

Desire as Violation

Sexual Violence as a Social Crime in Early Modern English Court Records and Literature

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Abstract: This paper explores the definition of 'rape' as depicted through early modern English court records and literature, arguing that contemporary sources viewed the crime as one of primarily social origin and impact. Both accused perpetrators and alleged victims of sexual violence in this time used social defenses and critiqued the social reputation of their opposition in order to further their case. The court records archives from England's Old Bailey, formal central criminal court of London – and literature – Shakespeare's *The Rape of Lucrece* – under examination provide textual evidence portraying the ways in which social interactions and standings were intertwined with the public's judgment towards ones propensity to either *enact* or *experience* rape.

In early modern Europe, the precise definition of sexual crimes remained largely elusive as authorities attempted to place personally nuanced sexual violations into the confines of black-and-white legal, medical, and social systems. Lawyers, doctors, scholars, and other officials prioritized various aspects of the crime – including its criminal consequences, physical evidence, or religious and moral implications – in their individual works to understand the nature of such a transgression. Nonetheless, they largely agreed upon one aspect of sexual violence: it qualified as a primarily social – rather than personal, psychological, emotional, or physical – crime impacting various parties beyond the individual upon whom it was committed. As a reflection of this perception, mentions of the social status of both victims and perpetrators before and after an instance of sexual violence abound in early modern source material; these references could be utilized as either a way to argue for a defendant’s innocence on the basis of his superior social standing or to support the victim’s testimony by citing a loss of the social respect she once maintained as a result of this violation. In this paper, I argue that a comparison between public trial records from early modern England – specifically, the London Old Bailey proceedings beginning in 1674 – and Shakespeare’s 1594 work *The Rape of Lucrece* offers evidence for the conception of rape as a primarily social transgression. This is supported through the works’ suggestion that the ability to both rape and be raped was a consequence of social standing as well as their descriptions of the reverberations of rape throughout a victim’s broader community. These two source materials, though vastly different in style and intended audience, are particularly revealing of contemporary social and legal dynamics, as they provide perspectives from both the criminal, and legislative sphere and the common understanding of sexual violence and its consequences. Shakespeare’s piece offers a detailed account of a particular instance of sexual violation, while the Old Bailey database supplies myriad early modern examples of such phenomena and their various means of resolution, supplying a comparison between accounts within entertainment media and concrete case material.

Both the Old Bailey public records and Shakespeare’s piece contribute to general characterizations of what made a man more likely to rape in addition to which traits rendered a woman more ‘rapable’ in early modern England. These conceptions emphasize the social nature of sexual violence, as they crafted a clear link between one’s prior social standing and an accompanying vulnerability to rape or be raped. In the Old Bailey records, for example, men found guilty of rape are frequently portrayed as inherently evil or socially inferior individuals; thus, their sexual crime is depicted not as an affront to a previously glossy reputation, but as a natural extension of their prior behaviors and place within society. An emphasis on descriptions of defendants as “lusty” men known for “drinking sometimes to excessive [sic]” or who are particularly prone to engaging in “lewdness or debauchery” in the records suggests that the public understood rape as a crime carried out by those previously recognized for immorality and a lowly social status (*Old Bailey Proceedings*, September 1677, 20 January 1686, 25 February 1685, trial 16770906, OA16860120, 16850225). This also had the effect of separating men viewed as ‘capable’ of rape from more socially respectable classes of society; as I will later argue, this presented a challenge when a woman claimed that a man of reputable social standing

had committed an act of sexual violence against her. Similarly, in some cases, establishing a low social evaluation of an accused perpetrator could serve as adequate reason for a judge to declare him guilty independent of the victim's testimony, proving the immense credibility social status held in determining one's ability to commit a sexual crime. The unequal weighting of victim testimony compared to the accused's own prior social standing extended into Old Bailey records and reflects the power of establishing a man as capable of rape by virtue of his social standing in persuading judges to declare a guilty verdict.

Likewise, in *The Rape of Lucrece*, the lustful characteristics of Tarquin, who ultimately commits rape upon the titular character, are consistently emphasized and condemned; yet, this negative portrayal of the man's sexual ills is not utilized merely to criticize the damage he imposes upon his victim, but rather to depict the crime as a result of Tarquin's co-optation by transgressive desire, thus reconciling the ability to rape with his previously reputable social status. Shakespeare describes the "lustful lord" Tarquin as "bewitch'd with lust's foul charm" and controlled "by brain-sick rude desire," implying that he does not accurately represent the entire social class of soldiers and noblemen but is instead exploited by an externally-imposed immorality that contributes to an increased propensity to commit sexual violence (Shakespeare, 1594, lines 169-175). This language depicts lust as a distinct entity capable of exacting authority over Tarquin's actions by 'bewitching' his conscience, thus rendering Tarquin uniquely favored to commit rape yet simultaneously removing a portion of the impetus to do so from his social identification as a lord and placing it onto an independent force, improving the social conception of the lordship more broadly. Shakespeare's rhetoric concedes that even the highest social classes could be victims of imposed lustful influences, yet the suggestion that Tarquin's crime was a result of this co-opted conscience rather than his own inherent nature protects the intrinsic social reputation of the lordship. Ultimately, the piece strengthens the perception of social attributes as decisive factors in one's tendency to commit sexual violence by depicting Tarquin as a rare, explainable exception to a norm in which lustfulness and social reputability are largely irreconcilable.

Conversely, the source material also crafts an opposing archetypal image of the socially honorable man who is intrinsically immune from rape accusations, despite what an examination of his behaviors may indicate. Just as establishing a man's low social honor could serve as a more adequate reason to find him guilty of rape than could a woman's testimony of his crime, the reverse also remained true; a high social reputation could overpower the conflicting testimony of a man's alleged victim. In one Old Bailey case from 1677, the records do not deny the woman's claim that "by violence" and "against her consent" the accused "had his will of her," yet this man is ultimately acquitted, partially due to him "having a good repute among his neighbours" (*OBP*, 6 September 1677, trial 16770906). This reference to reputation intertwines the capacity to rape with one's social standing, insinuating that an exemplary social influence is enough to overpower accusations of sexual wrongdoing, whether or not those accusations' credibility is fully examined. An additional case that took place in 1685 remarks that as the accused perpetrator was able to bring "[diverse] People to [justify] his used behaviour and

modest Carriage all along,” his social standing ultimately “over ballanced [sic]” victim and prosecutor testimonies and led to not only an acquittal, but the conclusion that the victim, a five-year-old girl, had used the rape accusation “as a design to get money out of the Prisoner” (*OBP*, 25 February 1685, trial 16850225). Such rhetoric indicates that determining guilt in early modern rape trials was not merely a question of if sexual violence had occurred, but a consideration of whether a perpetrator’s social standing superseded the credibility of the accuser. Therefore, even men who could otherwise be proven to have committed a sexual crime may have been acquitted because their social reputation rendered these acts incompatible with their prior nature. For this reason, victims “often sought a person with authority,” like a master of the house, “to help them denounce their attacker,” particularly if the victim was, herself, from a lowly social class and the perpetrator enjoyed a greater level of social repute (Steinberg, 2020, p. 9). Additional Old Bailey cases describe a victim’s claims of experiencing bodily damage as a result of sexual violence as failing to constitute “possitive [sic] Evidence of a Rape, under those circumstances the Law requires it,” insinuating that victim testimony alone, without social corroboration, may have been granted minimal credibility (*OBP*, 12 May 1687, trial t16870512-34). Social evidence communicating a man’s inability to carry out rape thus often received equivalent or greater consideration than more telling, tangible forms of proof.

In addition to drawing on social circumstances to produce archetypes of men who were more or less likely to be perceived as capable of committing rape, the Old Bailey records and *The Rape of Lucrece* also contribute to conceptions of various women’s ‘rapability.’ This spectrum refers not to the theoretical possibility that the physical act of forced sexual intercourse could be carried out against a woman, but rather to whether such an act qualified as an affront to social status and thus fit the popular definition of rape at the time. In the case of the Old Bailey records, it appears that in order to reach this threshold, the woman must first have demonstrated that she once had adequate social honor – such as prior virginity – that could have been diminished by sexual violence. Failure to establish this initial honorability often meant a guilty verdict was highly unlikely to be achieved. Even within testimony concerning a sexual crime, women “had a strong motive to pass over sexual details” in order to prevent tarnishing their “reputation” or “displaying knowledge that showed a lack of modesty” (Steinberg, 2020, p. 14). For many women, successful testimony required a meticulous arrangement of details and rhetoric that emphasized her own social reputation while simultaneously proving her loss of such honorability without associating herself with an inherent propensity for sexual transgression. In this sense, a rape trial represented the point at which “the *inner* act of violence is thus turned into a public spectacle, its victim into an actor” where her “ability to perform according to a script determines the successfulness of the legal appeal” (Pallotti, 2013, p. 219). That such legal proceedings may be characterized as a type of performance underscores their socially consequential nature. As a further reflection of the social characteristics of these cases, men accused of rape often employed witnesses to attest to a woman’s social inferiority, emphasizing that she came from “a dissolute Life, and of no good Name, having been a Companion of Idle and Loose Fellows” or that, despite her individual reputation, her “Parents were of no good

Repute,” according to Old Bailey cases from 1687 and 1693, respectively (*OBP*, 7 December 1687, 26 April 1693, trial 16871207, t16930426-86). That in each of these cases the man was acquitted portrays the gravity that a woman’s ‘unrapability’ as a consequence of low social regard held in determining the possibility – or lack thereof – that rape had occurred. Attacks on a woman’s ability to fulfill her expected domestic social duties could also contribute to her status as a less ‘rapable’ and credible victim; in a case from 1689, the accused’s witnesses described “that the Woman kept a Bad House, of no good Credit, and that several Evil Deeds were done there,” and the man was ultimately found not guilty despite the presence of additional evidence that “corroborated” the woman’s account that he had raped her (*OBP*, 11 December 1689, trial 16891211). Evidently, a woman’s prior social disrepute, whether based on her individual nature, the status of her friends and family, or her noncompliance with gendered social obligations could significantly weaken the applicability of the contemporary legal understanding of rape to her case; this ultimately strengthens the idea that such an understanding was rooted in an affront to social standing.

While trial records from this era produce an image of the woman who may have been unable to claim the occurrence of rape based on her social characteristics, *The Rape of Lucrece*, alternatively, uses the character of Lucrece to represent the most extreme form of ‘rapability’ that existed within women. From the opening of the play, Lucrece is depicted as the archetypally pure wifely figure, an identity which her husband Collatine consistently flaunts as he “[extolls] the incomparable chastity of his wife” (Shakespeare, 1594, line 0.21). This ideal of purity and grace is so omnipresent throughout the work that, as one scholar writes, “‘Lucrece’ becomes a metonym for chastity” (Quay, 1995, 5). Lucrece’s name is rarely written without a preceding adjective that describes her as “modest” or “holy-thoughted,” which linguistically cements the inseparability of the woman from her moral glory (Shakespeare, 1594, lines 123, 384). The work suggests that these defining characteristics ultimately contribute to Lucrece’s heightened vulnerability to rape; as her social value increases in tandem with greater chastity, she possesses much more social power to lose from a potential sexual violation. Despite an assumption of readers’ knowledge that Lucrece, a married woman, has likely engaged in sexual activity with Collatine, her rape is nonetheless depicted as engendering the same momentous loss as if she were previously a virgin. For Tarquin, the rape qualifies as “defloration,” a great detriment to Lucrece’s social standing, not in spite, but “because of the perfect chastity of Lucrece,” for “such chastity in the matron bequeaths a kind of virginity, metaphorically regenerating the hymen” (Baines, 1998, p. 85). Thus, it is precisely Lucrece’s prior association with supreme chastity that elevates the perceived gravity of the crime committed against her, which traces a link between her initial social characterization and her vulnerability to the social consequences of rape – namely, its theft of virginity and wifely potential. In the early modern legal realm, a woman’s prior virginity increased “the quality of the loss” incurred as a result of sexual violence, and though Lucrece was likely not a virgin at the time of her rape in the literal sense, her social representation to public audiences associated her with a symbolic, untouchable virginity (Pallotti, 2013, 216). Henry de Bracton, an English legal theorist of the Middle Ages whose influence

persisted into the early modern period, claimed that “to defile a virgin and to lie with one defiled [are different deeds],” and as Tarquin’s crime was categorized under the former, the social consequences gained increased severity (Baines, 1998, p. 71). Similarly, Shakespeare writes that “beauty” has the ability to “persuade the eyes of men” and questions why Collatine shares descriptions of his virtuous wife which “he should keep unknown,” insinuating that Lucrece’s chastity not only increases her potential social power to be lost by rape but also that these exemplary traits claim a portion of the blame for provoking Tarquin to act on his attraction (1594, lines 29-34). This is reminiscent of the aforementioned depictions of Tarquin as “bewitch’d” by lust, which isolates him from his honorable social identity – in order to produce a social ‘justification’ for his act – and diminish his autonomy in carrying out the rape in order to protect the honorability of the class of noblemen.

The severity of this rape is acutely understood by Lucrece, who describes a complete loss of her sense of self and presentation to others as a consequence of her destroyed chastity. The “virtuous monument” she once symbolized for all Roman women transforms into what she describes as “poor wasting monuments of lasting moans,” while she begins to dress “in mourning black” as a reflection of her symbolic grief for a lost piece of her identity (Shakespeare, 1594, lines 391, 798, 1587). Evidently, the image of model purity around which Lucrece’s social identity was once meticulously fashioned no longer remains intact following her sexual violation, and this violation itself largely occurred, as Shakespeare suggests, due to this same exemplary righteousness. Lucrece’s own dialogue and behaviors lend support to the idea of her purity contributing to an enhanced ‘rapability’; as she mourns an essential piece of her characterization to external audiences due to sexual violation, she aligns with the conception of rape as a crime of social motives and consequences. Lucrece’s self and social identities are so utterly destroyed following her rape that the decision “to live on casts doubt on her honor, her person, her symbolic place,” and since Lucrece can no longer exist as the honorable self she once was, she chooses to end her life completely rather than continue to live as a foreign, unchaste woman (Belsey, 2001, p. 333). Lucrece possesses the prior social power necessary to argue that a major loss in social standing has occurred as a result of rape; this contrasts with the women depicted in early modern trial records who often lost their cases as a result of a lowly social status that rendered the phenomenon of ‘rape’ impossible to be committed upon their bodies and identities, no matter the physical acts which may have occurred.

Finally, beyond constructing spectrums of individuals’ capability to rape or be raped, early modern source materials exhibit references to additional phenomena such as marriage, financial support, and property transfers – essential social interactions – as key factors in the initiation and resolution of rape cases. Many rape cases were not brought to trial immediately after the crime was alleged to have occurred; this gap of time could have resulted when the parties involved waited to determine if a marriage or other internal resolution could be arranged before filing a lawsuit. If the families of the perpetrator and the victim could reconcile with a marriage between the two, the now-unchaste woman would not be forced to endure the challenge of finding a socially and economically advantageous marriage partner while sexually ‘impure’

and thus largely undesirable. This is reminiscent of the early modern phenomenon of claiming seduction by promise of marriage – a claim which could, if successful, effectively “restore the woman’s honor and her status as marriageable” by establishing that she only engaged in sexual activity as a result of ultimately moral intentions (Dyer, 2003, p. 444). An Old Bailey case from 1678 remarks, regarding the perpetrator of a rape towards his victim, “that he gave her money afterwards,” suggesting an additional attempt towards resolving a case of sexual violence through financial support, which could maintain a woman’s social standing through bolstering her marriage dowry (*OBP*, 11 December 1678, trial t16781211e-2). This payment could also dissuade a woman from filing a rape case, as the accused perpetrator may portray the interaction as consensual, paid sex rather than a forced violation. Not only does the use of marriage as a resolution to sexual crimes portrays the social nature of such transgressions, but it also reflects how these crimes implicated entire families in a web of threatened social honor.

The Rape of Lucrece does not exemplify the same concerns over marriage, as Lucrece is married to Collatine before the rape occurs, yet it similarly portrays rape as a thread within a broader tangle of social and political dynamics. As Roman soldiers in the 500s BC, Tarquin and Collatine not only fight *with* one another but also *against* each other as they compete to gain social and political roles within a rapidly transforming society. Tarquin’s decision to rape Lucrece is likened to “high treason,” reflecting the broader political context within the rhetoric associated with sexual crime (Shakespeare, 1594, line 369). Likewise, Lucrece’s breasts, from Tarquin’s perspective, are described as “ivory globes” reminiscent of “a pair of maiden worlds unconquered,” which represents a transference of the language of politics, territorial conquering, and competition between masculine ambitions to Lucrece’s physicality (Shakespeare, 1594, lines 407-408). That Tarquin tells Lucrece that he has “come to scale thy never-conquer’d fort” similarly places her chastity within the context of land to be claimed, rendering her body a symbol of conquerance and ownership (Shakespeare, 1594, lines 481-482). Evidently, “the power struggle between and among men,” symbolized by Lucrece’s body as an opportunity for territorial conquest, constitutes what is “always at issue in the poem” (Baines, 1998, p. 85). Indeed, by committing suicide, Lucrece reflects this same dynamic, remaining “within the structure of militaristic conquest and masculine conflict that motivated the rape in the first place” by prompting her own death (Belsey, 2001, p. 327). The intertwining of the rape within broader political conflicts underscores the inseparability of sexual violence from social circumstances and hierarchies; just as Old Bailey records describe rape cases as a platform for the settlement of social conflict, Lucrece’s rape serves as a progression within a national social and political context. The violation against Lucrece thus stands as a threat towards a much greater collective, as the “rape is seen to be not a crime against an individual, but an offence against a civilisation” (Smith, 2005, p. 25). Believing her social degradation to be unable to be rectified, Lucrece claims that “if I die, my honor lives in thee; but if I live, thou livest in my defame” (Shakespeare, 1594, lines 1032-1033). Her choice to opt for the former represents her awareness of the social implications entangled within sexual violence and the broader context within which her rape falls. Such a decision emphasizes the capability of rape to implicate a vast

network of individuals within literal and figurative battles for honor, control, and conqurance; the stretch of such a crime reaches far beyond the individual upon which it is perpetrated.

Evidently, the Old Bailey trial records and Shakespeare's *The Rape of Lucrece* provide vast textual support for the representation of sexual violence in the early modern period as a crime of both social roots and social consequences. Through the production of a spectrum of a man's capacity to rape and a woman's ability to claim having experienced rape within the public, it is clear that individuals' place within social hierarchies impacted society's views towards their sexual propensities and potential for victimization. Yet, sexual crimes also extended far beyond the singular victim and perpetrator; as the source material exhibits, decisions to initiate trials, prosecution and defense strategies, and perceptions of threatened honorability involved broad familial and community webs. While *The Rape of Lucrece* tells the tale of just one case of sexual violence set long before the period in which it was written, its underlying meanings align closely with the perceptions of rape that took hold in the early modern English society in which Shakespeare lived and wrote, and the Old Bailey records prove the contemporary manifestations of these social attitudes within legal proceedings and case resolutions. These considerations underscore the immense importance of social honor and credibility in the early modern period and the consequences that could result in tandem with their diminishing; as the sources underscore, individuals and communities were often willing to perform whatever narratives were necessary in order to restore the honor of both their own generation and that of all potential progeny.

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