LCA 347 QUA 3/6 (Jan. 1930 to Nov. 1939)]. Fred (16) 'doffer', found guilty of: 'Gross indecency with male person', sentence; 'Bound Over'. [Manchester Assize Calendar 1927.11.14., CE# 012. NA HO 140/402 (1927)]. Although this apparent leniency was not universal and no-doubt reflected the circumstances of the case as suggest by the sentence for Norman (14) 'errand boy', found guilty of 'Buggery'. Sentence: 3 years imprisonment'. [Liverpool Assize Calendar 1923.11.05., CE# 013 LCA 347 QUA 3/5 (Jan. 1920 to Oct. 1929)].

Chapter 5. 'The start of a Golden Age of Policing victimless crime': The Indictable
Prosecution of Inter-Male Sex 1940-1970.

The thirty-one years covered by this chapter, include by far the greatest incidence of committals for both consensual and coercive inter-male sex related behaviour found for the whole period covered by this study. Indeed, the total incidence of such committals for the years 1940 to 1970 exceeds the cumulative total for the years 1850-1939, as set-out in Table 5.1.

*Table 5.1 Comparative breakdown of the Calendar data of inter-male sex related committals (1919-1970).*³³³

Year	Total <i>Calendars</i> in the sample	Total Committals in sample	Total IMS Committals in the sample
1919-1924	236	3478	91
1925-1929	225	3208	92
1930-1934	173	4137	62
1935-1939	163	4095	65
Total for period 1919 to 1939	797	14918	310
1940-1945	278	6526	137
1946-1950	240	7589	156
1951-1955	219	6780	230
1956-1960	253	9100	540
1961-1965	241	10658	294
1966-1970	244	14550	110
Total for period 1940 to 1970	1475	55203	1467

These Lancashire findings would provide qualified support for the arguments, based on the deeply flawed Home Office crime figures, that 'In the fifteen years following

³³³ Lancashire Committals of inter-male sex (1850-1970) Database.

the outbreak of the Second World War the number of indictable homosexual offences increased five-fold' [sic].³³⁴ When compared to the more accurate Lancashire sampled reading of such incidence, the limits of the structural weaknesses of the Home Office figures are again highlighted. That is, regardless of how significant the regional differences such variations are hidden within these overall totals. For example, the Lancashire figures note a significantly lower increase for that period (i.e. three-fold) and locates a larger eight-fold increase in the later 1950s, which far exceeded the rise noted by Weeks in his reading of the national Home Office figures.³³⁵

The Attitudes of the Police (1940-1970)

However, when interpreting the unprecedented increase in the incidence of Lancashire inter-male sex committals caution is required because the shifts were not consistent. For example, the increases for the 1940s and early 1950s represent no more than roughly a doubling of incidence over the pre-war years and that from a very low base. It is only by the late 1950s that the committal rate rose to eight-times that of the pre-World War Two totals. What perhaps appears counter-intuitive about these Lancashire findings is that this increase occurred after the establishment by the Home Secretary of an unprecedented investigation, independent of

³³⁴ Weeks, J. (1990) *Coming Out: Homosexual Politics in Britain from the Nineteenth Century to the Present*. 2nd ed., London: Quartet Books, p.158.

³³⁵ Of note it that the 'peak' of committals located by this study to the late 1950s does most probably not represents the zenith of such prosecution during the post-War War period. An initial sampling undertaken for this investigation of the records of the then newly established Lancashire Police Force of Greater Manchester County for the period 1974-1985 suggested that any 'golden age' of policing victimless inter-male sex lies outside of this study and belongs to the post-1970 period. [Manchester Police (1974-1985) *Annual Report of Greater Manchester Police*. Manchester: GMP. [GMC 352 2 Mi and catalogued by year].

government, into the very question of the criminalisation of inter-male sex (The Home Office Committee on Homosexual Offences and Prostitution more commonly known as the Wolfenden Committee).³³⁶ Further, that when the Committee reported in August 1957 it recommended significant reform of a number of the very laws being so enthusiastically implemented in Lancashire. Of note is that the recommendations of the Wolfenden Report, as the document became most commonly known, received a popular and learned welcome. For example, Hammelmann writing a few months later in the 'in house' legal journal *The Modern Law Review*. 'The document...has deservedly had a good and full press and can be welcomed as an eminently sensible and well-balanced piece of work.'³³⁷ Not for the first time in this investigation, a counter-intuitive speculation is provoked as to the attitudes of the politicians and those managing the operational priorities of the police and public prosecution services.

Of specific interest to this argument is that the Committee's recommendation on prostitution was enacted the following year, while their findings regarding

³³⁶ This internal Home Office, subsequently known as the 'Wolfenden Committee' after its Chairman John 'Jack' Wolfenden, first met in Autumn 1954 and reported three years later in August 1957. The committee's membership included: James Adair OBE (former Procurator-Fiscal for Glasgow), Mrs Mary G. Cohen (vice-president of the City of Glasgow Girl Guides, Chairwoman of the Scottish Association of Girls' Clubs), Dr Desmond Curran MB FRCP DPM (senior Psychiatrist at St George's Hospital, London and psychiatric consultant to the Royal Navy), Rev Canon V.A. Demant, (Canon of Christ Church, Oxford and Regius Professor of Moral and Pastoral Theology at the University of Oxford), Mr Justice Diplock (Recorder of Oxford and High Court judge), Sir Hugh Linstead (Conservative MP for Putney, and pharmaceutical chemist), Most Hon. the Marquess of Lothian (a Foreign Office minister), Mrs Kathleen Lovibond CBE (chairwoman of the Uxbridge juvenile Magistrates' Court and member of the Conservative women's organisation), Victor Mishcon (solicitor and Labour member of the London County Council), Goronwy Rees (Principal of the University College of Wales, Aberystwyth), Rev. R.F.V. Scott (Presbyterian Minister of St Columba's Church, London), Lady Stopford (Doctor, Magistrate and wife of the Vice-Chancellor of the University of Manchester), William T. Wells (Labour MP for Walsall North and Barrister) & Dr Joseph Whitby (general practitioner with psychiatric experience).

³³⁷ Hammelmann, H. A. (1958) 'Committee on Homosexual Offences and Prostitution.' *The Modern Law Review*, 21 (1) pp.68-73.

homosexuality (i.e. inter-male sex behaviours) took a further nine years to reach the statute book. Perhaps the increase in Lancashire committals and the long delay to the enactment of the Wolfenden recommendations on homosexuality are not coincidental. Clearly, there would appear to have been a strong argument within British society against a change in the law sufficiently powerful to both arrest parliamentary reform and to maintain, and even increase, the unprecedented targeting and prosecution of the more difficult forms of such behaviour to police. The question is then not one about the execution of a new policing strategy; as shown above, police targeting and committals of especially the nocturnal furtive consensual and anonymous inter-male sex behaviours was a well-established albeit infrequent feature of the inter-war years. The key question appears to concern the increased political priority afforded to the re-direction of police and public prosecution services' funding of a significant increase in largely victimless crime, at a time when post-war privations together with the shortage of public funding were still causing real hardship for millions of people in Britain.³³⁸ However, within the context of the 1940s and 1950s, in comparison to other advanced capitalist protestant nations which shared Britain's 'traditional' criminalisation of inter-male sex (e.g. Germany and the USA³³⁹), the re-invigoration of the British policing campaign

³³⁸ Exemplified by; the continuation of the war-time measure of rationing certain goods which only ended on 4th July 1954 and the chronic housing shortage (famously highlighted by Ken Loach's film *Cathy Come Home*). [*Cathy Come Home*. (1966) Directed by K. Loach. [Film] UK: BBC].

³³⁹ The 1950s increase in the criminal prosecution of inter-male sex-related behaviours is not a singular phenomenon of this period. The USA, former war-time ally, superpower and transatlantic Anglo-Saxon neighbor enjoying a very similar criminal code to that of the UK was during this period in the midst of a remarkable purge of 'homosexuals'. The equally unprecedented prosecution of inter-male sex was part of a much larger Cold War political agenda that equated political opposition with inter-male sex. That Eskridge has characterized as the 'anti-homosexual terror regime of the 1950s'. [Eskridge, W. N. (2008) *Dishonorable passions: sodomy laws in America, 1861-2003*. New York: Viking, p.10]. For example D'Emilio has shown in America the government sacked more federal employees for alleged sexual proclivities rather than as political opposition to the new Cold War project, of which perhaps Senator McCarthy was one of the most high profile advocates. [D'Emilio, J.

against 'homosexuality', as evidenced by these Lancashire findings, suggests a comparatively restrained exercise for the period.³⁴⁰

Although no-doubt a personal tragedy for those directly involved, the findings set out in the final section of this chapter regarding the trend in sentences handed down for such crimes, suggest an ongoing development of the trends towards lenient and even 'understanding' sentencing policy. Evidence points to a more reserved treatment of inter-male sex crime during this period than might have been expected. Before the findings for this period are discussed in detail, it is important to note that although not based on a comprehensive review of all Lancashire *Calendars*, these results are informed by a reading of an overwhelming majority of the *Calendars*

(1983) *Sexual politics, sexual communities : the making of a homosexual minority in the United States, 1940-1970*. Chicago: University of Chicago Press.] There certainly appears nothing in the UK that could equal the hundreds of arrests made by the authorities in Boise, Idaho, USA during the investigation of a 'homosexual underground' in the township between October 1955 and January 1957 that resulted in a trial of only fifteen men. [Gerassi, J. (1966) *The boys of Boise; furor, vice and folly in an American city*. New York: Macmillan]. To what extent can the 1950s USA government project of scapegoating 'homosexuals' be used as a means of understanding the increase of Lancashire prosecutions of inter-male sex during the same period? There are a number of problems when suggesting a causal link between these two similar trends on both sides of the Atlantic. Firstly, the practical operational antecedents were already laid in Lancashire more than a decade before the 1950s. [As shown in Chapter Four; the geographical distribution of committals during this period 1919 – 1939 suggests that most if not all Lancashire police forces had prosecuted by indictment a number of inter-male sex related cases]. Secondly, the peak of committals highlighted by this study during the later 1950s, although exceptional, can be seen as part of a trend that ante-dated the start of the Cold War, often dated to 1947. Kynaston notes an extreme official reaction of the period: 'An Admiralty signal went on to include recommendations of methods including "inspection of jars of Vaseline or hair gel for tell-tale pubic hairs", while officers were also to encourage to secure, "the help of the steadier and more reliable men on the lower deck" in order to counter the regrettable tendency 'to treat these matters with levity.' Kynaston, D. (2009) *Family Britain, 1951-1957*. London, Bloomsbury, p. 332. Also see: Gaddis, John Lewis (2005) *The Cold War: a new history*. New York: Penguin Press. Hobsbawm, E. (1994) *Age of extremes: the short twentieth century, 1914-1991*. London: Michael Joseph. Hennessy, P. (2010) *The secret state: preparing for the worst 1945-2010*. London, New York: Penguin Books.

³⁴⁰ We have yet to have the benefit of a dedicated comparative history of the implementation of inter-male sex criminalisation between the USA and UK which given the limited access to accurate prosecution figures might suggest such a publication is not imminent.

generated during this period.³⁴¹ What the breakdown of the sampled committal evidence shows is that for the period 1940-70 the consistent prosecution priority was towards joint committals of two males, men and 'boys', (i.e. teenagers aged 14 and 15 years) charged with the consensual offence of 'gross indecency' (see Table 5.2.)

Table 5.2 Incidence of inter-male sex related committals by cumulative totals and category of offence for the period (1940-1970).³⁴²

Cumulative totals for the years	Buggery (IMS) [Cat.3]	Attempted (IMS) Buggery [Cat. 3.2]	Gross indecency [Cat; 4]	Indecent Assault [Cat 5]	IMS including 'minor'	Five yearly Totals
1940-1945*	26	12	65	29	5	137
1946-1950	12	5	106	19	15	156
1951-1955	0	13	161	22	34	230
1956-1960	16	17	433	43	32	540
1961-1965	0	8	152	12	36	294
1966-1970	0	4	54	8	44	110
Total 1919-1939	53	60	967	133	166	1467

The substantive primary evidence on the committal of inter-male sex-related offences is again drawn from the Lancashire *Calendars of Prisoners* documents that include a majority of the criminal jury trials held in Lancashire during the period 1940-1970 and representing a majority of those court sessions (i.e. Assizes and Quarter Sessions) convened in the county between 1940 and 1970.

³⁴¹ The primary committals' evidence drawn from the Lancashire Calendars of Prisoners documents included a majority of the criminal jury trials held in Lancashire during the period 1940-1970. This includes 1,475 Calendars in the Sample out of an estimated total of 2,144 Calendars generated by all Lancashire Assize, Quarter Session and later Crown Courts during this period. [Source: Lancashire Committals of inter-male sex (1850-1970) Database.]

³⁴² Lancashire Committals of inter-male sex (1850-1970) Database.

The most striking feature of this data set, beyond the significant increase in the total number of committals, is the accelerated continuation of arrests and prosecutions for the offence of 'gross indecency'. As already noted, this offence was predicated on notoriously ambiguous terminology and therein subject to wide interpretation; a situation further aggravated from the defendant's viewpoint, as noted by Wolfenden, by the fact that no material evidence of physical contact was required to substantiate the charge.³⁴³ Therefore, any attempt at seeking an equitable and judicious application of such laws even between courtrooms in the same locale, was intrinsically problematic. The consequence for the Criminal Justice System was that what constituted 'gross indecency' was highly contingent and the subject of negotiation in courtrooms throughout the country. An investigation into the consistencies and divergences in the interpretation of what constituted the crime of gross indecency in the courtrooms of England during this period would certainly help our understanding of such usage.

The Wolfenden Committee in its final report urged caution on this question:

[it]...does not necessarily follow that the behaviour which is so discussed is more widespread than it was before... [further that]....it would be dangerous to argue from police statistics alone either that there was an overall increase or that homosexual behaviour was most prevalent in those years where the number of cases recorded as known to the police was the highest.³⁴⁴

³⁴³ Secretary of State for the Home Department and the Secretary of State for Scotland. (1957) *Report of the (Home Office) Committee on Homosexual Offences and Prostitution*. London: HMSO, (para.104), p. 28.

³⁴⁴ Secretary of State for the Home Department and the Secretary of State for Scotland. (1957) *Report of the (Home Office) Committee on Homosexual Offences and Prostitution*. London: HMSO, (para.42), p. 19.

Hyde, the contemporary parliamentarian, leading commentator and historian of 'Homosexuality', drawing on his long scholarly and parliamentarian interest in the topic, endorsed that same view:

I am convinced from a study of the subject extending now over twenty years that there has been little variation in the incidence of homosexuality and homosexual conduct in proportion to the total population at any given period and that this applies not only to the present century but to the previous eight centuries that is from time to time that local chroniclers and historians first beginning to take note of the phenomena in English society.³⁴⁵

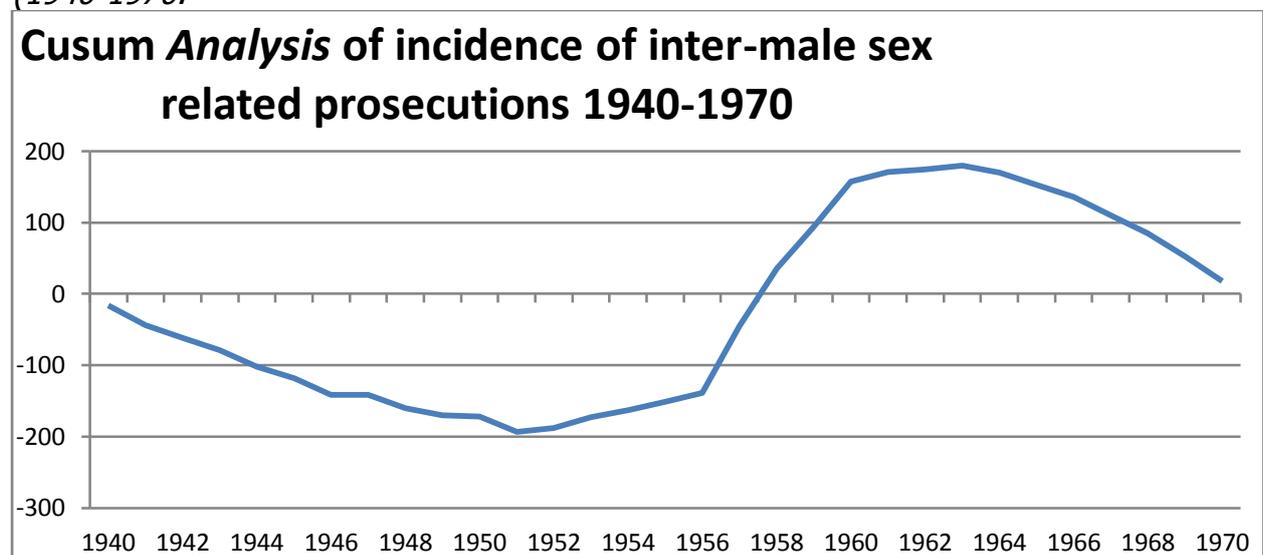
Thus the possible reasons for the increase in committal rates of inter-male sex related offences were a topic of contemporary debate and controversy. The absence of any nationally reliable reading of such committals forced contemporaries to fall back on the flawed Home Office 'statistics' together with anecdote and speculation. What this study contributes to that debate is the first, hopefully of many, accurate longitudinal quantitative and qualitative readings of prosecutions for inter-male sex that would seek to provide a more reliable alternative to the deeply flawed Home Office crime figures.³⁴⁶

³⁴⁵ Hyde, M. (1970) *The Love that Dared Not Speak Its Name: A Candid History of Homosexuality in Britain*. Boston: Little Brown, p.17.

³⁴⁶ This Lancashire investigation does provide some qualified endorsement of the deeply flawed national crime figures produced by the Home Office and annually presented to parliament. Given the flawed nature of those government figures great care is required. For example both McKibbin and Davenport-Hines have cited national crime figures and percentage thereof to argue that a dramatic increase in such prosecutions occurred during this period. [NB: Neither McKibbin or Davenport-Hines provides a source reference for their data but it seems reasonable to assume the data cited are taken from the Home Office annual published national crime figures]. Davenport-Hines has calculated that for the fourteen years between 1938 and 1952 there was a reported; "...850 per cent increase ['for homosexual offences'] compared to 223 per cent for all other indictable offences" [Davenport-Hines, R. (1990) *Sex, death and punishment: attitudes to sex and sexuality in Britain since the Renaissance*. London: Collins, p. 297]. Of particular note is that Davenport-Hines' highlights the plurality of 'buggery' offences and thereby the implicit inaccuracies of reading reports of 'buggery' as solely a crime referring to inter-male sex behaviours as 'sodomy & bestiality'. Interestingly McKibbin publishes identical findings for the following year, to those stated by Davenport-Hines for a contemporaneous twenty-year period (i.e. 1930-1950) for increases in 'homosexual' committals. [McKibbin, R. (2000) *Classes and Cultures: England 1918 -1951*. Oxford: Oxford University Press, p.325]. That the suggested eight-fold increases in committals, is based on deeply flawed government figures, is perhaps to be expected. However, what this study adds is at least a reliable and qualified support to

The cusum analyses of the incidence of committals adds an invaluable layer of insight highlighting the underlying patterns of shifts and consistencies of committals during this period. The cusum findings confirm that the incidence of committals is not a universal feature of this period. Indeed, the cusum calculation of the Lancashire data presents a highly textured, non-uniform picture of committals relating to inter-male sex for the period 1940 and 1970, see Graph 5.3.

Graph 5.3. Cusum Analysis of incidence of inter-male sex related prosecutions (1940-1970).³⁴⁷



The underlying pattern of committals for the opening years 1940-1946 suggests a relative consistency, which is perhaps surprising given that those years are ones including the upheaval and distraction associated with World War II. The War proved to be a seminal event of the century that directly touched all people's lives, both during and in its aftermath. An unparalleled dislocation of British society occurred, not least through the conscription of millions of men and women, including many of those Lancashire males previously or subsequently prosecuted for consensual inter-male sex-related behaviours. This wartime dislocation included the

the suggestion that some form of increase in at least committals, if not inter-male sex crime, occurred during this period.

³⁴⁷ Lancashire Committals of inter-male sex (1850-1970) Database.

relocation of millions of younger men and women from the traditional regulating mechanisms of social intercourse, including sexual relations, a disorientation further exacerbated and heightened by the emotive extremes and reality of war. Of particular note are the War's inclusive, collectivising myths, including 'the Dunkirk Spirit' and 'Together'³⁴⁸ embodied and promoted by the Ministry of Information in its propagandisation of the concept of 'the Peoples War'.³⁴⁹ However, that promotion of collectivism carried a price tag: 'For the Second World War was...not merely a struggle for military victory, but - even in Britain and the USA - for a better society'.³⁵⁰ The Beveridge Report and the landslide victory of the Labour Party in the 1945 General Election underline the general mood of optimism and belief in the concept of at least material 'Progress'. In the sphere of international law, the new Labour Government was keen to introduce new international standards of human rights. In December 1948, the UK was one of the founding signatories of the UN Universal Declaration of Human Rights, with its explicit statement of human equity.³⁵¹

³⁴⁸ Little, W. (1940) *Together*. National Archives collection File:INF3-318 Unity of Strength Together (British Empire servicemen).jpg.

³⁴⁹ Rose, S. (2003) *Which people's war? : national identity and citizenship in Britain, 1939-1945*. Oxford; New York: Oxford University Press. McLaine, I. (1979) *Ministry of morale: home front morale and the Ministry of Information in World War II*. London; Boston: Allen & Unwin.

³⁵⁰ Hobsbawm, E. (1994) *Age of extremes: the short twentieth century, 1914-1991*. London: Michael Joseph, p.161. Although not discussed here, there appears to be a link between wartime collective experiences and expectations for a better post-war Britain and the development of a more pragmatic social and legislative regime towards what was viewed as relating to the sexual: including 'homosexual' reform. Mindful that a majority of those legislators framing this new and more 'liberal' legislation had themselves been directly involved in at least one if not both World Wars (1914-1918 & 1939-1945).

³⁵¹ Article one of The Universal Declaration of Human Rights states that: '*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*' The United Nations. (1948). *Universal Declaration of Human Rights, (Article 1)*. Indeed, albeit part of global political tactics, the Labour Foreign Secretary Ernest Bevin was intimately involved in the drafting of the document and even supported the idea of making the terms of the declaration legally binding on all signatures, including the UK. [Normand, R.

However, despite this evocation of a New Jerusalem and heady pronouncements of a new universal brotherhood, the Lancashire police increased its priority of prosecuting victimless crime. This investigation confirms that the discreet fumbblings in pursuit of quick, anonymous male sexual enjoyment had moved up the Lancashire police managers' lists of priorities both during and especially after World War II. Perhaps on a more practical level, it was the willingness by governments of all political persuasions, both local and national, to underwrite and justify the extra expenditure that such committals required.

This study confirms that the 1940s and early 1950s were marked by a consistent, but not dramatic, increase in committals, never exceeding double figures in any one year. This was followed by a marked rise in the later 1950s reaching the greatest incidence of committals (i.e. a marked increase most probably influenced in part in this sample by the inclusion and exclusion of data from the busiest senior criminal courts³⁵²), and then a decline in committals during the 1960s. Of interest, but not necessarily significant, is the fact that the last three years of this investigation, 1968 to 1970, were the first full years in which there was qualified de-criminalisation of inter-male sex. They also marked the only sequential years for which the charge of 'gross indecency' represents a minority of sampled inter-male sex related committals (i.e. that is the category of committals most associated with the consensuality of

& Zaidi, S. (2008) *Human rights at the UN: the political history of universal justice*. Bloomington: Indiana University Press, p.238].

³⁵² For example Calendar evidence from two of the busiest Lancashire courts; Manchester and Liverpool Crown Courts (1957-1970) covering the two largest urban areas are only included in part for the years 1957-1961 in the Lancashire Committals of inter-male sex (1850-1970) Database.

those involved). Though this is not a definitive reading of those committals, the size of the sample does suggest that some reliability might be read into the narrative. Wartime emergencies and the post-war *New Jerusalem* political context can be read as one sympathetic to collectivist attitudes and shared ideals. Why amid these proclamations of 'universal brotherhood'³⁵³ and the practical reality of collectivist health care the case was for prioritising not simply the policing but the most expensive form of prosecutions for largely covert victimless sexual behaviours is not clear.

Given the significant differences in committal rate between the various policing districts, together with the qualified autonomy of police managers over operational matters in their jurisdiction, any suggestion of an explicit coordinated national or county-wide targeting of inter-male-sex is problematic.

What this investigation does permit is an accurate and nuanced reading of such prosecutions during this period from the perspective of a number of constituent players within the Criminal Justice System. As with previous chapters, the findings for this period provide a reading of all inter-male sex-related behaviours; both those that related to nominally or actually consensual and those that were likewise nominally or actually coercive behaviours. However, while the demarcation of such committals into the categories of consensual and coercive is important, a more

³⁵³ The Cold War dates from this period as does systematic torture and murder by British forces in Kenya (1952 to 1960). See, Anderson, D. (2006) 'A Very British Massacre' *History Today*. 56 (8) pp. 20-22.

insightful reading of such offences can be a problematic exercise. The question as to the reliability of such categories is often complicated by the ambiguity of some of the charges used (e.g. gross indecency), together with the often brief description of an offence, as recorded by the *Calendars*. Therefore, it is an inexact science, though still considered important given that, as noted in Chapter One, so much of the historiography focuses on the issue of the criminalisation of consensual inter-male sex almost to the exclusion of coercive behaviours.

The crime of 'gross indecency', unlike the other categories of charges used, did not require even physical contact or any malice to occur. Of the over nine-hundred committals for the offence of 'gross indecency', more than half (597) were joint-committals. That statistic explicitly states or strongly suggests, both a consensual mutuality and the involvement of no other individuals. Indeed, the limited and invaluable sampled depositional evidence available for this period, shows that arrests for covert late night consensual inter-male sex, behaviour in gentlemen's urinals, accounts for a sizable amount of such cases. Although the incidence of joint-committals suggestive of consensual mutuality is common in prosecutions of 'gross indecency', it is not bound by such cases. For example, 42 committals for the offence of 'buggery' and also 21 'attempted buggery' cases also strongly suggest similarly consensual behavior to be central to the prosecution case (i.e. joint-committals).³⁵⁴

³⁵⁴ Liverpool Assize Calendar 1940.04.03., CE# 09. LCA 347 QUA 3/ (Jan. 1940 to Nov. 1947). Liverpool Assize Calendar 1940.10.28., CE# 07. LCA 347 QUA 3/7 (Jan. 1940 to Nov. 1947). Liverpool Assize Calendar 1940.10.28., CE# 07. LCA 347 QUA 3/7 (Jan. 1940 to Nov. 1947). Manchester Assize Calendar 1940.11.25., CE# 014. LCA 347 QUA 3/7 (Jan. 1940 to Nov. 1947). Liverpool Assize Calendar 1941.01.27., CE# 049. LCA 347 QUA 3/7 (Jan. 1940 to Nov. 1947). Manchester Assize Calendar 1942.02.23., CE# 017. LCA 347 QUA 3/7 (Jan. 1940 to Nov. 1947).

This investigation focused on the charge of 'indecent assault', the definition of which clearly suggests at the very least unwelcomed behaviour involving perpetrator(s) and victim(s), which is interpreted here as nominally or actually coercive. This definition is not speculative, but based on a reading of those committals evidenced in the Lancashire *Calendars*. The following Lancashire committals demonstrate the singular and serial use of the indecent assault charge to target coercive behaviours.

Examples of singular usage include the cases of:

(1947) John a forty-one year old ships fireman was committed to the January 1947 Liverpool Assize for the offence of 'gross indecency; assault on Police Officer'.

(1957) Joseph a forty year old Clerk, 'On 12 October 1957 at Middleton indecently assaulted Brian Kay Courtland a male person...'³⁵⁵

An albeit rare example of the serial (joint) usage of this category of committal listed

in the *Calendars* is from 1948 of three men, Roger (35), James (43) and another James (40) all listed as 'Labourer'. They were tried at the West Derby County Quarter Session held in August 1948, just outside Liverpool, for the same offence:

'On the 17 June at Bold indecently assaulted John a male person.'³⁵⁶ Such joint committals for indecent assault, and not least naming of a singular victim in this case, appear to further confirm the coercive nature of the actions in question and thereby the usage of this category of charge. Indeed, a common feature of both singular and joint committals using the charge of 'gross indecency' is the inclusion of reference, usually by name, to the victim(s) who is/are alleged to have been assaulted. Of note is that it would appear that the Lancashire police maintained

³⁵⁵ Bolton Borough Q.S. Calencar 1958.01.21., CE# 016. LA QJC.82 (1958).

³⁵⁶ West Derby Co. Q.S. Calendar 1948.09.14., CE# 054. LA QJC/72 (1948 - NW). A jury found the men not guilty.

integrity of definition between the most common charge related to sexualised inter-male behaviours (i.e. gross indecency) and that of indecent assault. Such apparent integrity of usage would appear to help qualify the Wolfenden Report's commentary about the flexibility of police charging practice during this period.³⁵⁷

However, no such similar clear distinction appears to have been in evidence when using the charge of indecent assault as a 'back-up' or secondary allegation with other nominally coercive sexualised behaviours. For example, in the case of inter-male sex related buggery committals:

(1955) Jeremiah a thirty-eight year-old car driver was charged '(1) On 1 Jan 1955 at Formby attempted to commit buggery with George, (2) On 1 Jan 1955 at Formby assaulted George with intent to commit buggery with said George, (3) On 1 Jan 1955 at Formby indecently assaulted George a male person.'³⁵⁸

Zia a thirty-three year-old machine operator appeared at the County Quarter Sessions in May 1968 charged with, 'Assault with intent to commit buggery at Bootle.'³⁵⁹

However, by the 1960s the usage of 'indecency' related offences to supplement committals relating to more serious coercive inter-male sex behaviours cases cease to appear. That is suggesting that the prosecution agencies were developing and adapting charge sheets, as exemplified above, their practices with regard to inter-male sex crime.

³⁵⁷ Secretary of State for the Home Department and the Secretary of State for Scotland. (1957) *Report of the (Home Office) Committee on Homosexual Offences and Prostitution*. London: HMSO, (para.122), p.44.

³⁵⁸ West Derby Co. Q.S. Calendar 1955.02.15., CE# 03. LA QJC/79. The charge was defended and the jury found 'Not Guilty all charges'.

³⁵⁹ West Derby Co. Q.S. Calendar 1968.06.15., CE# 072. LA QJC/93 (1968 NW). The defendant pleaded guilty and was sentenced to three years imprisonment.

The evidence regarding committal offences for 'buggery' and 'attempted buggery' demonstrate that these charges were applied during this period for both consensual and coercive inter-male sex behaviours. For example; Fred (17), Colliery worker and, Peter (17), Railway Cleaner, appeared before Wigan magistrates on Friday 21 January 1955 and were committed to stand trial at the next Quarter Session on Buggery charges. The wordings of charges were identical with the names of each correspondent being different and read: 'On 31 Dec 1954 at Hindley attempted to commit buggery with Peter / Fred.'³⁶⁰ They both pleaded guilty and were convicted of a crime that carried a maximum punishment of ten years imprisonment. The sentence handed down by the presiding Judge Rhodes of a fine of £5 with three months to pay, again suggests a consensual act between two teenagers neither of whom had any previous convictions. The lesser buggery charge of 'attempted buggery' concerning joint apparently consensual, inter-male sex behaviours is also serially evidenced within this Lancashire sample: Terence (19), 'warehouseman' and Peter (21), 'receptionist', both first-time offenders, were tried at the November sitting of the Manchester Crown Court charged with 'attempted buggery'; though others are mentioned in the record, it is assumed they were the only ones involved.³⁶¹ They both pleaded guilty and were convicted and sentenced to a fine of £10 for an offence which carried a maximum penalty of ten-year imprisonment.

In this sampled reading of Lancashire inter-male sex related committals, cases involving under-sixteen-year-olds depicted as the victims, have been selected-out for

³⁶⁰ West Derby Co. Q.S. Calendar 1955.02.15., CE# 06. LA QJC/79 (1955 - NW).

³⁶¹ Manchester Crown Court Calendar 1957.11.05., CE# 047 & 048. GMC M545/1 Crown Court Calendars of Prisoners Volume 1 (1956-1958).

separate analysis. Those committals in which under-sixteens were committed, are categorised by the type of charge, as with all other cases. Those committals in which the man charged (sixteen years and over) is charged with inter-male sex related behaviour involving an under-sixteen-year-old male, fall into two types, both of which are read here as coercive. Singular male committals suggesting a perpetrator and an under-sixteen year old victim and the second category of joint cases, alleging a number of perpetrators of a coercive behaviour against a victim. This categorisation is problematic in that there are no clear lines of demarcation. As today, the Criminal Justice System considers young males aged between twelve and fifteen years as potentially both victims and perpetrators of serious crimes. To be clear, regardless of the age of the alleged 'perpetrator', committals in which an under-sixteen-year-old is cited as the victim are read in this study as coercive inter-male sex offences.³⁶²

Given the current focus on 'historic' [sic] sexualised 'scandals' by the corporate media, together with past attempts to link inter-male sexual attraction with sexual molestation of children it appears at first glance noteworthy that so few prosecutions of men for the sexual assault of younger males are recorded in the *Calendars*.³⁶³ However, given the many practical obstacles already noted to bringing such cases, together with the cost of such investigations and the problematic chances of

³⁶² This statement is not a contribution into the often fraught question of teenage sexual autonomy and protection, it is simply a rehearsal of English Law (Sexual Offences Act 2003: Sections 9-12) whereby by all sexual behaviour between or with an under-sixteen year-old is at least in theory criminalised.

³⁶³ For examples see. BBC (2014) '*Historic Cases of Sexual Abuse*' [On-line] (Accessed 7th July 2015) <http://www.bbc.co.uk/programmes/p0295l86> & Secretary of State for the Home Department and the Secretary of State for Scotland. (1957) *Report of the (Home Office) Committee on Homosexual Offences and Prostitution*. London: HMSO, (para.56 & 57), pp. 22-23.

conviction that low incidence is perhaps not that remarkable. Also, consideration needs to be given to the legal contemporary precedent; the offence of indecent assault of a boy under the age of sixteen could be tried by magistrates with the consent of the accused. Thereby the defendant would face the possibility of a lower sentence if convicted, (six months imprisonment and/or fine of £100)³⁶⁴ and as a consequence, those summary cases would not appear in the *Calendars*. A further feature of these findings with regard to the treatment of minors is the number of under-sixteen year-old boys who were themselves charged with what appeared to be consensual acts, as part of joint-committals, for the offence of 'gross-indecency'. Overall, this evidence confirms the targeted trend within the Lancashire policing of inter-male sex towards consensual (i.e. covert victimless sexualised behaviours) and away from coercive crime. As will be shown, this bias was most probably a result of the ease of arresting and obtaining a successful prosecution for the former rather than the potentially protected, and therefore costly, investigation relating the latter coercive acts including male rape. Of the nearly 1,400 committals for inter-male sex related cases listed in the Lancashire *Calendars* for this period, 811 specifically state or very strongly suggest mutual consensual behaviour. That is, a 'consensual' total that dwarfs that for committals explicitly or strongly suggestive of coercive inter-male sex related behaviours. Given the above findings regarding the apparently accurate use of the charge of indecent assault during this period, it would seem reasonable to read the singular committals for 'gross indecency' also as most likely to be consensual, rather than unwelcomed, behaviours. Indeed, in only five of the thirty-one years of this period did committals for 'gross indecency' not exceed the

³⁶⁴ Sexual Offences Act 1956 (4 & 5 Eliz. 2 c.69) Section 15 (i) London: HMSO.

collective totals for all other categories of inter-male sex-related cases (i.e. 1945, 1946, 1968, 1969 & 1970). Therefore, if all committals for 'gross indecency' are read as consensual during this period, then these findings further strengthen the impression that the policing and prosecution of coercive inter-male sexualised behaviours were operational priorities and/or actions that victims felt able to report. Thus the cusum analysis defining and highlighting the underlying incidence of inter-male sex related committals for this period, is predominately one regarding committal rates for consensual adult behaviours.

The targeted interpretation and implementation of the law of 'buggery' as a committal charge during this period appears to continue the trend noted in earlier periods of being increasingly used solely to prosecute inter-male sex behaviour. Indeed, there are only five examples within this collection of buggery charges being used in non-inter-male sex related committals: four for zoophilic buggery and one of 'attempted' zoophilic related buggery.³⁶⁵

What is emphasized and shown in this thesis is the nuanced nature of attitudes and policy with regard to causation and agency. The call for a more complex reading of inter-male sex related prosecution is not new, and even the very crime figures on which most of the debate was predicated were undermined during the period of this study, most notably by the Government. That is, the principle authoritative three-year government enquiry, the Home Office Committee on Homosexual Offences and Prostitution 1954-57, was presented with, and specifically scrutinized, the official

³⁶⁵ Preston Co. Q.S. Calendar 1944.07.11., CE# 026. LA QJC/68 (1944 - NW). Bolton Borough Q.S. Calendar 1948.09.21, CE#22. LA QJC/72 (1948 - NW). West Derby Co. Q.S. Calendar 1949.09.13., CE# 026. LA QJC/73 (1949). Manchester Crown Court Calendar 1958.04.01., CE# 055. GMC M545/1 Crown Court Calendars of Prisoners Volume 1 (1956-1961). Manchester Int. Q.S. Calendar1963.06.18., CE# 074. LA QJC/87 (1963). .

crime figures purportedly reporting the incidence of inter-male sex-related offences. Its report presented to Parliament a few weeks after publication provided a highly sceptical reading of contemporary government Home Office figures and the scale of the increases alleged. It noted that: 'It does not necessarily follow from these figures that there has been an increase...still less can these figures be regarded as an infallible measure of any increase that may have occurred during that period.'³⁶⁶

The reasons for the increases and shifts in the committal rates for inter-male sex-related behaviours over this period appear to fall into two main categories:

mechanical and political. The mechanical explanations refer to the practical means by which such increases occurred, the political reasons concern the wide historical backdrop that informed and influenced society in general, including those involved in the Criminal Justice System and in particular, local police force managers.

Wolfenden was the first comprehensive authoritative investigation into the topic of the policing and prosecution of inter-male sex in the immediate post-war period. It is the Wolfenden Report that first compiled and detailed all the mechanical reasons why there could have been an increase in committals. Having discounted the Home Office figures as unreliable, they could only speculate about longitudinal incidences as have most subsequent investigations. Indeed, the final report of this distinguished Home Office Committee provides a wealth of well-informed commentary, together with cautionary notes about the implementation of the law and the policing of inter-

³⁶⁶ Secretary of State for the Home Department and the Secretary of State for Scotland. (1957) Report of the (Home Office) Committee on Homosexual Offences and Prostitution. London: HMSO, (para.43) p. 19.

male sex during the period.³⁶⁷ There appears little reason to employ other sources to contextualize the findings of this Lancashire study. This is a feature highlighted with regard to the diversity of enforcement policy the Wolfenden Committee noting: 'Such discrepancies not only bring the law into disrepute and thus reduces its efficacy as a safeguard for society, but also inculcate a feeling of injustice and unfairness in the minds of those brought to trial.'³⁶⁸ Weeks also highlights: '...the acute disparity in the rates of prosecutions ... between different parts of the country and in the punishments meted out.'³⁶⁹ One of the major contributions of this investigation is to provide a longitudinal measure of the divergence in policing strategies across Lancashire forces that will hopefully be enriched by other similar studies sampling other counties and locations and so affording a wealth of potential comparative analysis.

The rehearsal, criticisms and recommendations with regard to police tactics used in obtaining committals were a key focus of the Wolfenden Report. The Report identifies and discusses at length a number of questionable policing tactics used to arrest and prosecute inter-male offences including: police use of 'agents provocateurs' [Para. 121], criminal charges not related to the actual offence in question (Para. 122.), police and not public agency in the instigation of local police campaigns against inter-male sex crime [Para. 130-131], retrospective prosecution

³⁶⁷ Secretary of State for the Home Department and the Secretary of State for Scotland. (1957) *Report of the (Home Office) Committee on Homosexual Offences and Prostitution*. London: HMSO, (para.42-47) pp. 19-20.

³⁶⁸ Secretary of State for the Home Department and the Secretary of State for Scotland. (1957) *Report of the (Home Office) Committee on Homosexual Offences and Prostitution*. London: HMSO, (para.128), p.46.

³⁶⁹ Weeks, J. (2000) *Coming Out: Homosexual Politics in Britain from the Nineteenth Century to the Present*. 2nd ed., London: Quartet Books.

policy [Para. 134-5] and the very high incidence of 'confessions' used as the principle piece of prosecution evidence [Para. 142-3].³⁷⁰ Each of these concerns met with reassurances and recommendations. For example, in the case of retrospective prosecution policies, the Committee did not consider that 'any public interest is served pursuing such stale offence[s]'. After setting out exceptions, the Committee made clear its distaste for such police action, recommending that except in serious cases: '...the prosecution of any homosexual offence more than twelve months after its commission should be barred by statute.'³⁷¹ This study is able to endorse a number of these Wolfenden findings with regard to police tactics, the extent to which each force specifically interpreted and executed the arrests and prosecution.

The *Calendar* evidence does not shine any direct light on the means of arrest. However, this study has been greatly assisted by the survival of over seventy depositional records for Lancashire trials of inter-male sex related cases during this period. These records detail cases held in County and Borough Quarter Session courts for the Boroughs of Bolton, Oldham and Salford between 1941 and 1968. Evidence taken from them can only be mentioned sparingly due to the parameters of this study.³⁷² Within this sample, the largest numbers of cases for which depositional documents have been identified, are of those of trials held at the Salford Quarter Sessions between 1941 and 1968 - forty-four cases in total. It is primarily this

³⁷⁰ Secretary of State for the Home Department and the Secretary of State for Scotland. (1957) Report of the (Home Office) Committee on Homosexual Offences and Prostitution. London: HMSO.

³⁷¹ Hyde, M. (1970) *The Love that Dared Not Speak Its Name: A Candid History of Homosexuality in Britain*. Boston: Little Brown, p. 226.

³⁷² One of the archives holding these depositional records on learning of their 'sexual' content have subsequently removed them from public access, re-classified and embargoing them until the middle of this century. This significant closing off of academic enquiry into what little evidence is available that reports the rare authentic voice of defendants charged with inter-male sex crime is to be regretted.

Salford depositional evidence that has been used here to help provide a qualitative insight into tactics of one of the Lancashire police forces, Salford.

The Wolfenden Report highlighted the increasing use of agents provocateurs, also known more commonly as 'pretty policemen', in known meeting places for anonymous consensual inter-male sex. They expressed concerns about compromising of the policemen being used as such decoys (i.e. younger 'pretty' police men) who had volunteered to undertake such an 'unpleasant task'.³⁷³ Indeed, the overwhelming majority of the cases in the Salford depositional sample relate directly to public urinals either being 'observed' by plain clothes police or by uniformed officers 'on patrol' near public toilets. The public toilets at Ordsall Lane East, Peel Park and Greengate/Exchange Railway Station were the locations where most of those arrests occurred. The fact that a majority of the arrests were made in the late evening and in particular during weekends, suggests the times were targeted by the police to obtain the 'best results'. For example, of the eleven depositions that have survived from the Bolton Police jurisdiction that relate to the joint prosecution of two males for the crime of gross indecency, nine were first arrested in the evening or very early morning. Only two of the cases from that sample resulted from arrests made during the daytime. (See table 5.4.)

³⁷³ Secretary of State for the Home Department and the Secretary of State for Scotland. (1957) *Report of the (Home Office) Committee on Homosexual Offences and Prostitution*. London: HMSO, (para.121), p.43-44.

*Table 5.4: Arrest times for the crime of gross indecency from Bolton Borough 1948-1960.*³⁷⁴

Defendants first initials	Date of the Deposition	Substantive charge	Day of the incident	Time of day of the incident	Source GMC GR124 Deposition Box [DB]
J & W	1948.01.26	Gross Indecency	Saturday	11.15pm	QBO/4/436 1948 (Apr.)
J & F	1948.03.01	Gross Indecency	Friday	10.20pm	QBO/4/436 1948 (Apr.)
J & J	1948.08.03	Gross Indecency	Saturday	10.35 pm	QBO/4/438 1948 (Nov.)
L & B	1954.11.22	Gross Indecency	Monday	10:20 pm	QBO/4/462 1954 (Nov.)
J & A	1959.10.26	Gross Indecency	Saturday	12.20 am	QBO/4/483 1959 (Oct.)
R & K	1959.10.26	Gross Indecency	Tuesday	12.15 pm	QBO/4/484 1960 (Jan.)
F & W	1959.10.26	Gross Indecency	Friday	10pm	QBO/4/483 1959 (Oct.)
R & P	1960.07.29	Gross Indecency	Monday	11pm	QBO/4/487 1960 (Oct.)
A & S	1960.10.28	Gross Indecency	Wednesday	11.35 pm	QBO/4/488 1961 (Jan.)

It is the compliance of the men arrested that is of particular note. In the majority of these cases, the men signed confessions, often written by the arresting officer, who was not likely to incriminate himself. Therefore, a rather one-sided and proscribed reading of the actual events of the arrest is handed down. However, a rare counter-commentary is provided in case papers for a trial in 1968: that of 'AE' regarding his arrest in the gentleman's toilet in Victoria Bridge Station by two plain clothes police officers. At the trial, the jury accepted the defendant's evidence that the arresting plain clothes officer had, immediately prior to the arrest, himself been masturbating in full view of the accused man.³⁷⁵ The account suggested by this case of a pro-

³⁷⁴ Source evidence drawn from the depositing records as denoted in the final columns of this table and held at GR124 Depositional Box Collection, QBO/4/483

³⁷⁵ Lancashire Borough & County Quarter Sessions. (1968) *Depositional papers*. Dated 3.8.1968 GMC GB 124 Salford QS Depositions Box (Sept.1968).

active young 'pretty' undercover policeman publicly rubbing his erect penis in a busy public lavatory (i.e. a criminal act of itself) in search of an arrest does provide perhaps a rare glimpse into some of the extreme tactics being licensed to obtain such prosecutions.

Of the City of Salford Quarter Sessions depositional records for committals relating to inter-male sex sampled, only nine originated from complaints made by a member of the public.³⁷⁶ That is, the majority of the cases in this Salford QS sample, thirty-three, were solely generated by the local police force themselves (Salford and then after 1968 the Manchester & Salford Police Force); this is a disparity noted in the Wolfenden Report with regard to the origin of cases being, 'not public agency ...[but] the instigation of local police...'

Another criticism of the Police by the Wolfenden Report was retrospective prosecution [Para. 134-5]. The Depositional sample for trials held at the Oldham Borough Quarter Session does include an example of retrospective police prosecution tactics. The trial of FS at the 1953 January Session of the court is a case in point. The defendant faced eleven charges mostly relating to 'gross indecency' with his seventeen-year-old co-worker, with whom he shared his home and bed. However, a handful of charges date back over five years to alleged sex-related

³⁷⁶ Lancashire Borough & County Quarter Sessions. (1940-1970) *Depositional papers*. Cases originated by a member of the public: Dated 13.01.1940 GMC GB 124 Salford QS Depositions Box (Jan. 1941). Dated 22.09.1945 GMC GB 124 Salford QS Depositions Box (Sept. 1945). Dated 18.03.1949 GMC GB 124 Salford QS Depositions Box (April 1949). Dated 29.09.1950 GMC GB 124 Salford QS Depositions Box (Oct. 1950). Dated 4.10.1950 GMC GB 124 Salford QS Depositions Box (Mar. 1950). Dated 4.09.1957 GMC GB 124 Salford QS Depositions Box (Sept. 1957) Dated 22.05.1958 GMC GB 124 Salford QS Depositions Box (July 1958 1 of 2). Dated 9.04.1968 GMC GB 124 Salford QS Depositions Box (April 1968).

behaviour 'between 9th June and 5th July 1947'. He pled guilty to six of the charges, the seriousness and context of which might be judged of the sentence handed down – two year probation.³⁷⁷

Wolfenden found that a majority of committals were remarkable for the high number of confessions made by the accused. This finding is again evident in the Salford depositional sample, which suggests that confessions were the principle evidence submitted in support of such charges, usually following arrests by police officers in public toilets. The arresting police officer usually then writing-out a confession completed and signed by the defendant within a few hours of arrest. For example, a man arrested in a public toilet at 8:50pm on 27 October 1959 in Salford on the charge of 'gross indecency with another man' had by 10:40 pm the same night, signed and timed his confession that had just been written out by the arresting police officer.³⁷⁸

The motivation informing such prompt confessions and perhaps ill-advised action by the defendant was informed by evidence of the police promising immunity from prosecution as a pretext for obtaining a statement. A prosecution document entitled 'Exhibit Four' in the deposition for the case of 'AS' regarding an earlier case in which a document incriminated him in a crime, was ruled inadmissible by magistrates. The magistrates apparently accepted the argument advanced by the defence that, 'They [the police] told me that if I made a statement it would not go any further'.

³⁷⁷ Lancashire Borough & County Quarter Sessions. (1952) *Depositional papers*. Dated 29.12.1952 GMC GB 124 Oldham QS Depositions Box (August 1952).

³⁷⁸ Lancashire Borough & County Quarter Sessions. (1959) *Depositional papers*. Dated: 12.11.1959 GMC GB 124 Oldham QS Depositions Box (Oct. 1958).

Sargent Settle said I would probably be used as a witness.³⁷⁹ In this case, the police do not appear to have allowed the defendant any time for reflection with the suggested priority being to mislead those ignorant of the Criminal Justice System in order to maximize the chances of an uncontested prosecution.

There is little evidence in this study of 'chain-prosecutions', whereby the police used information from one arrest to make further arrests of past sexual partners, although there are a number of cases involving a number of males jointly charged, suggesting some level of police investigation beyond the original arrest. However, there are a handful of serial committals that strongly suggest they are the result of 'fishing trips', whereby one defendant has provided general, but not specific, evidence of past inter-male sex 'crimes'. For example, the case of Joseph (21) 'General Labourer', Norman (31) 'Hospital Orderly', William (40), 'Miner', were committed and tried at the County Quarter Sessions at Preston held in January 1956. The near identical charge they faced was, 'On a day unknown between 1 January and 31 December 1954 at Chorley being a male person did commit an act of gross indecency with Norman ... a male person. 2nd Charge - on a day unknown between 1 January and 31 December 1954 at Chorley did attempt to commit buggery with William'³⁸⁰

Hyde offers a very human reason why the police were apparently keen on targeting such sex offenders. He argues that these types of arrests took place because it was

³⁷⁹ Lancashire Borough & County Quarter Sessions. (1952) *Depositional papers*. Dated 29.12.1952 GB 124 Oldham QS Depositions Box (August 1952) Document marked 'Exhibit Four'.

³⁸⁰ Preston Co. Q.S. Calendar 1956.01.10., CE# 021, 022 & 0 23. LA QJS.80 (1956). Though the men were convicted of a crime that carried a maximum sentence of ten years, they were instead bound-over without a fine, for two years.

'less troublesome for a police officer to catch a homosexual than a burglar'.³⁸¹ This very practical aspect of the targeting of such behaviour is well demonstrated by two factors highlighted by the Lancashire evidence. Firstly, across all the cases in this Lancashire depositional sample, there is no suggestion that the defendants offered any physical resistance upon arrest. Indeed, in some cases when a single police officer arrested two males simultaneously, in an age before police were equipped with radios as standard, they walked together to a telephone box or to the nearby police station. That the vast majority of men and boys arrested for inter-male sex-related offences were also first-time offenders with no previous police record underscores this compliant behaviour and the type of men being apprehended.³⁸²

The Salford depositional evidence gives the impression that those arrested were for the most part deeply embarrassed, highly biddable defendants who had never before come into contact with the police. Arrested for gross indecency at midnight in a public toilet in February 1951 the young man, Thomas, was reported to have said to the arresting officer, 'Please let me go' and his co-accused Herbert was also recorded, as saying 'I'd do anything to be out of this...A few drinks make you do what you wouldn't normally do.'³⁸³ A similar case concerning consenting inter-male sex in the same month in the same public toilet was made and the defendants reported commentary was similar, 'Don't tell my mother. It will kill her', and by his

³⁸¹ Hyde, M. (1970) *The Love that Dared Not Speak Its Name: A Candid History of Homosexuality in Britain*. Boston: Little Brown, p. 213.

³⁸² For example the Lancashire Calendars sample identifies just over nine-hundred committals for inter-male sex related offences, of that number, six-hundred and three had no previous convictions for even the most trivial of summary offences. Source: Lancashire Committals of inter-male sex (1850-1970) Database.

³⁸³ Lancashire Quarter Sessions Courts (1951) *Depositional Papers*, dated 8.02.1951. GMC GB 124 Salford QS Depositions Box, (Mar. 1951).

co-accused JS, 'I'm ashamed of myself'.³⁸⁴ It might be appreciated that the arrest of such obliging males unlikely to have had any previous experience of the law or criminality, would be seen by serving police officers as an easy-number compared to dealing with, for example, violent drunks or dedicated criminals. Hyde argues that police enthusiasm for such arrests was a quick and easy means for an aspiring police officer in the junior ranks to improve his arrest rates, thereby impressing managers and hopefully improving his promotional chances.³⁸⁵

The overall impression gained of such practical and clearly effective police tactics is that they targeted in particular, covert consensual behaviours that made for 'easy' arrests. This finding supports the suggestion often made that the police only arrested the most naive and innocent men who had little experience and knowledge of the dangers associated with seeking out semi-public inter-male sex, who were thereby less alert to the possible consequences.

Many isolated young homosexuals thought the only way to meet other men was by visiting public places like lavatories. As they became more experienced, learnt how to recognise other homosexuals and were shown other rendezvous, they often ceased to visit public places in search of partners. This meant that it was seldom the habitual homosexual, but often young isolated men who were arrested by the police for importuning. The other type of men apprehended were those so ashamed of their homosexuality that they sought quick and anonymous encounters in public places from which they would flee as soon as they had attained orgasm; or whose pleasure was heightened by a sense of danger.³⁸⁶

However, the arrest and committal of men and lads who had apparently enjoyed no previous brush with the law did not fall disproportionately on the young. As these

³⁸⁴ Lancashire Quarter Sessions Courts (1951) *Deposition Papers*, dated 28.07.1954 GMC GB 124 Salford QS Dépositions Box, (Mar. 1951).

³⁸⁵ Hyde, M. (1970) *The Love that Dared Not Speak Its Name: A Candid History of Homosexuality in Britain*. Boston: Little Brown, p. 213.

³⁸⁶ Davenport-Hines, R. (1990) *Sex, death and punishment: attitudes to sex and sexuality in Britain since the Renaissance*. London: Collins, p. 291.

figures show, the range of such males was extensive: Count–602; Mean–34.6 yrs.; Median–32 yrs.; Mode–19 yrs.; Range Min–14 yrs.; Range Max–79 yrs. Sons, brothers, husbands, grandfathers and perhaps even great-grandfathers, all first-time offenders, were arrested and committed in the hundreds to the most senior and most expensive criminal courts for jury trial or sentencing. The police tactics highlighted here by Wolfenden, Hyde and Cook and contextualised relative to the Lancashire evidence of the period, like most mechanical methods, can be switched on and off.

The inter-war period had witnessed thirty-seven Lancashire magistrates' courts prepared to commit inter-male sex cases to jury trial or judgment. During this 1940-70 period, that figure rose to seventy local Lancashire magistrates' courts committing such cases to the senior criminal courts.³⁸⁷ This included many magistrates' courts located in rural and semi-rural areas, suggesting that serious, indictable, inter-male sex related offences were not seen by contemporary police forces and the magistrates as singular or predominantly urban phenomena.³⁸⁸ The

³⁸⁷ The Lancashire Magistrates Courts listed as sending committals to its senior criminal courts for trial 1940-1970: Abergale Co., Accrington Boro.ro., Ashton-under-Lyne., Bamber Bridge., Barrow-in-Furness., Blackburn Boro., Blackburn Co., Blackpool Boro., Bolton Boro., Bolton Co., Bootle Boro., Burnley Boro., Bury Boro., Bury Co., Chadderton Co., Chorley Co., Church Co., Clitheroe., Darwen Co., Denton Co., Eccles Boro., Fleetwood Co., Formby Co., Fylde Co., Garstang Co., Heywodd Boro., Kirby Co., Kirkham, Lancaster City, Lancaster Co., Leyland Co., Leigh Boro., Liverpool City., Liverpool Co., Lytham Co., Manchester City., Manchester Co., Manchester Strangeways., Middleton Boro., Morecambe & Heysahm Boro., Nelson Boro., Newton-le-Willows., Oldham Boro., Ormskirk Co., Padiham Co., Prescott, Preston Boro., Preston Co., Radcliffe Co., Rawtenstall Co., Reedley Co., Rochdale Boro., Royton Co., Salford City., South Longsdale Co., Southport Boro., St Helens Boro., Standish., Stockport Boro., Stockport Co., Ulverston Co., Wallasey Boro., Warrington Boro., Warrington Co., Windes Boro., Widnes Co., Wigan Boro., Wigan Co., The Magistrates Courts without Lancashire County listing as sending committals to its senior criminal courts for trial 1940-1970: Chapel-in-the-Frith Ct. (Derbyshire), Knutsford Co. (Cheshire), Penrith (Cumberland), Wigton Co. (Cumberland). [Source: Lancashire Committals of inter-male sex (1850-1970) Database].

³⁸⁸ The consistent committal of inter-male sex cases from outside the large urban conurbations, predominately located in Southern Lancashire, is highlighted in the Lancashire data series for the

wider geographical distribution from which committals were drawn, certainly suggests for the first time within this longitudinal sample that a majority of the local Lancashire police forces sought to prioritise the expenditure of police time and funds on the prosecution of inter-male sex-related behaviours. However, the number of committals actually made by each individual court in the county varied greatly. Even if accounting for the evidential gaps in the *Calendars* reviewed for this investigation there appears to be a significant development in the divergent Lancashire locales towards committing more of such behaviour to senior courts for trial and/or sentencing.

As noted in previous chapters, the senior criminal courts of the Criminal Justice System only deal with a small fraction of criminal cases. We do not and perhaps never will know how many inter-male sex prosecutions were for a range of reasons (e.g. lack of evidence, personal caprice, avoidance of court expense and police time) afforded summary charges (e.g. such as those relating to public nuisance) in place of serious charges that they might otherwise qualified. For example, the Wolfenden Report paragraph 122 notes that police often sought to persuade defendants arrested for gross indecency to plead guilty to the lesser summary charge of importuning. The advantage of the magistrates' courts for the police was that it offered a quicker, cheaper and easier means of prosecution compared to the preparation and presentation of a case to a senior criminal court. This point also underlines the argument that the crime figures, regardless of statistical accuracy,

1960s. The records for that decade exclude the Calendar records for the two Crown Courts dealing with most of the crimes from Manchester and Liverpool leaving the series as largely a documentation of committals for the rural and semi-rural part of the county. [Source: Lancashire Committals of inter-male sex (1850-1970) Database].

can only be a partial indication of the actual incidence of, in this case, the rates of inter-male sex crime. A future sampled and detailed longitudinal examination of the court records from a Lancashire magistrates court could help shed light on this unknown quantity.³⁸⁹ However, there are a number of strong indications of the scale of inter-male sex cases that never reached the higher courts, which were dealt with summarily, if at all, in the magistrates' courts.

Houldbrook's review of the magistrates' registers for London notes a tripling of cases relating to inter-male sex between 1942 and 1947 for those lower courts.³⁹⁰

Houldbrook's findings, as did Upchurch's investigation of what happened in the same tier of courts nearly a hundred years earlier, shows that such cases were part of the magistrates' courts work throughout the period of this study. Those magistrates' courts also dealt with such cases in Lancashire in the inter-war period, as has been evidenced by the *Lancashire Constabulary Occurrence Book* evidence and discussed in Chapter Four. A point further highlighted for the post-war period by the reports of the City of Manchester Police (i.e. after its 1968 merger re-named the Manchester & Salford, Police Force) to the governing Watch Committee: See Table 5.5

³⁸⁹ The arrest and summary treatment of inter-male sex related prosecutions by the Lancashire magistrates' courts at any period still remains largely unexplored. However the evidence from the Lancashire Constabulary Police Occurrence Books testifies to their use in trying such criminal cases. Lancashire Constabulary. (1889-1952) *Occurrence Books*. LA GR55 PLA 19/1 – 25/2-44.

³⁹⁰ Houlbrook, M. (2005) *Queer London: perils and pleasures in the sexual metropolis 1918-1957*. London & Chicago: The University of Chicago Press, (Figure 4), p.33, & (Appendix 1) pp.273-74. Also see Manchester Police (1946-1970) *Annual Report to the Watch Committee*. GMC GB127 352 2 Mi.

Table 5.5: Extract from inter-male sex related prosecutions from the Manchester Police Criminal and Miscellaneous Statistical Returns

For the year	Unnatural offences	Attempts to commit unnatural offences	Indecency with Males
1940	4 Committals	6 Summary prosecutions; including 1 young person (aged 16years &under)	4 Committals
1950	15 Committals	14 Summary prosecutions; including two young person (aged 16years &under)	6 Summary prosecutions; including 3 young person (aged 16years &under)
1960	7 Committals	27 prosecutions; including 2 young person (aged 16years &under)	34 Summary prosecutions; including 2 young person (aged 16years &under)
1970	12 Committals	30 prosecutions; including two young person (aged 16years &under)	48 Summary prosecutions.

Of note is that in the period immediately following the 1967 Sexual Offences Act (i.e. that enacted a qualified reading of the Wolfenden Report's recommendations) a majority of those charged with inter-male sex related offences were charged summarily.³⁹¹ Therefore the falling off in the incidence of inter-male sex committals around the later 1960s, as confirmed by this study, might be interpreted not as a reduction in total arrests and prosecutions but merely a switch in the disposal of such cases summarily rather than by indictment. Such a change in policy would certainly imply significant financial savings for those Lancashire police forces about the targeting of such 'crime.' These findings further underline the argument that the *Calendars* only represent a partial reading of total prosecutions of inter-male related

³⁹¹ Section One of the Sexual Offences Act 1967, (c.60) de-criminalised private consensual inter-male sex for males of 21 years and over. 'Notwithstanding any statutory or common law provision, but subject to the provisions of the next following section, a homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age of twenty-one years.' This reduction in the seriousness with which inter-male sex was read by Parliament is also explicitly stated in section nine of the same Act (entitled 'choice of mode of trial for certain offences.') Paragraph two of that section confirmed and extended the scope of prosecuting inter-male sex cases summarily.

behaviours. The summary prosecution of behaviours that would in theory, be eligible for committal would appear to underscore the nuanced treatment of cases by the police. The steady increase in the use of summary convictions is shown in Column Two of Table 5.5 above and if representative of a more general trend among Lancashire Police Forces, would certainly go some way in helping to account for the drop in such committals during this period.

Of specific interest is that those cases listed under the heading of 'indecent with males' that in 1940 were recorded as requiring trial (i.e. committal) were halved in number by the 1942 report. By the 1960s, a majority of this category of cases were reported as summary.

This preliminary evidence from the Manchester Police Force demonstrates firstly, that in Manchester most inter-male sex cases were not committed, but dealt with by the local magistrates' courts. Secondly, the seriousness with which such offences were viewed was flexible and changed during the period. This finding supports the argument arrived at in previous chapters, that the choice of charge was largely at the discretion of the police. Worthy of note as part of this argument is the fact that under this 1967 enactment, Parliament did not abandon its centuries-old criminalisation of 'Unnatural Offence', Buggery, the maximum punishment for which remained life imprisonment. The 1967 Act maintained the criminalisation of such private consensual behaviour involving inter-male sex behaviour relating to under 21 year-olds, between men and women and zoophilic sex acts. However, the police appetite for such buggery and attempted buggery prosecuting did appear to

significantly wilt especially during the 1960s. In the first half of the 1960s, only nine Lancashire buggery and attempted buggery committals have been identified from the *Calendars*. Then the incidence fell further to seven such cases over the period 1965 -1970. Of particular note is that there were only two confirmed charges of inter-male sex buggery for the whole of the 1960s. The absence of such buggery committals again highlights the capricious nature of prosecution policy; prosecuting buggery no-longer appeared to be of interest to the police.

The seriousness many police managers attached to offences to justify expensive criminal prosecutions of consensual adult inter-male sex was also explicitly criticised by the Wolfenden Committee. For example, with regard to the police application of the offence of indecent assault, a nominally coercive behaviour, the Committee found, 'frequently it amounts to nothing more than horseplay'.³⁹² The final recommendation was that many of the prosecutions, including the most common charge found in this sample, 'gross indecency', where possible should not be read as serious indictable offences, committed and heard in the senior criminal courts, but be tried along with other minor offences in local magistrates' courts.³⁹³ The flexibility of many of the charges related to inter-male sex, not least 'gross indecency', together with general bylaws for 'public nuisance' offences, facilitated changeability as to whether the same behaviour was prosecuted as a serious or minor offence. As

³⁹² Secretary of State for the Home Department and the Secretary of State for Scotland. (1957) *The Report of the (Home Office) Committee on Homosexual Offences and Prostitution*. London: HMSO, (para. 96) p.36.

³⁹³ Secretary of State for the Home Department and the Secretary of State for Scotland. (1957) *The Report of the (Home Office) Committee on Homosexual Offences and Prostitution*. London: HMSO, (para. 122) p. 44.

already noted the Wolfenden Report notes that switching charges was a common feature of police prosecutions in this period.

The overall significant increase in committals during this period, however obtained, promotes speculative questions about a possible coordinated 'witch-hunt'. The argument in favour of a protected systematic operational campaign is hard to sustain, given the findings of this study. For example, the police force in the popular sea-side resort of Blackpool appears to have been successful in taking only four inter-male sex cases to jury trial, or only presented four such cases for committal between October 1946 and May 1952. Two of the committals were for nominal or actual coercive crimes and two for consensual offences.³⁹⁴ Given the millions of holiday-makers alone, including males successfully seeking out sex with other males, four committals does not appear to be a huge figure, especially given Higgins' contention that 'it was a national practice' for policemen and local communities to persecute homosexuals.³⁹⁵ One can only speculate at the rationale informing the attitudes and prosecutions adopted by individual police managers in the various parts of Lancashire during this period. Perhaps local conditions, such as the wish of hoteliers and other businesses of this resort town to encourage visitors putting money in their pockets, was a factor in such an apparent lack of serious charges being brought. For example, had the influence of the 'Pink Pound' highlighted by

³⁹⁴ Preston Co. Q.S. Calendar 1946.10.08., CE# 022. LA QJC/70 (1946 - NW).], Preston Co. Q.S. Calendar 1946.10.08., CE# 023. LA QJC/70 (1946 - NW). Preston Int. Co. Q.S. Calendar 1954.05.18., CE# 021. LA QJC/78 (1954 - NW). Preston Int. Co. Q.S. 1954.05.18., CE# 022. LA QJC/78 (1954 - NW).

³⁹⁵ Higgins, P. (1996) *Heterosexual Dictatorship: Male Homosexuality in Postwar Britain*. London: Fourth Estate, p. 166.

Justin Bengry already produced results in seeking to make such escapist Lancashire resorts 'homo' friendly?³⁹⁶

It may be seen then, that there were a range of practical measures, including increased targeting of such behaviours, employment of a range of tactics and the willingness of local police and local magistrates to press and endorse more serious charges, which help to account for the shifts and increases documented during this period. However, policing and magistrates' courts did not operate in a vacuum; they were subject to the influences and material conditions of the period. Perhaps nothing more illustrates the impact of influences outside the Criminal Justice System than the events that unfolded in the opening years covered by this study than global conflict. The Second World War, as Costello notes: To a far greater extent than World War I, the century's second global conflict was to prove the truth of the assertion made by A.L. Rowse: 'There is a wide-ranging association of war with sexuality, complex, intricate, intimate and at every level.'³⁹⁷ Perhaps one of the most impressive and long term consequences of the Second World War, was the extent to which it highlighted the inadequacy of traditional sexual morals to address the demands and needs of a population and armed forces facing an even more technologically advanced and deadly conflict. This war placed millions of civilians in the front line because of advances in large-scale, long-distance aerial bombardment. Again, it appears a world war undermined 'traditional' sexual standards that were, at least in-part, ill-suited to address the sexual demands of people during wartime. In

³⁹⁶ Bengry, J. (2009) 'Courting the Pink Pound: Men Only and the Queer Consumer 1935–39.' *History Workshop Journal*. 68 (1) pp. 122-148.

³⁹⁷ Costello, J. (1985) *Love, sex and war: changing values, 1939-45*. London: Collins, p. 14.

so doing, the societal rules of sexual engagement were often renegotiated to suit contemporary human needs. As Costello suggests, the sexual legacy of World War

Two set the seal on the rise of:

...the permissive society...by the early 1970s homosexuality was no longer a criminal offence, the laws against prostitution were relaxed or less stringently enforced. Abortions became legal for the first time representing a significant increase in the freedom of choice for the female population – although only in the face of vehement opposition by the churches and moral purity campaigners.³⁹⁸

The impact of the War on more traditional readings of sex, sexuality and gender roles was remarkable, not least in that militarisation itself, through voluntarism and the conscription of millions of younger males and females into the armed forces and war work, further added to the 'breakdown' of past certainties and realities, including the sexual. Only two decades after the First World War, another generation of British youngsters left homes and neighbourhoods to live with strangers who were most likely their same age, in locations pregnant with sexual possibilities and opportunities. Husbands, wives, families, friends, girlfriends, boyfriends and lovers were parted often for years, sometimes forever. Of those who returned, there were few who had not been profoundly affected by their wartime experiences, including their understanding of their own and others' sexual needs and potential. The development of the Cold War in the post-war decades ensured peacetime conscription into National Service and thus the continued removal of young men from home into predominately male-only environments for two year stints, until the early 1960s.

³⁹⁸ Costello, J. (1985) *Love, sex and war: changing values, 1939-45*. London: Collins, p. 370.

The testimony of a Manchester woman captures a rare insight into the reality of the sexual dilemmas and solutions that the War brought:

We lived in a world of uncertainty, wondering if we were going to survive from day to day. My husband was away in the RAF...happy married life was over. [Then] the Yanks arrived and set up camps all around Manchester, bringing a wave of glamour, romance and excitement that has never been experienced before or after...There was nothing cheap about our affair [with 'Ric' a GI soldier, lasting two years] ...then my husband returned and we tried to resume our old way of life.³⁹⁹

The sixty-thousand 'war brides' who were shipped to the USA after the War is a notable example of the sexual impact of just one of the consequences of war: the friendly invasion of thousands of young men from the USA who in a popular phrase of the period, were 'over-sexed, overpaid and over here'.⁴⁰⁰ It was not only on the home front though that the rules of sexual conduct were again being re-written to fit the demands of war. The large number of venereal infections among males in the forces suggest that such sexual adventures were not rare, but an ever-present and growing feature and headache for those in charge of keeping the army 'able-bodied'.⁴⁰¹ For example, it is estimated that during the Italian campaign (1943-45) more injuries were caused to soldiers by sexually transmitted diseases than by the conflict; allied soldiers had also found 'traditional' sexual standards ill-suited for war. The excitement of sexual needs generated by the War was, as ever, not limited to one specific kind of human desire or behaviour. Dickinson cites an example of the educative effect of war on providing instructive readings of sexual diversity that otherwise might not have occurred.

³⁹⁹ Costello, J. (1985) *Love, sex and war: changing values, 1939-45*. London: Collins, pp. 23-24.

⁴⁰⁰ The phrase was popularized by Tommy Trinder (1909-1989) to which the GI come-back included the retort, '*underpaid, undersexed and under Eisenhower*'.

⁴⁰¹ Costello, J. (1985) *Love, sex and war: changing values, 1939-45*. London: Collins, esp. Ch. 14 '*The Girls they met 'over there.*' pp.287-308.

Julian Wills was called up for military service during the war...he recalls working with a fellow soldier during the war who was homosexual: 'I remember one young chap who I served with in the 1940 Campaign in France. He was overtly camp and didn't really hide it. He was a good source of entertainment for us; he could always be relied upon to lighten the mood. I had never met an overtly gay person before, but he 'had my back' then I had his I suppose. It opened my mind and I was less prejudiced against it.'⁴⁰²

Connolly notes a similar educative example of the impact of the war on stereotypes and pre-war ignorance born of the lack of candour in addressing rationally the topic of sex:

The military experience of homosexuality in World War Two chipped away some of the old taboos. Service men living in close proximity to one another were made aware that men who chose a sexual relationship with other men were not suffering from a deadly disease; nor were they cowards or effeminate. Many thousands of homosexuals discovered a new consciousness of their collective identity in the sub-culture of bars and camaraderie which expanded to meet the wartime demand.⁴⁰³

Edsall suggests that it was the very highly structured life of the armed forces of World War Two that could and did actually facilitate the environment to help soldiers investigate and seek out erotic inter-male sexual experiences:

...self-discovery might seem safer: in the erotically charged but essentially asexual world of barracks or shipboard horseplay and teasing; in the frustrations and temptations – and loneliness – of living under intense pressure in a single-sex environment; in the tendency of many soldiers and sailors to pair off as buddies; in the enforced physical intimacy of sharing a tent or lower berth of a train or a bed in an overcrowded hotel; in the prevalence of gang shows as entertainment for the troops. Barracks or ships could also provide a safe haven, intimate yet in a way anonymous to which to return to tentative forays into the gay subculture of strange cities'. 'The army is an utterly simplified existence for me,' a young [USA] soldier wrote a gay friend back home. 'I have no one to answer to as long as I behave during the week and stay out of the way of the M.P.s on weekends. If I go home...how can I stay out all night or promote a serious affair.'⁴⁰⁴

⁴⁰² Dickinson, T. (2014) *'Curing Queers': Mental Nurses and their patients 1935-74*. Stockport: Manchester University Press.

⁴⁰³ Costello, J. (1985) *Love, sex and war: changing values, 1939-45*. London: Collins, p.173.

⁴⁰⁴ Edsall, N. (2003) *Towards Stonewall: Homosexuality and Society in the Modern Western World*. London & Charlottesville: University of Virginia Press, p. 261.

The reaction of the Lancashire police forces to the shifting sexual landscape that at least questioned the formal established and policed sexual regime, can perhaps be read into their increased targeting of indictable inter-male sex crime. That is, there are literally only a handful of committals identified in the initial large scale review of all the available *Lancashire Calendars* for this period relating to the charge of rape (i.e. of females by males during this period). The increase in war-time cases for inter-male sex related behaviours appears all the more curious given the sharp fall and then near drought of such cases that, together with the many extra demands placed on the police during the Second World War, strongly suggest a deliberate act of targeting.

As shown in Chapter Three, the committals for inter-male sex offences were extremely rare during World War One, something that might be expected when police time and resources were bent to address wartime emergencies. During World War Two, new, urgent and dramatic daily demands were placed on the police and their resources by wartime realities, not least the consequence of the aerial bombing of Lancashire towns and cities that in June 1941 included a direct hit on the Manchester Police Headquarters.⁴⁰⁵ Emsley identifies some of the daily demands war placed on officers:

...busy patrolling the streets, moving on street sellers and tricksters, directing traffic, resolving minor problems and enforcing wartime restrictions. But sickness records for the Metropolitan Police suggest that, as the war

⁴⁰⁵ For example the Liverpool 'Blitz' ran from August 1940 to January 1942 killing an estimated 1,741 people and injuring another 1,154 people. The bombing of Manchester commenced August 1940, with the raids that Christmas (nights of 22/23 and 23/24 December 1940) that included the adjoining city of Salford and township of Stretford. That raid alone killed an estimated 684 people and injuring 2,364 and damaging both notable buildings (e.g. Manchester Cathedral, the Royal Exchange, the Free Trade Hall and Salford Royal Hospital) together with many (e.g. over 8,000 homes were damaged or destroyed). In June 1941 the Manchester police headquarters was also damaged in a raid.

continued, physical and mental exhaustion, made worse by declining numbers, was beginning to take its toll.⁴⁰⁶

Although caution must be exercised in seeking to apply the incidence of committals specific to particular Lancashire police forces, what appears clear is that unlike World War One, a number of Lancashire forces deemed the arrest and prosecution of inter-male sex crime to be a policing priority. The sample evidence strongly suggests at the very least a continuation of pre-war levels, and in some places even an increase, in committal rates. In the midst of a national emergency without parallel, a number of Lancashire police forces chose to dedicate what must have been a significant amount of police time and limited war-time funding to the arrest and committal of consensual, adult, inter-male sex cases, see Table 5.6.

Table 5.6 Committals during World War Two relating to inter-male sex (1940-1945).
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	Buggery (IMS) [Cat.3]	Buggery (IMS) [Cat. 3.2]	Attempted indecency [Cat; 4]	Indecent Assault [Cat 5]	Gross indecency [Cat; 4]	IMS including 'minor'	Joint- Committals	Ambiguous Buggery [Cat. 2]	Ambiguous attempted Buggery [Cat. 2.5]
1940	5	2	9	10	0	18	1	1	
1941	1	3	8	1	1	6	2	0	
1942	5	2	14	1	2	18	3	0	
1943	4	4	14	2	1	13	1	0	
1944	1	1	14	3	1	8	4	1	
1945	9	1	11	7	0	18	6	0	
Totals 1940- 1945	25	13	70	24	5	81	17	2	

Although it is important to note the limited total number of committals over the years 1940-1945, the majority of those cases related to nominally consensual, joint

⁴⁰⁶ Emsley, C. (2009) *The Great British Bobby: A History of British Policing from the 18th Century to the Present*. London; Quercus, p. 240.

⁴⁰⁷ Lancashire Committals of inter-male sex (1850-1970) Database.

committals for 'gross indecency' offences, a fact that suggests an ongoing intensity of policing of such covert, victimless, and therefore difficult to apprehend offences.

A useful insight provided by the war-time committals is the suggestion of the determination of the police of the period in seeking to pursue this operational priority. Committals include twenty-nine men directly involved in the prosecution of the war; that is, indictable prosecutions that demanded service men be removed from the task of preparing for, or indeed fighting in, the War. A handful of those arrests can be explained by virtue of the coercive nature of the offences. For example, Walter, a thirty-five-year-old 'serving soldier was committed by Liverpool City on 14 June 1945 for 'Indecent assault on male person and gross indecency', for which he was convicted at the following Manchester Assize and sentenced by Justice Oliver on 3 July 1945 to three years imprisonment.⁴⁰⁸ However, the majority of the committals involving members of the armed services suggest consensual inter-male sex behaviours. Indeed, over eighteen of those committals of members of the armed forces or auxiliary services such as the merchant navy, were joint 'victimless', consensual offences of gross indecency, from which the following three examples are taken.⁴⁰⁹ Two teenagers, Harold, aged eighteen and listed as a 'Seaman', and Gerard, aged nineteen also listed as a 'Seaman', were arrested.⁴¹⁰ They appeared

⁴⁰⁸ Manchester Assize Calendar 1945.07.02., CE# 027. LCA 347 QUA 3/7 (Jan. 1940 to Nov. 1947).

⁴⁰⁹ For example typical cases of males committed jointly for inter-male sex related crimes during the war years include: eleven 'soldiers, nine members of the Merchant Navy, five members of the RAF, three RN sailors and one 'Civil Defense Worker'. E.g. case transferred from Liverpool; Eric a 'Soldier' (28) [Lancashire Co. Q.S. Calendar c 1944.01.04., CE# 07. LA QJC/68 (1944 - NW)]. James RN 'Rating' (28) [Liverpool Borough Q.S. 1944.01.04 CE# 08. LA QJC/68 (1944 - NW)]. Albert (19) 'Serving RAF' (19) [Liverpool Assize Calendar 1944.04.10., CE# 021. LCA 347 QUA (3/7 Assize Calendars Jan. 1940 to Nov. 1947)].

⁴¹⁰ Manchester Assize Calendar 1942.02.23., CE# 017. & 1942.02.23., CE# 019 LCA 347 QUA 3/7 Assize Calendars (Jan. 1940 to Nov. 1947).

before Liverpool magistrates on 6 February 1942 jointly charged with the serious offence of 'Buggery' and committed for trial at the Manchester Assize later that month. These men had most probably been involved in what was to become known as the Battle for the Atlantic, keeping the country supplied during the attempted U-boat blockade of World War Two.

In December 1942, two Liverpool teenagers serving as firemen in the National Fire Service, Alexander, seventeen, a fireman in the National Fire Service, and John, also seventeen, were arrested and committed by Liverpool magistrates for trial at the Liverpool Assize the following February for the offence of 'Buggery & gross indecency'.⁴¹¹ Finally, Eric, twenty-eight a 'Soldier' was arrested together with James twenty-eight listed as a navy 'Rating' they appeared together before Liverpool magistrates on 30 December 1943 charged that: 'On the 21 December 1943 at Seaforth being a male person did commit an act of gross indecency with Sidney another male person' and committed to trial.⁴¹² Whether in this case the Sidney named was a victim or was charged and tried separately is not part of the *Calendar* record, however, given that the charge was for gross indecency and not assault a consensual form of inter-male sex is suggested.

The *Calendar* evidence of these and the other committals during and after this period are highly suggestive of men seeking out a brief moment of covert,

⁴¹¹ Liverpool Assize Calendar 1943.02.01., CE# 08. LCA 347 QUA 3/7 Assize Calendars (Jan. 1940 to Nov. 1947).

⁴¹² Lancaster Co. Q.S. 1944.01.04., CE# 07 & 08. LA QJC/68 (1944 - NW).

consensual, adult intimacy. Of the twenty-seven men in this category committed, nineteen had no previous criminal record, summary or otherwise. Nevertheless of specific note is that these men's and teenagers' behaviour was read and treated by the Liverpool police as being among the most serious offences that presented such a serious threat to war-time Lancashire that they demanded a trial in the most important and senior criminal courts of the county. This attitude evident in such actions are afforded further significance when the costs required to pursue such committals are considered, not least during a period of war-time emergency with very limited resources at the disposal of the police.

However, the senior members of the county judiciary presiding the Quarter Session and the professional High Court Judges in the Assize appear to have had problems with the Lancashire police force's prosecution of victimless offences by servicemen during the war years. The war-time sentences handed down on conviction of members of the armed forces and auxiliary services were often minimal, allowing them to quickly return to their prosecution of the war. For example, the nineteen-year-old Gerald, cited above, who was found guilty of the offence that carried a maximum tariff of life imprisonment, was in fact sentenced by Justice Table on 24 February 1942 to two days' imprisonment. The less enthusiastic response of the judiciary to the increasing number of inter-male sex committals being heard in their courts, suggests that police priorities with regard to inter-male sex crime were not always shared by the presiding judiciary of the period.

This overall increase in committals during the War and its aftermath was not associated with any single, large, apparently zealous police force targeting inter-male sex, but became an increasingly common albeit sometimes infrequent part of Lancashire policing. As noted, the geographical spread of magistrates' courts prepared to commit and by direct inference, the many Lancashire police forces pursuing those charges, were found in all corners of the county: rural, township and city. For example, the evidence shows that thirty-two different Lancashire magistrates' courts were committing such cases for trial during the period 1940-45.⁴¹³

The increased incidence of committals for inter-male sex-related behaviours, especially by consensual adults, was a feature of the war years and remained a limited yet specific police priority in the years immediately following VJ Day.

Houlbrook suggests that by the end of the war:

...fears surrounding 'homosexuality' acquired a particularly electric resonance and narratives of sexual danger as corruption, predominated in public discourse. For many observers the rapid social changes unleashed by the war seemed to have rendered stability problematic...⁴¹⁴

⁴¹³ Lancashire Magistrates Courts committing inter-male sex related committals to trial during the years 1940-1945: Barrow-in-Furness Borough, Blackburn Borough, Blackburn County, Blackpool Borough, Bolton County, Bootle Borough, Burnley Borough, Bury Borough, Chorley, Church, Eccles Borough, Knutsford County, Leyland, Liverpool City, Liverpool County, Lytham County, Manchester City, Manchester County, Newton-le-Willows, Oldham Borough, Ormskirk County, Penrith, Prescot, Preston Boro., Preston County, Rochdale Borough, Salford City, Southport Borough, St Helens Borough, Stockport Borough, Warrington Borough, Wigan Borough. Source: Lancashire Committals of inter-male sex (1850-1970) Database.

⁴¹⁴ Houlbrook, M. (2005) *Queer London: perils and pleasures in the sexual metropolis 1918-1957*. London & Chicago: The University of Chicago Press, p. 236.

As McKibbin notes 'Perhaps in no other area of English life did politics, religion, morality, all that we call ideology, intersect with more friction than in attitudes towards sexuality'.⁴¹⁵

The Wolfenden Report noted the scale of the challenge presented by the War and its aftermath to more traditional readings of sexual function and behavior:

Sexual matters in general are more openly talked about to-day than they were in the days of our parents and grandparents; and it is not surprising that homosexuality should take its place among other sexual topics, in this wider range of permissible subjects of conversation. Public interest in the subject has undoubtedly increased, with the consequences that court cases and magazines give considerable space to its discussion. In general literature too, there is a growing number of works dealing incidentally or entirely with the subject. All this has no doubt led to a much greater public awareness of the phenomenon and its manifestations....⁴¹⁶

It was not simply the War that challenged the more 'traditional' reading of sex and sexuality. World War Two had also encouraged and employed the new social sciences including criminology, sociology and psychology. There was also a new optimism in the air about post-war Britain, a new political climate marked by the rejection of the former ruling elites and, by inference, some of the ideals they stood for. The landslide victory of the Labour Party, with its radical reforming manifesto, had at its core the creation of a New Jerusalem: a project that was to introduce the NHS, widespread nationalisation and seek to employ the most scientific means at its disposal to chart a new course towards a better tomorrow. These new scholarly disciplines included among their interests research into sexual behaviour, including homosexuality. Among the targets of this new learning was the desire to address

⁴¹⁵ McKibbin, R. (1957) *Classes and Cultures: England 1918 –1951*. Oxford: Oxford University Press, p. 330.

⁴¹⁶ Secretary of State for the Home Department and the Secretary of State for Scotland. (1957) *The Report of the (Home Office) Committee on Homosexual Offences and Prostitution*. London: HMSO (para. 42) p. 19.

society's problems, one of which was sexual deviance. Indeed, the Wolfenden Committee and Report can be read as a product of this new, more rational, scientific approach applied to the topic of 'homosexuality.' This in itself could have been seen as a direct challenge to the police force's traditional monopoly of policing sex. As Howard has suggested, the advent of wide scale social reform at the start of the century was seen to trespass onto police territory, so the larger scale changes of the post-1940 period could be read as an even more alarming threat to policing.⁴¹⁷

The intellectual and popular challenge associated with the ignorance that had dominated and buttressed 'traditional' and 'puritanical' British readings of sex and sexuality, albeit inarticulate and censorious, were unrelenting. A small publishing revolution occurred around the topic of sex and sexuality included seminal texts, such as *The Sexual behavior in the human male* by Kinsey, Pomeroy and Martin (published in 1948) and *Report of the Committee on Homosexual Offences and Prostitution* that appeared nine years later in 1957 (to which Kinsey had given invited evidence).⁴¹⁸ Both publications enjoyed wide media coverage and public interest. A major element in this new publishing strand was the pioneering, and perhaps self-interested role, of members of the clinical profession who sought to monopolise the debate, arguing that 'homosexuality' was not a crime, but an illness

⁴¹⁷ Taylor, H. (1999) 'Forging the Job: A Crisis of 'Modernisation' or Redundancy for the Police in England and Wales 1900-1939.' *British Journal of Criminology*, 39(1) pp.113-135.

⁴¹⁸ Austin writing later in this period cites Edward White's explanation for this outpouring of publications regarding the taboo topic of inter-male sex: '*Only after World War Two did many Americans have the courage to write seriously and to read understandingly about the one area of life seldom before explored – the world of the homosexual.*' [See Austin, (1977) *Playing the Game: The Homosexual Novel in America*. Indianapolis: Bobbs-Merrill, p. 94.] Although much of this minor publishing revolution occurred in the USA, Britain was not beyond the influences of such a development. e.g. D J West (1955) *Homosexuality*. London: G. Duckworth, and Schofield, Michael (1952) *Society and the Homosexual*. Victor Gollancz: London.

that they could treat.⁴¹⁹ This argument is one that the Wolfenden Report engaged with but interestingly did not fully endorse.

Newspaper reports of the increasing number of trials occurring at this time were disseminated among a readership of millions that local and regional newspapers commanded and ensured the topic was in the public mind and discourse. Regardless of pro- and anti-homosexuality stances, articles in the press, together with the more scholarly publications, had a common effect that can be read as fatally undermining the advice of Lord Ellenborough regarding the Lancashire buggery trials of 1806: Edward Law's perceptive insistence that taboos around discussion of the topic of sex needed to be maintained was further validated. The genie was endeavouring to escape the bottle: discussion of sex-related topics such as divorce, birth control, sexual diversity and prostitution were now the weekly fare of newspapers read by millions of people.

The greater openness and public and scholarly discussion of 'homosexuality' could only be read as a serious challenge to those holding onto a more limited reading of the function of sex and sexuality. However, the more puritanical reading of the function of the law did not disappear during or after the period of this study.⁴²⁰ In

⁴¹⁹ Dickenson, T. (2014) *'Curing Queers': Mental Nurses and their patients 1935-74*. Stockport: Manchester University Press.

⁴²⁰ For example Mary Whitehouse was perhaps one of the most obvious standard bearers from the 1960s; cherishing and promoting a singular male-female reading of sexuality not least by the explicit discrimination of all other forms of human erotic experiences. [Whitehouse, M., Thompson, B., Trunk, J. & Wheeler, J. (2012) *Ban this filth! : letters from the Mary Whitehouse archive*. London: Faber and Faber]. However, the appearance and spread of the HIV virus in Britain from the 1980's highlighted how alive the more puritanical readings of sex and sexual diversity were. In the locale of Greater Manchester only a decade after the closing year of this study James Anderton (Chief Constable of Greater Manchester Police 1976-91) appears to have been the focus of this 'backlash' which was nothing of the kind. Known as 'God's Copper' Anderton was arguably Britain's best known

relation to policing, McKibbin has suggested that these more 'moral' readings of the function of the law were strongly held by many senior police officers during and well after the close of the period covered by this study.⁴²¹ Again, caution is required in trying to over-generalize; as the Wolfenden Report noted, significant differences were evident in the committal rates for inter-male sex-related offences between 'one police force and another according to the outlook of the senior police officers.'⁴²² The findings of this study indicate that during this period significant numbers of senior police managers, together with many of their officers, were dedicated to the prosecution of in particular, covert victimless sex between males.

The argument advanced in this thesis is not that the Lancashire police during this period were exceptional in their puritanical reading of society and their role within it by which they justified their targeting of inter-male sex. The general level of rational discussion within society was poor. The degree of common ignorance about the

policeman, attracting national attention for his outspoken views. In December 1986 in an address to a police training event in Manchester, with regard to the growing rate of HIV infection; *'Everywhere I go I see evidence of people swirling around in the cesspool of their own making. Why do homosexuals freely engage in sodomy and other obnoxious sexual practices knowing the dangers involved?'* [Campbell, B. (2004) 'Village people.' *The Guardian*. Saturday 7 August 2004.] Despite calls for his dismissal, Anderton enjoyed national government support, [See unnamed article (2012) 'Margaret Thatcher saved career of police chief who made Aids remark.' *Daily Telegraph* 4th January [Online] [Accessed 25 November 2015]. <http://www.telegraph.co.uk/news/uknews/law-and-order/8991935/Margaret-Thatcher-saved-career-of-police-chief-who-made-Aids-remarks.html>]. Anderton was subsequently awarded a number of honours by the state including: Deputy Lord Lieutenant of Greater Manchester (1989) & Knight Bachelor (1990). In 1988 Parliament enacted the Conservative Government's Local Government Act 1988 that confirmed and enshrined in law a hierarchy of sexual desire and defined 'homosexuality' as a second class or 'pretend' status. Section 2A of the Act stated that a local authority *'shall not intentionally promote homosexuality or publish material with the intention of promoting homosexuality'* or *'promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship'*. In the current century, hate crime motivated by 'homophobic' and 'transphobic' views are one of the current policing priorities of the second largest police force in England: Greater Manchester Police.

⁴²¹ McKibbin, R. (2000) *Classes and Cultures: England 1918 –1951*. Oxford: Oxford University Press, p. 325.

⁴²² Secretary of State for the Home Department and the Secretary of State for Scotland. (1957) *The Report of the (Home Office) Committee on Homosexual Offences and Prostitution*. London, HMSO, para 43, p. 19.

general topic of sex, reproductive intercourse and sexual diversity was both a legacy of the past and an ongoing feature of the period. In the absence of such informed discussion superstition, 'old wives' tales', religious bigotry and fear filled the vacuum. In the late 1940s, *Mass Observation* (largely focused on the citizens of Bolton, Lancashire) noted that, 'Parents, nowadays at least, are generally well-meaning, but are themselves too ignorant and inhibited to give reliable information to their children'.⁴²³

A number of singular incidences did allow the societal dangers of 'homosexuality' to be more publically raised not least with the defection in 1951 of the English MI5 agents Burgess and McClean to Russia. The reference to the sexual desires of one of the men would have provided an ideal opportunity to promote a linkage between patriotism and inter-male sex. Indeed, the Sunday Dispatch on 10 June 1951 '...had drawn attention to the disappearance [of Burgess and McClean], dropping a strong hint that it was time to follow the American model of "weeding out both sexual and political perverts"'.⁴²⁴

Certainly, the justification and encouragement of police targeting of inter-male sex was validated by the newly appointed British Home Secretary in October 1951. David Maxwell-Fyfe (i.e. the da facto political chief of the Metropolitan Police force with a direct line though 'guidance' to all English police force) when he called for a 'new

⁴²³ Slater, E. & Woodside, M. (1951) *Patterns of Marriage: a study of marriage relationships in the urban working classes*. London: Cassel, p.173. McKibbin, R. (2000) *Classes and Cultures: England 1918–1951*. Oxford: Oxford University Press, p. 314.

⁴²⁴ Hodges, A. (1983) *Alan Turing: the enigma*. New York: Simon and Schuster, p. 501.

drive against male vice' that would 'rid England of this plague': i.e. inter-male sex. Similarly, in October 1953 the Admiralty issued new fleet orders highlighting 'the horrible character of unnatural vice' and insisted that naval officers 'stamp out the evil'.⁴²⁵ However, the population and many members of the English ruling elite appeared far from convinced by the American counter-factual agenda. The trial of a young and well known member of the British aristocracy Edward Douglas-Scott-Montagu, third Baron Montagu, and his friends Pitt-Rivers and Peter Wildeblood at the Winchester Assize in March 1954, provided a test of opinion.⁴²⁶ The leading commentator of the topic during this period, Montgomery Hyde MP, noted that the popular and influential media (e.g. *Sunday Times* and *The Times* newspapers) appeared to express sympathy towards the defendants of one of the most high profile 'homosexual' trials of the period:

That is not to suggest that the prosecution of inter-male sex was arrested by such demonstrations of popular sympathy with such defendants and advertised in a number of the daily newspapers of the period. Indeed, as these findings show, there was a significant and sustained increase in the committals of inter-male sex cases during the 1950s. Prosecutions adversely affected the lives of thousands of males and their families that not only netted members of the working classes, but also the likes of MP's and eminent scholars, such as the Manchester based Dr Alan Turing.

⁴²⁵ Kynaston, D. (2009) *Family Britain, 1951-1957*. London: Bloomsbury, p.332.

⁴²⁶ Hyde, M. H. (1970) *The Love that Dared Not Speak Its Name: A Candid History of Homosexuality in Britain*. Boston: Little Brown, pp.224-228.

What the actual connection was, that selected out inter-male sex behaviour as a danger to both Capitalist and Communist Societies in the post-war Cold War is too problematic to provide a distinctive answer to, but it would be reasonable to note that the trends of Lancashire prosecutions were not out of step with such international trends.⁴²⁷

Kynaston has noted that the general public, despite or indeed because of the increased publication of newspaper reports and books related to 'homosexuality', was still largely ignorant and their attitudes were highly discriminatory: '...the lurid, wholly unsympathetic approach of the popular press'; 'For many the crime reporter

⁴²⁷ What is clear is that throughout Europe and especially the Anglo-Saxon world there was a marked increase in official hostility towards inter-male sex during the mid-decades of the twentieth century. The adoption of a harsher version of Paragraph 175 in Germany by the newly elected Nazi government marked the definitive defeat of the earlier homosexual reform campaign of Magnus Hirschfeld (1868 – 1935) and the Wissenschaftlich-humanitäres Komitee to decriminalise. [See, Evans, R. (2015) *The Third Reich in Power 1933-1939*. New York: Penguin; Plant, R. (1986) *The Pink Triangle: The Nazi War Against Homosexuals*. New York: Henry Holt & Co.; Steakley, J. (1975) *The Homosexual Emancipation Movement in Germany*. New York: Arno Press; Haeberle, E. (1981) 'Swastika, pink triangle, and yellow star: the destruction of sexology and the persecution of homosexuals in Nazi Germany,' In Duberman et al., (Eds.) *Hidden from History*. New York: New American Library, pp. 365-79 & Boden, E. (2011) 'The Enemy Within: Homosexuality in the Third Reich, 1933-1945,' *Constructing the Past*, 12 (1) [Online] [Accessed 12 December 2015] <http://digitalcommons.iwu.edu/cgi/viewcontent.cgi?article=1138&context=constructing>] The adoption of Article 121 into the Criminal Code of the USSR in early 1930s marked the end of the early Homosexual Rights in the Communist world. The Cold War rhetoric and action of the USA government in the immediate post-World War period infected not only the States, but influenced their satellites; not least of all in the newly founded German Federal Republic (aka West Germany) that maintained the Nazi version of Paragraph 175 within its criminal code. Richard Evans has made the point that the number of gay men who were prosecuted under the Third Reich is hardly exceptional when compared with the 100,000 who were prosecuted by the Bundesrepublik (West Germany) between 1953 and 1965. [Evans, R. (2015) *The Third Reich in Power 1933-1939*. New York: Penguin, pp. 533-536 & Browne, D. 'Persecution of Homosexuals under the Dictatorships of the Twentieth Century.' San Jose State University [Online] [Accessed 12 December 2015] http://www.sjsu.edu/history/docs/Browne_Dennis.pdf]. However, of note is that in Soviet controlled Deutsche Demokratische Republik (aka East Germany) only the milder Weimar version of Para. 175 was adopted. Even in France that had removed consensual adult inter-male sex behaviour from the eighteenth century Code Napoleon sought to suppress Homosexual publications and encourage religious and medical campaigns against inter-male sex behaviours and relationships. See; Gunther, S. (2009) *The Elastic Closet: A History of Homosexuality in France, 1942-present*. New York: Palgrave Macmillan & Edsall, N. (2003) *Towards Stonewall: Homosexuality and Society in the Modern Western World*, Charlottesville: London, pp.288-289].

was the only source of information about homosexuality.’⁴²⁸ The historian Davenport-Hines has commented ‘...they concluded that all homosexuals were chorister-molesting vicars or men who grouped together in subterranean lavatories in a fetid atmosphere of urine’.⁴²⁹ However, while such administrative realities and pronouncements certainly suggest the Lancashire police obtained significant endorsement for their increased targeting of sex between males from the Home Office and politicians, care needs to be taken not to exaggerate such developments. A more nuanced reaction of the British establishment is suggested by a number of contemporary events and commentators. For example the mass media were not universally in support of the police-campaign against victimless inter-male sex of the period. Coverage of the criminal trial of previously noted prosecution of Lord Montagu and his two friends in 1954, suggests that such prosecutions could not always rely on the uncritical support of the fourth estate.⁴³⁰ Also, the role of the state religion, the Church of England, and not least its Moral Welfare Council supported by one of Anglicanism’s leading theologians, Derrick Bailey, would certainly suggest the establishment was far from being united on the issue.⁴³¹ The setting-up in 1954 of an independent Home Office Committee to investigate the

⁴²⁸ Kynaston, D. (2009) *Family Britain, 1951-1957*. London: Bloomsbury, p. 334.

⁴²⁹ Davenport-Hines, R. (1990) *Sex, death and punishment: attitudes to sex and sexuality in Britain since the Renaissance*. London: Collins, p.299.

⁴³⁰ The limits of the English newspaper ‘anti-homosexual’ campaign is noted by Hyde, a contemporary commentator and historian who championed in Parliament the decriminalization of consensual adult ‘homosexuality’. See popular and media sympathy expressed towards the defendants [Edward Douglas-Scott-Montagu 3rd Baron Montague, Pitt-Rivers & Peter Wildeblood] at the Winchester Assize in March 1954 and charged with and subsequently convicted of gross indecency with two RAF servicemen. [Hyde, M. (1970) *The Love that Dared Not Speak Its Name: A Candid History of Homosexuality in Britain*. Boston: Little, Brown, p. 224-228.

⁴³¹ See Church of England Moral Welfare Council (1956) *Sexual offenders and social punishment; being the evidence submitted on behalf of the to the Departmental Committee on Homosexual Offences and Prostitution, with other material relating thereto*. London: Westminster, Church Information Board. Bailey, D (1955) *Homosexuality and the Western Christian tradition*. London: Longmans. Bailey, D. (1962) *Common sense about sexual ethics: a Christian view*. New York, Macmillan. Bailey, D. (1959) *Sexual relation in Christian thought*. New York: Harper & Brothers.

issue was itself unprecedented. Indeed, the establishment journal *The Spectator* praised those serving on the Committee and also recognised that apart from their sexual desires 'homosexuals' were 'otherwise, decent citizens.'⁴³²

All the more intriguing was the position of Chair being offered to and taken-up by John 'Jack' Wolfenden, a secular and fearlessly independent scholar whose own son's pursuit of inter-male sex was no secret in the corridors of power.⁴³³ Indeed, the very tactics police adopted to secure increased prosecutions were also the subject of scrutiny and suggestions of impropriety are reflected in the final Wolfenden Report.⁴³⁴

The *winds of change* were blowing, not only across part of the post-war British Empire, but also at home. The regular reporting of the trials of inter-male sex behaviours, however poorly reported, validated public discourse, but the constructions offered contrasted with people's experiences of the reality of sexual diversity within their own locale. The increased scholarly and, not least, clinical discussion of 'homosexuality' as an illness might easily be read as a challenge trespassing directly onto the monopoly previously enjoyed by the Criminal Justice System over the policing of sex, sexuality and gender. The irony was that it was the

⁴³² The Spectator. (1954) *Enquiry into Homosexual Offences*. 2nd September, p. 4.

⁴³³ Jeremy Wolfenden (Jack's son) the 'cleverest boy in England' studied at Eton (King's Scholar) and then Magdalen College, Oxford, where his enjoyment of inter-male sex had been well known. Sebastian, F. (1996) *The Fatal Englishman*. New York: Vintage.

⁴³⁴ Secretary of State for the Home Department and the Secretary of State for Scotland. (1957) The Report of the (Home Office) Committee on Homosexual Offences and Prostitution. London: HMSO, para. 121 & 122, pp.43-44.

zeal and tactics employed in the policing of inter-male sex by a number of forces that no-doubt boosted interest and that informed the establishment of the Wolfenden Committee in 1954, its subsequent recommendations in 1957 and enactment of many of those into the 1967 Sexual Offences Act.

As the 1950s progressed, the greater public discourse, and not least the deliberations and report of the Wolfenden Committee, with its recommendations for qualified decriminalisation, together with adverse public criticism of certain police prosecutions, led to a changing climate. Indeed, Davenport-Hines suggests that the very appointment of the Wolfenden Committee 'change policing and sentencing immediately'.⁴³⁵

Contemporary opinion polls also suggested the emergence of a far more accommodating reading of covert, consensual, adult male sex behaviour.⁴³⁶ In addition, albeit rare, examples of larger-scale public solidarity exist, being expressed towards those caught and prosecuted for inter-male sex crime. In 1953, the well-known actor John Gielgud, was successfully prosecuted for an inter-male sex crime in the final few days of rehearsal for his role in a new play *A Day by the Sea*. On his first pre-London public appearance on a Liverpool stage following his conviction, he

⁴³⁵ Davenport-Hines, R. (1990) *Sex, Death and Punishment: attitudes to sex and sexuality in Britain since the Renaissance*. London: Fontana, p. 315.

⁴³⁶ An opinion poll taken just after the publication of the Wolfenden Report on 1957 reported 40% for and 50% against. A few years later a GALLUP poll reported 63% for and only 36% against the same recommendations [Source; Hyde, M. (1970) *The Love that Dared Not Speak Its Name: A Candid History of Homosexuality in Britain*. Boston: Little Brown, pp. 233 & 264].

was 'cheered to the rafters' and then again in London during the five-month run of the play.⁴³⁷

The reaction to the publication of the Wolfenden Report in 1957 also suggests a more welcoming and receptive audience was eager to learn more about the topic. In September HMSO published the Wolfenden Report, and the 5,000 copies of the Report that sold for five shillings sold out within hours. The mixed Press reaction to the Report recommendation for a qualified decriminalisation of 'homosexuality' is noted in Kynaston, 'Only two national dailies came out unambiguously against, namely the *Daily Mail* ... and the *Daily Express*... *The Times*, the *Manchester Guardian* and the *News Chronicle* were almost wholly supportive...'⁴³⁸ In the following decade as Cook notes, the challenge to more traditional readings of sex was given another boost by the wider sexual shifts often identified with the 'swinging sixties'.⁴³⁹

What has been essayed here is a dichotomised reading of a traditional, puritanical ideology being challenged by the redundancy of such rules in time of world war and a wider 'liberal' cultural development pre-dating, but most clearly associated with, the post-war period. In so doing, no absolutes or sharp lines are suggested, simply that a lively dynamic was abroad that helped to provide a contextual dynamic of the forces behind the increased committal rate for inter-male sex related offences.

⁴³⁷ Koenig, R. (2011) 'John Gielgud: When England hounded a hero,' *The Independent*, 23rd October.

⁴³⁸ Kynaston, D. (2013) *Modernity Britain: opening the Box 1957-1958*. London: Bloomsbury, pp. 70-71.

⁴³⁹ Cook, M., Mills, R., Trumbach, R. & Cocks, H, (eds.) (2007) *A Gay history of Britain: love and sex between men since the Middle Ages*. Oxford: Greenwood World Pub., p. 175.

The findings of this study afford regional quantitative and qualitative contributions and fascinating insights into the complex environment within which divergent attitudes towards the criminality or otherwise of inter-male sex was read and practically played out. Within this discussion is also the suggestion that it was the very police methods by which committals were obtained that provided a major factor in bringing about the qualified de-criminalisation of inter-male sex in 1967.

The attitudes of the Defendants (1940-1970)

The improved success of committals in terms of obtaining convictions noted for the previous inter-war decades, was a continuing feature of this period: with a proportionally even smaller incidence of pre-trial dismissals - less than thirty.⁴⁴⁰ The increase in committal rates can itself be read as an encouragement to the police to bring further cases forward. As noted, the *Calendars'* commentary on the contribution of the defendants is limited to a record of the plea submitted. However, this again provides an invaluable insight into the reaction of defendants to such charges. In this period, it is the difference between the large number of males facing gross indecency charges that cooperated (i.e. pleaded 'guilty') compared with the much smaller number that rejected the charge (i.e. pleaded 'not guilty') that stand out as highly significant.

The availability of a sample of depositional evidence from this period offers a further level of qualitative evidence about the defendants' reactions to the cases brought against them that is not available for the earlier periods. Although only a small measure of that dispositional material can be used in this investigation, it does add the authentic voices of key participants in the prosecution of 'sex' crimes by the Criminal Justice System: the defendants. The evidence strongly suggests that predominately working-class men subjected to such prosecutions were not always

⁴⁴⁰ For example the *Calendars* note in such cases reasons including: 'Unfit to stand', 'Bench Warrant Issued' (i.e. indicating the defendant had failed to surrender or 'jumped' bail while awaiting trial) together with other procedural reasons. Lancashire Committals of inter-male sex (1850-1970) Database.

overtly perplexed by the significance of their sexual behaviours. As Helen Smith suggests, the strength of any taboo relating to consensual inter-male sex behaviours was more superficial among the majority of the population. That is, the working population of the country were perhaps disinterested or distracted by more mundane considerations of daily life to be too engaged by the more puritanical reading of such behaviours.⁴⁴¹

The frequency and success of the indictable prosecution of so many inter-male sex offences, together with having all but a few committals rejected, are testament to two factors evident during this period. Firstly, the continuance of an attitude and practice by a number of local police managers that read all manner of inter-male sex offences as being so threatening to society as to justify the ongoing investment of significant public funding to fund the most expensive categories of charges available. Secondly the willingness of the majority of males charged with 'gross indecency' to cooperate with the prosecution and return 'guilty' pleas. Table 5.7 highlights the greater incidence of 'guilty' rather than 'not-guilty' pleas returned during this period.

⁴⁴¹ Smith, H. (2012) *A Study of Working-Class Men who desired Other Men in the North of England c.1895-1957*. Ph. D. University of Sheffield.

Table: 5.7 Lancashire sample defence pleas submitted 1940-1970 for all trials of inter-male sex related cases (1940-1970) Defence Pleas: for all sampled committals [Cat. 3-6]

	Plea: Not Guilty	Plea: Guilty	Plea: Guilty of Lesser charge
1940-1945	26	90	0
1946-1950	34	108	7
1951-1955	39	166	6
1956-1960	92	436	3
1960-1965	36	240	3
1966-1970	29	70	4
Totals (1940-1970)	256	1110	23

Table 5.7 reflects the success of Lancashire police forces' tactics in achieving the arrest and prosecution of so many uncontested cases. However, the expense of indictable offences was mitigated by the high incidence of guilty pleas, requiring only minimal work for the prosecution and court time and costs in general. That is, avoidance of the potentially problematic task of justifying that covert and often very furtive 'sexualised' behaviour had occurred, with the real possibility of failure — a 'not-guilty' verdict. Indeed, it is questionable given the cost of such prosecutions whether this level of committals in this period could have actually occurred without such cooperation from the defendants. Such a theoretical counter-historical reversal would have required a huge prosecution exercise to gather sufficient evidence to prove 'beyond reasonable doubt' the guilt of each case.

Perhaps the only way of accounting for the increased committal rates shown during this period was that a majority of defendants freely cooperated in their own

prosecution. This appears especially to be the case with regard to those charged with the offence of 'gross indecency' as shown in Table 5.8 that sets-out the pleas of defendants charged with that offence.

Table 5.8 Defence Pleas: in cases of substantive charge of gross indecency (1940-1970).⁴⁴²

	Plea: Not Guilty	Plea: Guilty	Plea: Guilty of Lesser charge
1940-1945	13	40	0
1946-1950	25	74	1
1951-1955	23	128	4
1956-1960	72	358	1
19601-1965	20	203	0
1966-1970	6	47	0
Totals	159	850	6

Indeed, the very high incidence of guilty pleas reflects the earlier finding that most of those arrested and prosecuted with the offence of 'gross indecency' were first time offenders with little knowledge or experience of police practice. As noted above, the most common responses to arrest within the small depositional evidence included: mitigation, rejection of stereotypes as opposed to outright revulsion at the behaviour itself and at times, even muted justification.

Males being committed to trials for inter-male sex related offences in Lancashire during this period were subject to as Kynaston notes, '...lurid, wholly unsympathetic' media reports.⁴⁴³ The press reports of such trials, even when highly critical of police methods as in the Montagu case of 1954, promoted a specific labelling process in

⁴⁴² Lancashire Committals of inter-male sex (1850-1970) Database.

⁴⁴³ Kynaston, D. (2009) *Family Britain, 1951-1957*. London: Bloomsbury, p. 334.

the public mind. In the pages of the popular press, the public were encouraged to read the men charged with inter-male sex offences as being candidates, if not already full members, of a 'homosexual' minority. However, a piece of depositional evidence, from the Salford QS sample, suggests that the labelling process was often rejected by defendants within this Lancashire sample. One of two young twenty-year-old friends arrested in Salford in 1960 for enjoying a late-night covert, mutual masturbatory experience clearly recognised and rejected for himself that negative labelling process when he stated: 'We are not puffs or queers'.⁴⁴⁴

The depositional evidence also notes defendants' protests against being arrested and charged for consensual sexual behaviour, questioning the very justification of the law criminalising such covert actions. For example, James, arrested in July 1955 for gross indecency, was reported to have commented, 'We weren't doing any harm' emphasising the victimless nature of his crime.⁴⁴⁵ Mitigation is also a feature of the defendants' comments, perhaps an understandable reaction to what the men involved perceived as a furtive, anonymous, fleeting, consensual sexual experience, occurring in the later hours in or around semi-private spaces, in which the only person clearly 'offended' was the arresting police officer. The mitigation offered by William, arrested in October 1958, highlights the lack of seriousness and even

⁴⁴⁴ Lancashire Borough & County Quarter Sessions. (1958) *Depositional papers*. Dated 14.10.1958 GMC GB 124 Salford QS Depositions Box (Oct. 1958). There is no reason to doubt the sincerity of this man's pronouncement. While having clearly been aware of the labelling agenda to define an aspect of his sexual behaviour as queer he chose to reject such application. This limited evidence suggests the persuasive immediacy of such labelling and would support Smith's conclusion that northern working-class males preferred to define themselves by their community and employment rather than in sexual terms.

⁴⁴⁵ Lancashire Borough & County Quarter Sessions. (1955) *Depositional papers*. Dated 5.07.1955. GMC GB 124 Salford QS Depositions Box (March 1951). Statement by DC Hill 118, p.3.

perfunctory reading that some men attached to their inter-male sex experiences stating: ‘...and he got hold of my prick and started to wank me. I didn’t mind, you know how it is when you’ve had a few drinks’.⁴⁴⁶ Other defendants ‘explained’ their behaviour typically by reference to problematic relations with wives and girlfriends; Clifford stated, ‘My girl let me down’.⁴⁴⁷

This evidence of an overwhelming willingness of defendants charged with gross indecency to cooperate, confess and plead guilty invites an important procedural question. What was the real outcome sought by the police managers? Given the level of defendant cooperation, the option of a prosecution in the cheaper and quicker magistrates’ courts was readily available, thereby allowing police forces to focus on more serious crime instead of being tied up in the costly prosecution and time-consuming cases in the senior criminal courts. Moreover, the prosecution of this type of offence in magistrates’ courts would have been punished in much the same way as in the higher court (i.e. fines and short prison sentences). Indeed, it was this highly wasteful use of resources highlighted in the Wolfenden Report that was included in the key recommendations it made to Parliament, ‘We feel that the offence of committing an act of gross indecency with another male person should be triable summarily. We accordingly recommend that the offence [gross indecency] be added to the first schedule of the Magistrates Courts Act 1952’.⁴⁴⁸

⁴⁴⁶ Lancashire Borough & County Quarter Sessions. (1955) Depositional papers. Dated 5.07.1955. GMC GB 124 Salford QS Depositions Box (March 1951). See Signed statement by ‘WU’

⁴⁴⁷ Lancashire Borough & County Quarter Sessions. (1958) Depositional papers. Dated 18.02.1958. GMC GB 124 Salford QS Depositions Box (Mar. 1958). See signed statement by defendant ‘CM’ page 1.

⁴⁴⁸ Secretary of State for the Home Department and the Secretary of State for Scotland. (1957) *The Report of the (Home Office) Committee on Homosexual Offences and Prostitution*. London: HMSO, para. 114, p. 41.

That many Lancashire police managers chose not to pursue this procedural 'short-cut' for disposing quickly and cheaply of a significant number of cases, would appear questionable even in purely operational and financial terms. These ongoing prosecution decisions suggest the existence of a separate agenda of sufficient power to override such operational and financial considerations that otherwise might be decisive. Some other factor was in operation to justify, over a number of years, the increasing expenditure and time invested in prosecuting cases in the senior criminal courts, which would obtain identical results if they had been tried summarily. In the absence of any definitive evidence with regard to motivation, discussions about using which courts to prosecute the crime of inter-male sex behaviour would appear to support a contextual reading of the period, in which the prevalence of puritanical ideology could have unduly influenced the decisions of a number of police managers. Crucially, it is clear that many defendants during this period identified that their behaviour was transgressive and were prepared to cooperate with the police in its prosecution. Defendants' reactions to arrests and prosecution for nominal and actual consensual inter-male sex behaviour were predominantly reflected in their acquiescence and biddable cooperation. Clearly, many wished to avoid a level of shame they believed would and indeed did, follow such trials.

However, by the end of the period, a more assertive note was increasingly evident. The case of Arnold, a defendant previously cited, who pleaded 'not guilty' for the offence of gross indecency in a gentlemen's public urinal located in the busy transport hub of Salford Exchange Railway Station, is illustrative. The depositions

papers record his arrest by two plain clothes policemen who had been 'taking observations'. In his defence, Arnold logically argued that 'Being a homosexual...' his response (i.e. a penile erection) was 'natural' and therefore involuntary and not a crime (i.e. no elective intention). The jury accepted the argument, and the defendant was found 'not guilty' and discharged. Given that this case occurred only months after the enactment of the 1967 Sexual Offences Act, with all the attendant publicity, it might be read as being an example of a more sceptical reading by juries of police tactics, together with the new albeit qualified legal status of 'homosexuality' afforded by the provisions of the 1967 Act within the working of the Criminal Justice System. However, one swallow does not make spring, and even a cursory review of the post-1970 *Calendars* suggests defendants' cooperation with such charges was an ongoing feature of policing such victimless and covert behaviours.

Those defendants charged with nominally and actually coercive indecent assault offences similarly showed a marked preference for returning 'guilty' rather than 'not-guilty' pleas, a tendency that persisted throughout the period, see Table 5.9.

*Table 5.9 Defence Pleas: in cases of substantive charge of indecent assault (1940-1970).*⁴⁴⁹

	Plea: Not Guilty	Plea: Guilty	Plea: Guilty of Lesser charge
1940-1945	2	21	0
1946-1950	4	12	1
1951-1955	10	9	0
1956-1960	10	30	0
19601-1965	5	14	1
1966-1970	4	2	2
Totals	35	88	4

⁴⁴⁹ Lancashire Committals of inter-male sex (1850-1970) Database.

However, this category of inter-male sex related offences does include a number of serious coercive behaviours including alleged attacks. The three following examples are of singular committals of defendants charged with 'gross indecency' who plead 'not guilty', but the jury found 'guilty'.

James (60) 'Labourer' tried at the Assize in Liverpool on the charge of 'Gross Indecency', sentenced and on conviction sentenced by Justice Oliver on 4th June 1947 to five years penal servitude.⁴⁵⁰

John (25) 'bus guard' tried at the Manchester Crown Court in July 1959 on the charge of 'indecent assault' was after a two day trial convicted and sentenced by Judge Sir Basil Nield, (Recorder of Manchester) to 'To pay fine of £10 with two months from 5 July 1957 2 months imprisonment in default of payment'⁴⁵¹

Harry (49) 'Baker' was tried at the Quarter Session held at Bolton for 'On 10 May 1961 at Old Trafford indecently assaulted Brian a male person' convicted and sentenced by the presiding judge Philip Kershaw Esq. to a year Probation Order⁴⁵²

However, the disparity of sentencing between these cases does invite speculation as to the levels of coercion to which the defendants had professed their innocence. This kind of evidence endorses the speculative categorisation used in this study of 'nominal and actual coercive' inter-male sex related behaviour that awaits further investigation of a detailed definition of that criminal charge as interpreted by individual police forces and local prosecution services.

The Attitudes of the Lancashire Juries (1940-1970)

The large number of 'guilty' pleas that were submitted during this period meant that in the majority of trials, the adjudicatory function of the jury was not required.

⁴⁵⁰ Liverpool Assize Calendar 1947.06.02., CE# 014. LCA 347 QUA 3/7 (Jan. 1940 to Nov. 1947).

⁴⁵¹ Manchester Crown Court Calendar 1957.07.02., CE# 07 GNC M545/1 Crown Court Calendars of Prisoners Volume 1 (1956-1961).

⁴⁵² Bolton Q.S. Calendar 1961.07.18., CE# 080. LA QJC/85 Calendars of Prisoners (NW).

However, in cases where a 'not-guilty' plea was submitted, and the prosecution was required to present a case of sufficient competence and evidential content to prove *beyond reasonable doubt* the veracity of the charge, the weight of evidence was of central importance.⁴⁵³ In a majority of the cases tried, the police prosecutions were successful and obtained a guilty verdict however what the figures as set out in Table 5.10. demonstrate that a successful prosecution could not be expected and significant number of 'not guilty pleas' resulted in acquittal (i.e. jury 'not guilty' verdict).

*Table 5.10 Outcomes of jury trials for all categories of inter-male sex related cases (1940-1970).*⁴⁵⁴

	VERDICT- Not Guilty	VERDICT - Guilty	VERDICT - Guilty lesser Charge	NO VERDICT (e.g. Hung jury, Procedural)
1940-1945	17	28	0	0
1946-1950	13	26	0	0
1951-1955	9	35	1	4
1956-1960	33	54	2	22
19601-1965	17	29	1	17
1966-1970	8	25	0	1
Totals	97	197	4	49

However, a marked feature of this sample is that about one-third of the cases tried were found 'not-guilty' or a non-verdict (i.e. most common a hung jury), which is not a good prosecution rate. Common prosecution policy dictates that the success of conviction is a major consideration before money and time is spent on expensive

⁴⁵³ While malicious prosecutions cannot be discounted, this study has found no evidence to support such an interpretation in any of the cases identified. Although the most famous case of the period, that of Lord Montague and his friends, does suggest a manufactured case. Lord Montagu life-long protests of innocence against sex charges made against him by Hampshire police in the 1950s. It is a claim that his co-defendant also maintained for over sixty years until his death in 2015. Douglas-Scott-Montagu, E. (2000) *Wheels within wheels: an unconventional life*. London: Weidenfeld & Nicolson, pp.95-116. & Wildeblood, P. (1959) *Against the law*. London: Weidenfeld and Nicolson.

⁴⁵⁴ Lancashire Committals of inter-male sex (1850-1970) Database.

court procedures. That approximately half of all police cases failed during this period again suggests the existence of another motive beyond the common expedient of successful conviction of crime within a context of limited public money to fund such cases. That is, half of inter-male sex-related cases demanding significant funding and removal of police resources from other tasks required for such trials were clearly poor prosecution cases. That in turn invites speculation about police motives for bringing such cases in the first place. However, what makes this failure rate all the more directly significant is that although many of these cases were conducted in a day, a substantial number ran over two or three days, suggesting the measure of investment required by prosecution, defence, court officials and where defendants had been remanded in custody, the prisons' service costs of that detention.⁴⁵⁵

In the case of trials for the crime of gross indecency, as noted, the expansive and ambiguous scope in terms of defining that crime, encouraged by the wording would appear to favour the prosecution in that only a perception, not actual physical contact, was required to prove that a crime had been committed. However, the apparent prosecution advantage afforded by this ambiguous charge was still not enough for Lancashire juries, who returned a verdict of 'not guilty' for approximately a third of trials of this category of inter-male sex charge they adjudicated during this

⁴⁵⁵ Topical examples of trials taking more than one day to reach a 'not-guilty' verdict includes those of: Calendar entries: Manchester Assize Calendar 1946.11.25., CE# 040 & 041. LCA 347 QUA 3/7 Assize Calendars (Jan. 1940 to Nov. 1947). Liverpool Assize Calendar 1947.10.27., CE# 107 LCA 347 QUA 3/7 Assize Calendars (Jan. 1940 to Nov. 1947), Lancaster Co. Q.S. 1953.01.06., CE# 011. LA QJC/77 (1953 - NW). Manchester Crown Court Calendar 1957.02.05., CE# 004. GMC M545/1 Crown Court Calendars of Prisoners Volume 1 (1956-1958). Manchester Crown Court Calendar 1958.03.04., CE# 07 & 08 GMC M545/1 Crown Court Calendars of Prisoners Volume 1 (1956-1961). Lancaster Co. Q.S. Calendar 1958.10.07., CE# 04. LA QJC.82 (1958). Manchester Crown Court Calendar 1960.02.02., CE# 087 & 088. GMC M545/2 Crown Court Calendars of Prisoners Volume 1 (1959-1960).

period. Roughly one in every two contested cases (i.e. the defendant(s) pleaded 'not guilty') that is sixty-two out of one hundred and three trials the jury rejected the police case and thereby implicitly, a large number of the initial decision to prosecute were at best questionable.

Table 5.11 Outcomes of jury trials for the charge of inter-male sex related 'gross indecency (1940-1970). ⁴⁵⁶

Trial Outcomes for Gross Indecency	VERDICT- Not Guilty	VERDICT - Guilty	VERDICT - Guilty lesser Charge	NO VERDICT (e.g. Hung jury, Procedural)
1940-1945	10	15	0	0
1946-1950	5	24	0	4
1951-1955	6	16	0	12
1956-1960	26	39	0	13
19601-1965	13	14	0	1
1966-1970	2	5	0	1
Totals	62	113	0	31

That the comparative ratio of guilty to not-guilty verdicts shifted towards acquittals in the decades after the War does invite speculation of the effect on Lancashire juries of the greater and highly rational debate developing within Britain during this period, perhaps most famously marked by the publication of the Wolfenden Report in 1957. Although impossible to investigate (i.e. contempt of court laws ban researchers from questioning jurors on anything that happened in the jury room) the trends shown by these findings do invite speculation about why the acquittal rate increased in trials of victimless crime. Perhaps the more informed public discussion of the topic of 'homosexuality' did encourage more rational discussion of evidence and even a greater willingness to afforded the benefit of the doubt in such deliberations.

⁴⁵⁶ Lancashire Committals of inter-male sex (1850-1970) Database.

However the incidence of the jury trials for the nominally and actual coercive inter-male sex-related offences of 'indecent assault' suggests a firmer and more accurate police reading of the evidence, reflected by the greater rate of prosecution success of such trials, as shown in Table 5.12.

*Table 5.12 Outcomes of jury trials for the charge of inter-male sex related indecent assault (1940-1970).*⁴⁵⁷

	VERDICT- Not Guilty	VERDICT - Guilty	VERDICT - Guilty lesser Charge	NO VERDICT (e.g. Hung jury, Procedural)
1940-1945	2	6	0	0
1946-1950	1	1	0	0
1951-1955	1	8	1	4
1956-1960	2	5	1	0
19601-1965	1	13	0	0
1966-1970	5	15	0	4
Totals	12	48	2	8

Clearly, the police managers could and did exercise a more professional reading and practice in the decision-making process of weighing evidence and judging the probable success, or otherwise, of cases. That is, with the exception of victimless, consensual inter-male sex-related behaviours, that again suggests the introduction of other factors and considerations. Although again a note of caution is required: the low incidence is problematic when seeking to secure more specific readings of such data; however, this sample shows a much better prosecution performance with a success ratio of three cases out of every four contested. More investigations of this nature are required if a more secure reading of such incidence is to be obtained.

⁴⁵⁷ Lancashire Committals of inter-male sex (1850-1970) Database.

These findings again highlight the independence of the Criminal Justice Systems' juries frequently throwing out police prosecutions.

The Attitudes of the Judiciary (1940-1970)

As noted to date, no published research has emerged to provide a reliable quantitative reading of the longitudinal incidence or treatment of inter-male sex cases tried in the lower magistrates' courts during this period. What is known is that disquiet about the punishments licenced to be applied in such 'sexual' offences, was already being sounded by the national body representing magistrates as early as the 1940s. Not surprisingly, the 'medical' solution advocated by the Report of the Joint Committee on Psychiatry and the Law was no-doubt strongly informed by the clinicians co-sponsoring, 'The Criminal Law and Sexual Offenders.' It was argued that fines should not be imposed on sexual offenders, except in cases where those found guilty, refused to acknowledge their offence, or refused or were unable, to co-operate in treatment'.⁴⁵⁸

The Psychiatry and the Law Report concluded and confirmed that magistrates, including perhaps the Lancashire Magistracy, were not conforming to the maximum level of punishment that the law (i.e. Parliamentarians) deemed appropriate, and that they were expected, in summary cases of inter-male sex crime, to impose. The sponsorship of this joint investigation and its subsequent findings set out in the 1949

⁴⁵⁸ The criminal law and sexual offenders: British Medical Association and the Magistrates' Association. (1949) *A report of the Joint Committee on Psychiatry and the Law*. London: British Medical Association, para. 63, p. 22.

Report, can be read as an independent challenge to the legislators. It questioned the punishments recommended for crimes of inter-male sex that had been consistently advocated by Parliament from the previous century.

It was the judiciary that had experience of inter-male sex cases brought with increasing frequency before them during this period. They had access to quantitative and qualitative information about the men who stood before them, from all walks of life; magistrates had the opportunities to compare the reality of such lives with the often stereotyped and sensationalist reading provided at the time by the popular newspapers. It would appear reasonable to suggest that this experience in court rooms throughout Lancashire and the rest of the country, caused magistrates to question 'traditional' readings of inter-male sex as representing a serious threat to society and always necessitating access to harsh punishment, including life imprisonment. This unease, so publicly advertised by the Magistrates Association in 1949, can also perhaps be detected in the sentencing policy that emerged from the senior criminal courts on Assize, Quarter Sessions and, after 1957, Crown Courts in Lancashire during this period. Magistrates' readings of inter-male sex stand in sharp contrast to the Lancashire police force's' increasing choice and application of the most serious indictable committal charges in its prosecution of inter-male sex. Clearly, police policy in this regard appears not to have obtained uncritical approval even within the British establishment.

Of the different type of sentences handed down in hundreds of convictions, perhaps the most readily accessible categorisation was between: imprisonment and non-custodial. By dividing the sample into two cohorts, 1940-1955 and 1956-1970, the impact of the suggested more rational reading of inter-male sex that occurred during this period might be best noted. Using the sentencing figures for convictions for the crime of 'gross indecency' and then 'indecent assault', the move towards a more non-custodial, and therefore less threatening, reading of 'homosexuality' on society can be seen.

*Table 5.13a Comparative summary of sentences handed down in convictions of the offence of Gross Indecency (1940-1955).*⁴⁵⁹

Gross Indecency (1940-1955)		No. of Cases 275			
	Prison	Probation	Fine(£)	BO/CD	Borstal & other
Count	68		78		
Medium	0.5		10.0		
Mode	0.5		10		
Range					
Max	5		100		
Range					
Min	0		2		

*Table 5.13b Comparative summary of sentences handed down in convictions of the offence of Gross Indecency (1956-1970).*⁴⁶⁰

Gross Indecency (1956-1970)		No. of Cases 575			
	Prison	Probation	Fine(£)	BO/CD	Borstal & other
Count	49	56	338	127	5
Medium	0.8		20.0		
Mode	0.5		10		
Range					
Max	2		50		
Range					
Min	0		10		

⁴⁵⁹ Lancashire Committals of inter-male sex (1850-1970) Database.

⁴⁶⁰ Lancashire Committals of inter-male sex (1850-1970) Database.

What stands out from this analysis is an explicit or implicit move away from custodial sentences by presiding judges as the appropriate punishment for males convicted of such crime. In the period 1940-1955, a convicted felon had a 1:4 chance in this sample of obtaining a prison sentence. In the following sixteen years 1956-1970, that chance had been reduced to 1:10 for the same crime.

Table 5.14a Comparative summary of sentences handed down in convictions of the offence of Indecent Assault (1940-1955). ⁴⁶¹

Indecent Assault (1940-1955)				No. of Cases	55
	Prison	Probation	Fine(£)	BO/CD	Borstal & other
Count	30	0	5	18	2
Medium	2.3		20.0		
Mode	3		20		
Range Max	10		50		
Range Min	0		5		

Table 5.14b Comparative summary of sentences handed down in convictions of the offence of Indecent Assault (1956-1970). ⁴⁶²

Indecent Assault (1956-1970)				No. of Cases	47
	Prison	Probation	Fine(£)	BO/CD	Borstal & other
Count	17	4	20	4	2
Medium	1.0		25.0		
Mode	0.75		50		
Range Max	7		50		
Range Min	0		10		

The shift towards a non-custodial sentencing regime for the offence of 'indecent assault', suggests a further differentiation between the weighting of consensual and coercive inter-male sex acts. The overall impression gained is of the development of an ongoing sentencing trend, that inter-male sex was increasingly not being read as a major threat to society requiring 'life' imprisonment, as had sometimes been the case in the previous century. Despite the possibility of a more medical reading of

⁴⁶¹ Lancashire Committals of inter-male sex (1850-1970) Database.

⁴⁶² Lancashire Committals of inter-male sex (1850-1970) Database.

'homosexuality' highlighted by the Magistrates Association, this survey finds little evidence of widespread application in trial outcomes with no more than a handful of cases each year recording any reference to a clinical involvement in the sentencing process.

These findings demonstrate that although the practice of committing inter-male sex cases had become established in most parts of the county of Lancashire during the interwar period, this period 1940-1970 witnessed an unprecedented rise in the coming to trial of so many indictable cases for inter-male sex-related behaviours. However, again the picture painted is highly nuanced with the constituent players within the Criminal Justice System often demonstrating divergent readings and treatment of 'homosexuality'. Perhaps one of the most remarkable findings is of the fulsome cooperation of hundreds of Lancashire males in their own conviction for furtive consensual and anonymous inter-male sex experiences with other males.

The Conclusion

The premise underscoring this project has been how little is known about the criminalisation of inter-male sex. That is, despite the remarkable and pioneering endeavors by a relatively small number of scholars over recent decades, made visible in publications, conference papers and collegial discussions, there remain many blanks in our understanding. The late flowering of this branch of history, its complexity touching on some of the most emotive issues within society, in part explains its unhelpful proximity to ongoing and hotly contested, political debates regarding the function of religious morality within the Criminal Justice System of a modern secular state. This ongoing interplay of highly contentious polemics fed by theology and identity politics is not the ideal locale in which to conduct objective investigation.⁴⁶³

Contribution to the blank spaces on the historical map using an empirically grounded approach

The goal of this thesis has always been to 'fill-in' a small portion of that *terra incognita* in our understanding of past attitudes towards inter-male sex by means of a robust empirical approach. An empirical approach was central to this investigation in seeking to counter 'retro-labelling' by privileging the evidence of the past attitudes of those directly involved in the Criminal Justice System, who went about the task of processing cases of inter-male sex crime. That is, a deliberate structural tool by

⁴⁶³ A striking example of this problematized environment is the recent political fashion of seeking governmental 'pardons', for past convictions of inter-male sex as if to negate some collective guilt for past discriminatory criminalisation.

which if not to completely forestall, at least qualify today's 'Gay', 'Homosexual', 'Queer', et al. readings of the past attitudes to inter-male sex.

An evidentially rich subject area

The surprise, having chosen such a determinedly empirical approach, was the sheer wealth of authoritative, longitudinal primary evidence series generated by individuals and agencies involved within the Criminal Justice System. The principle documents used, the *Calendars of Prisoners*, was only one from a range of remarkable, largely untouched, primary evidence of past attitudes towards a range of behaviours.

Indeed, this study reviewed a large number of documents that had hitherto never been called from their storage and no doubt can be found in every county archive.

The potential for further and more detailed historical investigation awaits and hopefully, this study has helped to highlight and encourage the future use of this remarkable material and the invaluable insights it can provide.

The primary material used here was married to a strong, statistically informed methodology; this was a further attempt to structurally insulate these findings from the most distracting problems of the ongoing and often polemical debates.

Creating an alternative enumeration of the incidence of inter-male sex committals

What this investigation provides is the first reliable longitudinal reading of the committals of inter-male sex behaviours based on primary evidence contemporaneously reporting thousands of individual cases that can in turn, be independently verified. So doing, further highlights the serious limits of the deeply flawed Home Office Department's crime figures that are regrettably still in some quarters afforded an undeserved authority in commenting of actual incidence of crime. Each of the approximately three thousand Lancashire committal cases identified and employed in this investigation can be collaborated by reference to the indictment records held by Kew or in the local press reporting of criminal trials. Each case listed in the database created by this study [i.e. 'Lancashire Committals of inter-male sex (1850-1970) Database'] has been given a unique reference in this study that provides the name of court, date of court session and number of the case as entered into the *Calendar of Prisoners* to help facilitate such cross-referencing. The hope is that this investigation, and not least the gazette of inter-male sex trials it has produced, will encourage future researchers to target and exploit more easily the wealth of largely untouched primary evidence into past attitudes towards criminalised sexual behaviours.

The distance between abstract and practical criminalisation

This unique and exhaustive Lancashire longitudinal sample of committals also demonstrates a strong disconnect between Parliament's designation of inter-male related sexualised behaviours as serious crimes demanding harsh punishment and practical reality; this parliamentary decree for such criminalisation in Lancashire for

much of the period 1850-1970 was little more than a paper tiger. It did not, no doubt, present itself as a benign measure for those directly involved and charged with such criminalisation. However, for the vast majority of males, who at least from the Georgian period met up and enjoyed a quick, semi-covert, anonymous sexual encounter in Lancashire, they had little to fear from the law. Much remains to be discovered about the places and contingent attitudes of males in search of consensual, anonymous inter-male sex and others within modern societies. What appears clear is that despite official attitudes and condemnatory judgements of such behaviour, it was a universal feature of human society and behaviour.

A contribution to the Historiography

This longitudinal Lancashire-based reading has also sought to provide some balance to the current historiography. The late nineteenth century metropolitan focus of consensual behaviours and atypical trials, epitomized by the near annual publishing of yet another study on the celebrity and 'gay martyr' Mr. Oscar Wilde, dominates the historiography. As this study has noted, the predominant occupations of those sent for trial showed them to be from the poor, the pauper and working classes. Perhaps the only commonality between the vast majority of those and Wilde was the category of charge faced and the absence of previous offences. Clearly, as more diverse regionally-based studies such as this thesis are conducted, ones which seek a more expansive and inclusive reading of such criminalisation, the narrow focus of historiography will be addressed and more nuanced readings will be provided. Perhaps, this area of study would benefit from the approach pioneered by Asa Briggs

in his *Chartist Studies* that provided a number of regional readings of Chartism, giving a far more convincing and nuanced nationwide understanding of the phenomena.⁴⁶⁴

The Criminal Justice System a highly nuanced and not singular process

This reading of the Criminal Justice System's treatment of such criminalisation has itself highlighted a complex, county-based reading of such cases from the point of view of four diverse agencies, or 'players': the prosecution (i.e. including the police), the defense, the jury and finally, the presiding judiciary. This sophisticated reading has demonstrated a complex process by which inter-male sex cases were brought and tried. That while the discord between prosecution and defense might be expected — and in fact discoursed — concord between all four different players within the Criminal Justice System was the recurrent feature of the process. This investigation for the first time demonstrates many of those twists and turns that might be expected from the committals of males accused of largely victimless, inter-male sex behaviours, who were subjected to the contingent caprice of the often conflicting, self and collective human interests and preoccupations of those directly involved. That is, attitudes that must have been strongly influenced by their own individual and community readings and experiences of community self-regulation about sex and sexual behaviours. However, within that highly nuanced reading of the four distinct players within the Criminal Justice System, a number of underlying patterns have emerged and been demonstrated in the respective chapters.

⁴⁶⁴ Briggs,A. (1959) *Chartist Studies*. London: Macmillan.

The contribution to the understanding of prosecution attitudes towards inter-male sex

Perhaps the most marked longitudinal feature of the prosecution of inter-male sex, was the rarity of such cases until the advent of the Second World War when an unprecedented rise in committals occurred. Indeed, the period from 1940 onwards can be, with some justification be called a 'golden age' of the policing of male lavatories for victimless crime. It would appear to be a 'golden age' that shone more brightly in the years following those decades explored in this study. This investigation demonstrates that it was consensual, victimless inter-male sex that was the prosecution priority and not coercive inter-male sex behaviours, such as male rape. Indeed, the role of the police in protecting men from unwanted sexual approaches and assault from other men was minimal, perhaps a reflection of the lack of complaints and the costs and sensibilities involved in such police investigations and prosecutions.

The post-1970 policing of inter-male sex crime in Lancashire was populated with characters such as the Chief Constable of Greater Manchester Police Sir James Anderton and affected by the local impact of AIDS, although not yet the subject of concerned historical investigation, is ripe with promise. The hope is that the findings of this investigation provide a useful background study to such future endeavors.

The findings of this study have also strongly suggested that the police attitudes towards inter-male sex were not singular, but highly divergent across the various police forces within the county. This divergence of attitudes regarding the seriousness or otherwise of such behavior, is strongly suggested in the spatial distribution of the local magistrates' courts committals of such cases for trial. Certainly, in the first half of this study (1850-1920), vast areas of the county did not commit any, or just a handful of, cases for trial. This strongly suggests that the police forces located in such areas were either not prioritising such offences or using summary charges. That is, the findings show that only a minority of Lancashire police forces undertook such prosecutions during this period. Despite the development of specialist investigatory departments within police forces at this time, the detection of inter-male sex, outside of Liverpool, does not appear to have been a Lancashire policing priority. That these findings identify a handful of police forces consistently targeting such committals does help narrow down the task of identifying those forces whose records might most realistically provide fruitful in pursuing a more strident reading of prosecution attitudes towards inter-male sex behaviours.

However, what is clear is that when defendants pleaded not guilty to the inter-male sex charges, they stood a good chance of acquittal compared with other categories of offence, such as larceny. What motivated defendants to plead not-guilty (e.g. innocence, as a protest of the intrusion into their private life or for understandable pragmatic reasons) will perhaps remain a mystery. However, a sizable majority of defendants chose to cooperate with the prosecution and pled guilty, a trend that

grew markedly over the course of the following decades. The success rate of not-guilty cases that resulted in acquittal must in part be understood as reflecting the difficulty of prosecutions proving beyond reasonable doubt to a jury that such commonly covert and victimless behaviours occurred. The question then turns to the politicians who underwrote the financial cost of such prosecutions and the diversion of police time to target and arrest such behaviours. This is another question and perhaps worthy of further in-depth research.

The contribution to understanding the attitudes of defense in inter- male sex cases

This study has demonstrated two key themes in the attitudes of those prosecuted and committed for trial for inter-male sex related offences. In the first half of this investigation (i.e. 1850-1920s), the defendants facing inter-male sex related charges were more likely to plead 'not guilty' or 'guilty to a lesser offence' than 'guilty'.

However, especially from the 1940s, such defendants were far more likely to plead 'guilty', that is cooperating with the prosecution to obtain their conviction. This is the first time such an insight can be reliably provided and suggests that the dramatic rise in convictions was in large measure the result of the males arrested for such behaviours cooperating with their prosecution.

Given the bounds of this study, the causes of this *volte face* from contested to overwhelmingly 'guilty' pleas are not considered in detail here; however, some linkage with self- and community-based readings and judgments concerning sex

must be directly implicated in such shifts. What this insight signals is not that perhaps future studies might focus specifically on the role of the police in obtaining such convictions, but on the widespread compliance of the men arrested to facilitate their own prosecutions. Perhaps such insights can provide a more complete reading of the influences and circumstances that contributed to the unprecedented increase in prosecutions during this post-World War Two period. The identification, and albeit limited usage, of the court depositional papers in this study indicates an evidentially rich starting point for such enquiry.

The contribution to the understanding attitudes of juries

It is the apparent reluctance of Lancashire juries to convict inter-male sex committals during the second half of the nineteenth century that is perhaps the most notable feature of this study's investigation of their attitudes. This is perhaps no better exemplified than by the hitherto unknown frequency by which the Lancashire Grand Jury threw out such cases at the preliminary stage of committals. This finding, together with that showing the consistent and relatively poor conviction rate of contested cases throughout the period, suggests a significant disconnect between the judgment and definitions of crime used by the prosecution and that of the Lancashire juries.

What is of particular interest is that despite these problems in the post-1940 period, Lancashire police manager and politicians underwrote the costs involved and more

than re-doubled their targeting of such largely victimless behaviours during a period of immediate post war shortage. This is perhaps among the more astonishing finding of this study. Although alluded to here, the explanations for this strategic tension are largely outside the scope of this enquiry. However, this study affords such future investigations with a reliable reading of the actual incidence, categories and attitudes of the different players within the Criminal Justice System in Lancashire from which to proceed. Further, this study of the attitudes to juries also provides a non-elite reading of attitudes towards inter-male sex, an aspect of past experience that has been in such short supply in this area of historical enquiry.

The contribution made to identifying and understanding the attitudes of the presiding judiciary

The attitudes of the presiding judges described in this study, who following conviction of males for inter-male sex crimes, handed down sentences, are among the most notable of the many insights provided. Throughout the period of this study, the offence of Buggery carried some of the heaviest punishments available to any Assize or later Crown Court Judge: life imprisonment. What this study has shown is that as the decades passed, the willingness of judges to employ such heavy sentencing steeply declined. Although during the period 1850-1880 a number of harsh sentences were handed down for the crime of buggery, the trend was towards the lower range of imprisonment. Again, in the sentencing of the lesser crime of gross indecency, from the later 1880s, the sentencing policy did not reflect a perfunctory implementation of the maximum two-year imprisonment, but more

frequent sentences were for lesser terms of imprisonment and the handing down of non-custodial sentencing was also a feature of the period.

In the early twentieth century, the tendency towards more lenient sentencing continued with more extensive use of shorter custodial periods, including on occasion the handing down of non-custodial orders of 'Bound Over'. This trend towards non-custodial sentencing of nominal or actual, consensual, *victimless* crimes that emerged in the inter-war years blossomed in the post-1940 period and included defendants who were servicemen, being handed very light sentences, presumably so they could rejoin fighting, and perhaps even die, in the then ongoing war with Nazi Germany. Soon, fines and probation became the more common sentences handed down. The findings of this study have shown that as early as 1948 the lower branch of the Judiciary (i.e. those magistrates committing such cases for trial) through their Magistrates Association had clearly demonstrated its unease at such criminalisation.

What these findings suggest is a particular disjuncture between the severe punishments that Parliament felt were needed to punish inter-male sex crime, especially buggery, and the judiciary failure to impose such severity in the sentences handed down. It is only by means of such a longitudinal study that such trends and disjuncture can be identified, and a more insightful reading of the past attitudes towards inter-male sex within the Criminal Justice System can be provided. This conclusion certainly invites further targeted research into the relationship between the judiciary and Parliament on this question of what appears to be a difference of

opinion between two key players in the formulation and implementation of the Criminal Law, with regard to inter-male sex.

A Contribution to an understanding of the dynamic between community and state policing and regulation of sex

This study has provided a contribution to the wider readings and attitudes towards inter-male sex, not simply through the prism of Parliament and the common law. In doing so, it has highlighted the role of wider contingent socialisation, a powerful and dialectical feature of all communities, past and present. The conclusion being that the practical impact of such community rules and policing can both complement official attempts to govern and police the very same communities.

That is, the internal self-government of individuals and communities within Lancashire between 1850 and 1970 noted above does provide a glimpse of the largely silent powerful undercurrent with its own values, judgment and systems of punishment. Sometimes the views of this community self-government chimed with Parliament, sometimes they did not and on the issue of sex, serious disagreement appears to have occurred. Indeed, even the attitudes of Lancashire juries largely drawn from the wealthier members of local society, towards prosecutions of inter-male sex especially in the second half of the nineteenth century, appear at best ambiguous.

It is clear then that community attitudes towards sex between males offer a potentially fruitful avenue to pursue a fuller understanding of past attitudes towards inter-male sex. The gazette of inter-male sex committals can directly aid the location of any and all newspaper coverage of such cases – the value of which is demonstrated by Helen Smith’s remarkable findings of working-class attitudes towards inter-male sex.

A contribution to understating of the categories of laws used to criminalise inter-male sex.

This *Calendar* evidence in particular has proven a great boon in providing an accurate and longitudinal reading of the use of the buggery laws in the prosecution of inter-male sex that otherwise has largely escaped analysis. This in turn has provided the first county-wide reading that shows that for much of the second half of the nineteenth century, the rare use of the buggery laws was to target zoophilia related sexual behaviours. Only by the last decades of that century and the first decades of the twentieth century did the charge of buggery become reserved for inter-male sex.

Similarly, this study has provided the first parochial confirmation of the delayed take-up from the 1890s of the new offence of ‘gross indecency’, albeit still at a low rate. Further, the adoption and usage of gross indecency charges coincided with the greater singular use of the buggery charge against inter-male sexual behaviours.

The prosecution agencies of the Criminal Justice System were clearly tailoring charge sheets that selected out inter-male sex as behaviour and crime from other sexualised acts. However, whether the more singular use of the buggery law towards inter-male sex was a deliberate move or the product of the falling out of fashion of the difficult to prove buggery charge for the most ambiguous charge of gross indecency awaits further investigation.

Post-WW2 Western attitudes towards inter-male sex

This investigation points towards a marked increase in the prosecution of inter-male sex from World War Two onwards, which within wider Western context is not exceptional. As noted what is evident is that throughout the Anglo-Saxon and Gallic world, there was an increased *official* hostility towards inter-male sex during the mid-decades of the twentieth century. It is within the wider reading of the criminalisation of inter-male sex that the prosecution of inter-male sex can be better understood, and even the response by the British Parliament and government can be viewed as both being consistent and, with the setting-up of the Wolfenden Committee, exceptional.

What this longitudinal study has contribute to and encouraged is an understanding of the criminalisation of inter-male sex that is rooted in a more reliable and nuanced reading of the implementation of such laws. This reading contributes to a more authoritative insight into past attitudes towards criminalisation in general and

therefore the tabooed subject of inter-male sex. This thesis has therefore not simply provided a new and more accurate reading of criminalisation but that insight has also helped clarify and open-up questions and enquires. For example perhaps one of the more obvious questions posed, given the rarity of committals for much of the period 1850 – 1970, is the extent to which other, perhaps more powerful agencies were at work promoting what today might be called 'homophobia'?

Finally, this investigation argues that there was, a large distance between action and identity. That is, many of the males arrested and prosecuted, as noted in the review of the court depositions material, did not define or seemingly interpret their sexual behaviours. Indeed, a number rejected any attempt to project on to them a sexual label. That is, the link between sexual identity and sexual action is elective, not causal. Again, this endorses the reading of the study as an investigation of attitudes towards inter-male sex, which by definition only has at best a fragile relationship with any 'gay' label.

Appendix I (The Calendars of Prisoners)

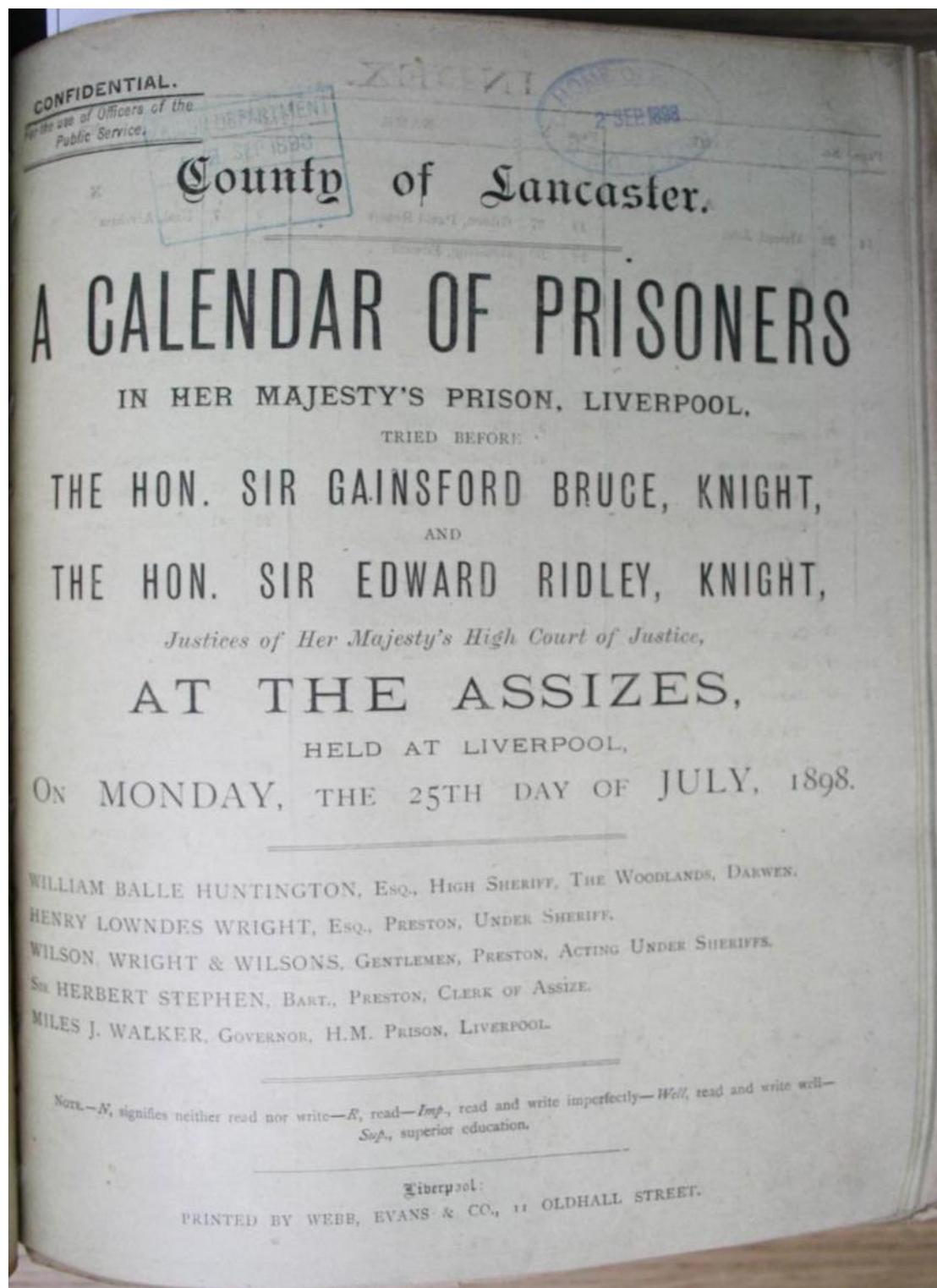


Figure 11: Standard Cover design and information for the Cover of Calendar of Prisoners, this for the Liverpool Assize held 25th July 1898

The practical criminalisation of inter-male sex 1850-1970: A Lancashire case study.

		IN HIS MAJESTY'S					PRISON, LIVERPOOL							
No.	NAME	Age	TRADE	Period of Imprisonment	Name and Address of Commencing Magistrate	Date of Commencement	Particulars of Offence or Offences as charged in the Indenture	When tried	Before whom tried	Termination of the Term	Particulars of Previous Convictions charged in the Indenture and proved in Court	Remarks as to Order of the Court	No.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
41	John Bradley B.M. Prison, Liverpool Barrister Peter Spanton, B.L. August, 1862, monthly 14 Days H.L. as John Bradley. B.M. Prison, Liverpool Barrister Peter Spanton, 23rd August, 1866, discharges 7 Days H.L. as John Bradley. Wagon Ferry Station, 14th January, 1866, monthly police committal 7 Calendar Months H.L. as John Bradley.	40	Gilber	1862-1866	Hon. Edward Green, Esq., 25, St. John's Street, Wigan-County	1862	A. Assault on the 15th February 1862, committal of 14 days to have (monthly) committal (monthly) Margaret Ellen Green, 1 and 2nd half for age of 14 years, such committal as to court and name of Magistrate John Green.	1st May 62	The Hon. Mr. Justice Wainwright (Chief)	Monthly	Calendar Months (not stated)	Calendar Months (not stated)	1	
42	George Hamilton (Discharged 6th March, 1862.)	34	Fireman	1862	Mag. W. Clark, Esq., 44, Market Street, Liverpool	1862	A. Liverpool, on the 21st February 1862, being male person, did unlawfully commit a criminal offence (indecent) with each other, in public.	1862	1862	Not stated	Not stated	To be discharged	2	
43	John Williams (Discharged 5th March, 1862.) B.M. Prison, Liverpool Liverpool City Sessions, 23rd June, 1862, 14 days and weekly 3 and 7 Days H.L. (monthly), as Frederick Collins.	25	Barman	1862	Mag. Dole	1862	Not stated	1862	1862	Not stated	Not stated	To be discharged	3	
44	Henry Fenwick Evans (Discharged on Conditional)	28	Labourer	1862	Mag. W. J. Stewart, Esq., 44, Market Street, Liverpool	1862	A. Liverpool, on the 21st February 1862, did unlawfully commit a criminal offence (indecent) with each other, in public.	1862	1862	Not stated	Not stated	Calendar Months (not stated)	4	
45	Francis Kelly B.M. Prison, Glasgow Glasgow Sheriff Court, 23rd September, 1861, 14 days for housebreaking, B. Days H.L. as William Tait. Glasgow Sheriff Court, 26th March, 1868, 14 days for housebreaking, B. Days H.L. as William Tait. Glasgow Sheriff Court, 25th January, 1869, housebreaking, 40th March, 3 Calendar Months H.L. as John Robertson. Glasgow Sheriff Court, 1st July, 1869, 14 days for housebreaking 7 Calendar Months H.L. as William Tait. Glasgow Sheriff Court, 22nd May, 1869, 14 days for Calendar Months H.L. as William Tait. Glasgow Sheriff Court, 23rd August, 1869, 14 days and weekly 3 Days (not stated) (not stated) as William Tait. Glasgow Sheriff Court, 23rd May, 1869, 14 days and weekly 3 Days (not stated) (not stated) as William Tait. B.M. Prison, Halifax Halifax Recorder's Court, 25th September, 1869, housebreaking, 15 Calendar Months H.L. as Francis Fenwick. (Discharged on Conditional)	28	Printer	1862	Mag. Tait	1862	A. Liverpool, on the 21st February 1862, did unlawfully commit a criminal offence (indecent) with each other, in public.	1862	1862	Not stated	Not stated	Calendar Months (not stated)	5	

Figure 2: Standard tabulated listing of each committal within the Calendar of Prisoners document.

Appendix II (The Lancashire Court Houses)

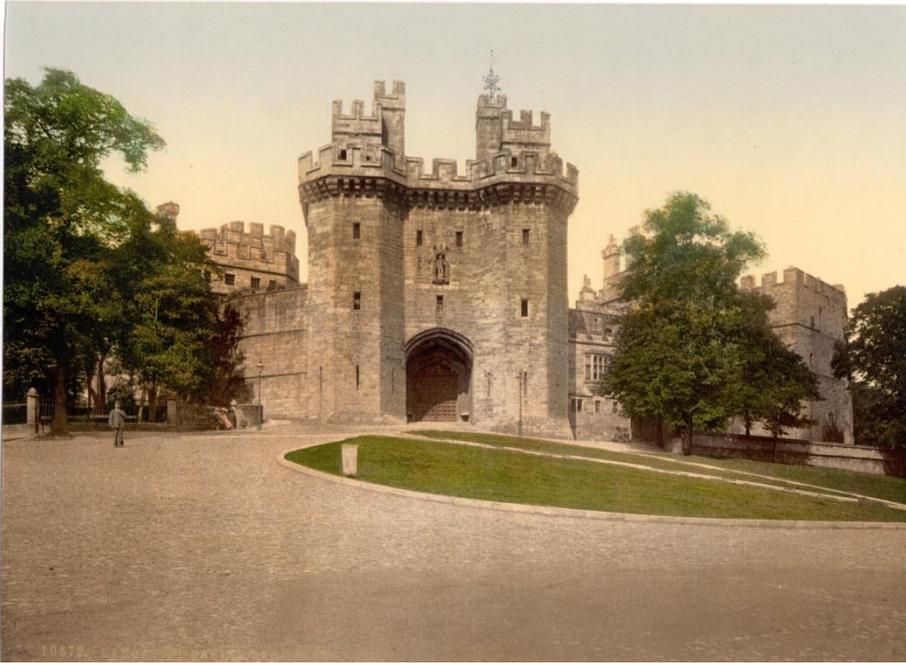


Figure 3 Lancaster Castle; home of the Lancaster Assize 1802-1972

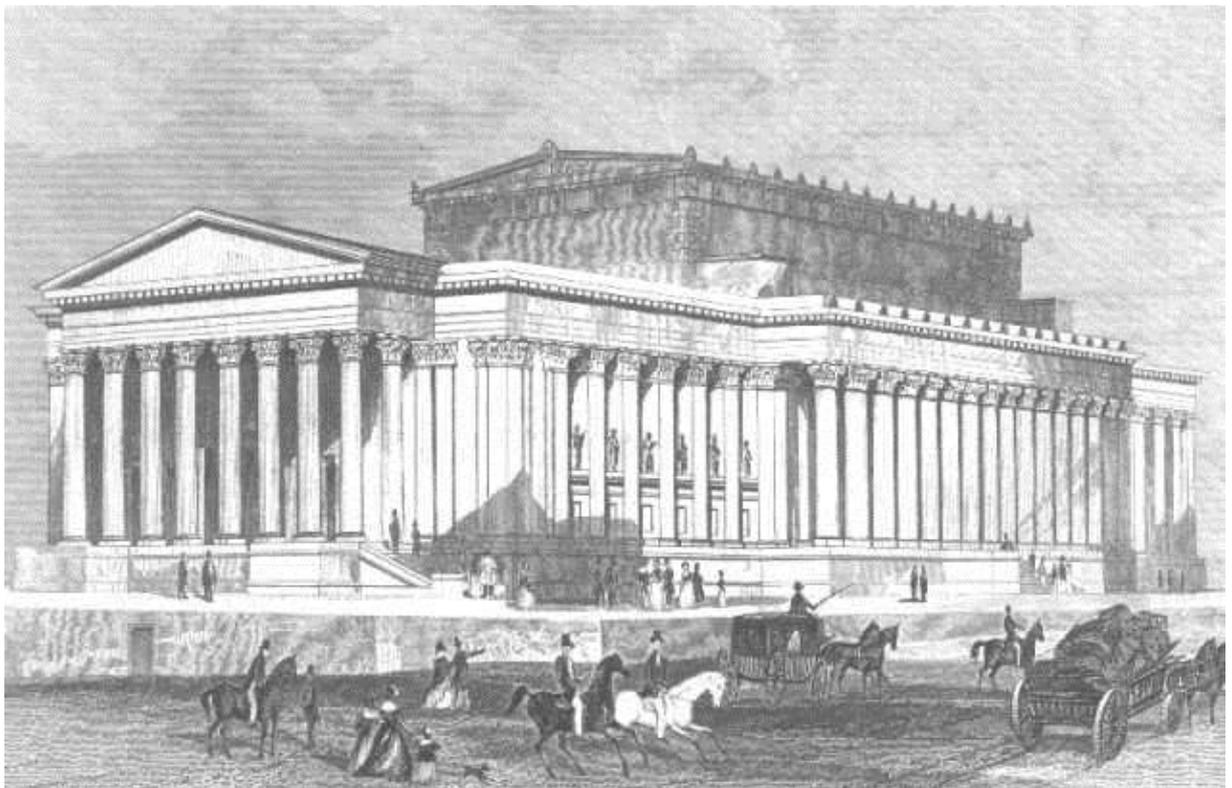


Figure 4: St George's Hall; home of the Liverpool Assize 1854-1984



Figure 5: Home of the Manchester Assizes 1864-1940



Figure 6: the Preston Sessions House 1903 -Present.

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GR55 QJC/07: (1848-1853).	GR55 QJC/07: (1848-1853).
GR55 QJC/08: (1854-1856).	GR55 QJC/08: (1854-1856).
GR55 QJC/09: (1857).	GR55 QJC/09: (1857).
GR55 QJC/10: (1861).	GR55 QJC/10: (1861).
GR55 QJC/12: (1838-1873).	GR55 QJC/12: (1838-1873).
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GR55 QJC/25: (1901).	GR55 QJC/25: (1901).
GR55 QJC/26-65: (1902-1941).	GR55 QJC/26-65: (1902-1941).
GR55 QJC/66a, 66b: (1942, Volume I & II).	GR55 QJC/66a, 66b: (1942, Volume I & II).
GR55 QJC/67a, 67b: (1943, Volume I & II,).	GR55 QJC/67a, 67b: (1943, Volume I & II,).

⁴⁶⁵ Key to Public Archives used: Archon Codes

Bolton Archives and Local Studies Service	...	...	...	...	BA	GR125
Cumbria Archive and Local Studies Centre, Barrow	...	...	...	...	CA	GR25
Greater Manchester County Record Office (with Manchester Archives).	...	...	...	...	GMC	GR124
Greater Manchester Police Museum & Archives	...	...	...	GMP	GR3256	
Lancashire Archives	...	...	...	...	LA	GR55
Liverpool City Libraries	...	...	...	...	LCA	GR1623
Manchester Archives and Local Studies	...	...	...	...	MALS	GR127
North West Sound Archive	NWSA	GR2989
The National Archives	NA	
Wigan Archives Service	WA	GR132

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GR55 QJC/96: West Derby Hundred (1968).	GR55 QJC/96: West Derby Hundred (1968).
GR55 QJC/95: (1968).	GR55 QJC/95: (1968).
GR55 QJC/97: Salford Hundred (1968)	GR55 QJC/97: Salford Hundred (1968)
GR55 QJC/98: Preston (1968).	GR55 QJC/98: Preston (1968).
GR55 QJC/99: Preston (1969).	GR55 QJC/99: Preston (1969).
GR55 QJC/100: Lancaster (1969).	GR55 QJC/100: Lancaster (1969).
GR55 QJC/101: West Derby Hundred (1969).	GR55 QJC/101: West Derby Hundred (1969).
GR55 QJC/102: Preston (1969).	GR55 QJC/102: Preston (1969).
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GR55 QJC/5/2: (1890-1891).	GR55 QJC/5/2: (1890-1891).
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GR55 QGP/4: (1903).

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NA HO 27/96: (1851)

NA HO27/100: (1852).

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NA HO27/108: (1854)

NA HO27/114: (1856).

NA HO27/123: (1859).

NA HO27/111: (1855).

NA HO27/117: (1857).

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NA HO27/129: (1861).

NA HO27/132: (1862).

NA HO27/135: (1863).

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NA HO 140/2; (1868).

NA HO 140/6; (1869).

NA HO 140/10; (1870,

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NA HO 140/26; (1874).	NA HO 140/177: (1897).	NA HO 140/360: (1920).
NA HO 140/30; (1875).	NA HO 140/185: (1898).	NA HO 140/336: (1921).
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NA HO 140/38; (1870).	NA HO 140/201: (1900).	NA HO 140/378: (1923).
NA HO 140/42; (1878).	NA HO 140/209: (1901).	NA HO 140/384: (1924).
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GR 124 Oldham QS: (Sept. 1955).	GR 124 Oldham QS: (November 1969, Box 2).
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Oral Testimonies

Allan Horsfall: (1927-2012) was a British gay rights campaigner and founder of the North West Committee for Homosexual Law Reform, which became the Campaign for Homosexual Equality. NAt Peter Tatchell described as '*one of the grandfathers of the gay rights movement in Britain.*' Interviewed 6th March 2011 & 18th July 2011.

Raymond Arthur Gosling (1939-2013) was an English broadcaster, journalist, author, and gay rights activist. Interviewed 12th April 2011 & 27th August 2011.

Manchester Police Officer 'A': provides commentary regarding his duties about the surveillance of gentlemen's public toilets in the 1970s included being poisoned in the roof space of such facilities spying on urinating males below for four hour shifts. Interviewed on 2nd March 2010. *In authors private collection*

Manchester Police Officer 'B': was part of large police 'raid' of a 'gay' sauna in the 1970s. Interviewed on 2nd March 2010. *In authors private collection*

Manchester Police Officer 'C': provided testimony of the contemporary reading of inter-male sex behaviours and the reactions to the 'respectable' and 'provocative' features of the emerging Manchester 'Gay Village' about Canal Street, in the later 1960s and 1970s. Interviewed on 2nd March 2010. *In authors private collection*

Manchester Police Officer 'D': speaks of his time as part of 'A' Division as a 'beat bobby' in the 1960s and beyond and the shifting perceptions towards the permissive society in the post-World War period. Interviewed on 2nd March 2010. *In authors private collection*

Manchester Police Officer 'E': a senior constable speaks candidly about his attitudes towards 'queers' and his experiences concerning the policing of inter-male sex behaviours in 1960s and 70s Manchester inner-city area. Interviewed on 2nd March 2010. *In authors private collection*

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