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See table of contents

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Article abstract

This paper explores the ambivalent attitudes of the criminal justice system, and indeed of society as a whole, towards crimes of sexual violence in Montreal from 1803-43. Nineteenth-century society acknowledged that rape was a heinous crime deserving of harsh punishment, yet the courts were confronted with a much murkier reality in which drastically different and gendered accounts of the alleged crime were presented by the accuser, the accused, and the witnesses. Female complainants defined rape in terms of personal violation; the accused conceived of it in the context of negotiation of their sexual access to women; judges and juries conceptualized rape in terms of dominant ideas about appropriate gender relations; and medical doctors understood rape in terms of bodily marks and physical signs. The criminal court for the District of Montreal becomes a microcosm in which societal ideas about relationships between men and women were articulated, constructed, resisted, and imposed.

"A Most Detestable Crime": Gender Identities and Sexual Violence in the District of Montreal, 1803-1843

SANDY RAMOS

In October of 1842, Rose MacManus was hired as a live-in servant to work in the home of prosperous Montreal merchant Alexander MacDonald. One day in November, while MacManus was busy stocking wood for the stove in the dining room, MacDonald suddenly appeared behind her. He grabbed her by the hand, pulled her into his bedroom, and then threw her down on the bed. MacManus cried for help, but no one came as Mrs. MacDonald and the children were out visiting. He covered her mouth with his arm and, as MacManus later recalled, they struggled,

> she thinks for half an hour – when she became weak and overpowered, and he at last affected his purpose, that of violating her person against her will. He afterwards detained her in the room and told her that if she opened her lips to any one he would surely take her life... MacDonald then told her that he would give her ten dollars – and that she would never want while she lived, if she promised not to reveal what he had done. She rushed out of the room and got out of the house onto the street – her hair all in disorder, her gown all unhooked – and before she had gone far she met with John Loincer the Constable of Police, to whom she immediately told what happened.[1]

In a sworn statement Constable Loincer corroborated MacManus's account of the incident by testifying that he had met her on the street with her hair and dress in disarray, and that she told him MacDonald had raped her. Loincer immediately accompanied MacManus to the Police Magistrate to lodge her complaint. MacDonald was promptly arrested that very day.

Initially, MacManus' account of rape was believed by the authorities, as evinced by the Constable's sympathetic reaction and MacDonald's swift arrest. Here we have a young single woman, a servant, acting without the protection of a patriarch (be it father or husband), using an all-male criminal justice system to punish the man who had allegedly sexually assaulted her. On the surface,

1 Case Files of the Court of King's Bench of the District of Montreal, Archives nationales du Québec à Montréal, TL 19 S1 SS11, Régistres des Procès Verbaux, (hereafter CKB/CQB), Queen vs. Alexander MacDonald, November 1842.

the criminal justice system indeed appeared to be the "impartial defender of the public, including women, against predatorial criminals."[2] According to the statutes of Lower Canada, a woman's word was sufficient evidence to convict a man in cases of rape and of assault with intent to ravish. Further, the harsh penalty ascribed to crimes of sexual violence reinforced society's condemnation of this abhorrent act, as rape was a capital offence. The timely reaction of Constable Loincer ostensibly reinforced the notion of the law as the avenger of the innocent. However, when the case of the Queen vs. Alexander MacDonald came to trial, the twenty-four men of the Grand Jury impaneled to hear the evidence returned no bill of indictment. The case was dismissed for lack of evidence, despite the corroborating testimony of John Loincer. MacDonald was released from jail a free man.

The case of Rose MacManus illustrates the ambivalent attitudes of the criminal justice system, and indeed of society as a whole, towards crimes of sexual violence in early nineteenth-century Lower Canada. Few would dispute the idea that rape was a heinous crime deserving of harsh punishment; yet when cases of sexual violence came before the courts, the judge and jury were confronted with a much murkier reality in which drastically different and gendered accounts of the alleged crime were presented by the accuser, the accused, and the witnesses. The manner in which rape was defined or understood differed dramatically depending on which perspective one considers. The records of the Court of King's/Queen's Bench from 1803 to 1843 reveal the clash of perspectives on the issue.[3] Female complainants defined rape in terms of personal violation; the accused conceived of it in the context of negotiation of their sexual access to women; judges and juries conceptualized rape in terms of dominant ideas about appropriate gender relations; and lastly, medical doctors, as expert witnesses, brought their profession's distinctive outlook into the court and understood rape in terms of bodily marks and physical signs. Thus, the criminal court for the District of Montreal becomes a veritable microcosm in which societal ideas about relationships between men and women were articulated, constructed, resisted, and imposed – sometimes simultaneously. It is this dis-

2 Donald Fyson, "Women as Complainants Before the Justices of the Peace in the District of Montreal, 1779-1830" (1996), 2. <http://www.fl.ulaval.ca/hst/profs/Dfyson/WomComp.htm>

3 This paper is drawn from research for my Master's dissertation,"'Against Her Will and Without Her Consent': Women, Sexual Crimes and the Law in the District of Montreal, 1803-1843," (M.A., Concordia University, 1996). All the cases discussed here are from the Court of King's/Queen's Bench as this was the court that dealt with the most serious criminal offences, such as rape and murder. The selection of the period 1803 to 1843 was largely dictated by the availability of the records at the Archives nationales du Québec à Montréal, which had only archived the documents of the court of King's/Queen's Bench up to 1843. However, for my doctoral dissertation I have gathered some 300 cases drawn from the Court of King's/Queen's Bench, Court of Quarter Sessions and Court of Special Sessions from 1803-1870.

course between these various actors, rather than points of law or conviction rates, that is the focus of this paper.

Women who brought a charge of sexual assault to court were often bitterly disappointed by the criminal justice system. While judges and juries "explicitly asserted that it was their task to defend both the law and an unwritten code of legal chivalry according to which virtuous women were to be protected from evil men,"[4] the evidence for the District of Montreal shows that the harshness of rape legislation was greatly tempered when it was applied in courts. Of the 111 women who brought forth a charge of sexual violence to the Court of King (or Queen's) Bench between 1803 and 1843, eighty-five women's accounts were disbelieved at various stages of the proceedings. Only five men were ever found guilty of rape and eleven of assault with intent to ravish (for a detailed breakdown of the cases, see Table I and II).

Table I
Outcome of Rape Cases in the District of Montreal, 1803-43[5]

Total number of Rape Cases	63
Convictions	5
Not Guilty	14
True Bill – No Resolution	7
No Bill	23
No Resolution/*Noli Prosequi*	14
Charge Reduced	11
Conviction on Lesser Charge	4

Table II
Outcome of Attempted Rape Cases in the District of Montreal, 1803-43

Total Attempted Rape Cases	48
Convictions	11
Not Guilty	15
True Bill – No Resolution	4
No Bill	13
No Resolution/*Noli Prosequi*	5

4 Angus McLaren, *The Trials of Masculinity: Policing Sexual Boundaries, 1870-1930* (Chicago: University of Chicago Press, 1997), 59.

5 Tables I and II demonstrate that women's accounts of sexual violence were infrequently believed by the Courts. Indeed, of the 111 cases of rape or assault with intent to rape in Montreal during this forty-year period, eighty-five cases were dismissed at some point during the proceedings before a verdict was ever rendered.

Given such slim chances of obtaining a conviction, the motivation for, and purpose of, pursuing a charge of sexual violence must have been more subtle and more complex than merely "seeing justice done." Although the sources are never explicit in detailing why women decided to press charges, some inferences can nevertheless be made. Undoubtedly, many looked to the criminal justice system to redress the egregious injustice that had allegedly been done to them, but for others the process seemed to be more about personal vindication. Women pressed charges of sexual violence not only for revenge or justice, but also to send a public message to the community that they had been wronged. Of course, not all the women who made accusations were telling the "truth"[6] and other women had more practical reasons to press charges, such as obtaining monetary compensation or restoring a sullied reputation. However, the point is to highlight the diverse ways in which women tried to manipulate the all-male judicial system to their advantage, with various degrees of success and integrity.

Montreal women were not strangers to the civil and criminal courts of the district, representing between twenty-five and thirty percent of all the complainants that appeared before the justices of the peace.[7] Indeed, Mary Anne Poutanen, Kathryn Harvey, and Donald Fyson have all demonstrated that in the nineteenth century "prostitutes, battered wives, and victims of sexual aggression, all undoubtedly victims of a patriarchal society, were far from passive in their contacts with a criminal justice system that was biassed against them."[8] Women used the legal system as a forum in which various types of interpersonal disputes – from slander to assault – were aired out and resolved. Yet while women showed some degree of agency, when they appeared before the courts, they were necessarily confronted by an "inherently gendered institution: the justices, the clerks and other officials, the constables and bailiffs, the members

6 In fact, some women lied outright as a case from 1856 demonstrates. Bridget Hughes conspired with her father and his lawyer to press charges of rape against John Gunn. Gunn and Hughes were to be married, but bowing to familial pressure, Gunn broke off the engagement. The Hughes engineered a false accusation of rape to coerce Gunn to marry Bridget in exchange for dropping the charges. Bridget eventually confessed to the scheme and the charges were dropped. It is unclear if any charges were brought against her or her father. (CQB, Q vs. John Gunn, June 1856). However of the 300 case files from all the criminal courts of Montreal from 1803 to1870, I have only found two confirmed instances of false accusations.

7 Donald Fyson, "Women as Complainants," 2.

8 Ibid.. For more on women's agency in the courts of the district of Montreal, see: Mary Anne Poutanen, "Reflection of Montreal Prostitution in the Records of the Lower Courts, 1810-1842," in *Class, Gender and the Law in Eighteenth and Nineteenth Century Quebec: Sources and Perspectives*, eds. Donald Fyson, Colin Coates, and Kathryn Harvey (Montreal: Montreal History Group, 1993), 99-125; and Kathryn Harvey, "Amazons and Victims: Resisting Wife-Abuse in Working-class Montreal, 1869-1879," *Journal of the Canadian Historical Association* 2 (1991): 131-148.

of the jury, the attorneys, all were men; the laws and the law books were written by men: and thus when a woman ventured into court, or even a justice of the peace to lodge a complaint, she was entering an essentially masculine space."[9]

Despite the obvious obstacles that stood in their way, women like Rose MacManus "seemed quite willing to enter the public sphere of the legal system in order to challenge those who had wronged them."[10] The procedure for pursuing a criminal case for rape or sexual assault was relatively straightforward. The initial complaint was heard by a justice of the peace who performed the preliminary steps in most criminal cases. The justices were at the point of contact between the general population and the criminal justice system. Justices heard complaints, issued warrants or summonses on the merits of the complaint, examined defendants and witnesses brought before them, and determined the course of the defendant's criminal process.[11] The accuser was asked to make a deposition, essentially a sworn statement that described her version of the crime, like the one by MacManus quoted earlier.

If the accused was arrested, a preliminary hearing was held before a justice of the peace. If the accused was committed to stand trial, a grand jury consisting of twenty-four men was impaneled to hear the initial evidence and decide whether or not an indictment would be laid and a trial held. At this point, the grand jury had various options as to the course of a charge. They could reject the bill of indictment by returning a decision of "No bill," whereby ruling that the evidence did not warrant a trial. Alternatively, if the grand jury found sufficient evidence to merit a trial, they passed a "True bill" of indictment and sent the case along to be decided by a trial jury. The trial jury consisted of twelve men who heard the evidence and decided the outcome of the case. Beyond returning a verdict of guilty or not guilty, the trial jury had a range of other possibilities: to "dismiss a true bill with nothing further" before a verdict was ever delivered; to file a motion of *noli prosequi*, denoting that the accused would not proceed any further with the criminal trial; or to pass a motion for *ignoramus*, meaning a case was rejected due to lack of evidence before the trial commenced.[12]

While justices of the peace, grand and trial juries, and judges swore oaths to be impartial defenders of the law, they were nevertheless a product of their social milieu and evaluated the men and women who appeared before them in terms of their own bourgeois values of respectability and good character. As

9 Donald Fyson, "Women as Complainants," 2.

10 Ibid., 14.

11 Donald Fyson, "Criminal Justice, Civil Society, and the Local State: The Justices of the Peace in the District of Montreal, 1764-1830" (Ph.D., Université de Montréal, 1995), 34.

12 Ibid., 82.

demonstrated by historian Donald Fyson, what distinguished these men "above all from their neighbours (apart from the even more obvious fact that they were all men) was not their language or their culture, but their social place of prominence within the colony."[13] Further, "the men who acted as magistrates in Montreal were, virtually without exception, drawn from the colony's elites: almost all were merchants, landowners, or professionals, both private and government."[14] As such, these men sought ways to differentiate themselves from other classes by emphasizing their gentility and respectability. Dominant nineteenth-century ideologies about appropriate gender roles were embraced by the middling and upper classes (to which judge and juries belonged), but they were also emulated and internalized by, as well as applied to, various other social groups. Indeed, the men and women who appeared before the criminal courts for the District of Montreal often created narratives that incorporated many of the dominant gender ideals, in which women contrived to make themselves appear pure and chaste, and men portrayed themselves as hard working and honest. In this manner, both the accuser and accused tried to signal to the court that while they may have lacked the necessary class accoutrements (see Table III), they nevertheless shared with the bourgeoisie a sense of respectability and hence deserved to be believed.

Table III
Social Rank of the Accuser (or Father/Husband) and of the Accused[15]

Rank	Accuser	Accused
Elite: Merchants, lawyers etc.	3	4
Middling: Shopkeepers, Artisans etc.	8	11
Farmers	3	6
Labourers/Skilled Workers	17	11
Not Disclosed	18	14

A number of historians have sought to understand the meaning of sexual violence in patriarchal societies. Among other things, they have investigated such issues as the nature and application of rape laws and the gendered notions of "good" and "bad" character. Anna Clark, Shani D'Cruze, Karen Dubinsky, and Carolyn Strange conceptualised rape as a phenomenon firmly entrenched

13 Donald Fyson, "Local Judiciary, Local Power and the Local State: The Justices of The Peace in Montreal, 1764-1830" (1997), 7. <http://www.fl.ulaval.ca/hst/profs/Dfyson/LocalJudiciary.htm>

14 Ibid.

15 Table III shows that most of the men and women who appeared before the court were not members of the social elite. However, it is my contention that both accused and accuser used dominant notions of gendered behaviour to construct their narratives in order to sway judges and juries in their favour.

in the male oppression of women.[16] These historians asserted that sexual violence was one way of appropriating or consolidating power within gender relations and that women's agency was central to our understanding of rape. They have identified a male culture of violence in an historically specific setting and have located sexual violence within the wider context of violence against women. Sexual violence was not the manifestation of unbridled male sexuality nor was it the necessary by-product of patriarchal domination, as argued by earlier historians.[17] Rather, the recent historiography presents sexual violence as a much more ordinary occurrence and conceptualises sexuality as the setting for the expression and negotiation of uneven gender relations. My own project aligns itself with the recent historiography, but moves the analysis beyond the two individuals concerned in each case to try and understand the multiple discourses – including judicial, medical, and societal – that informed nineteenth-century notions of sexual violence.

One of the pivotal insights that emerges from the historiography and from the evidence for the District of Montreal is the centrality of "character" in sexual violence cases. Concern about appropriate expressions of femininity and masculinity was at the core of sexual violence trials. According to early-nineteenth century sensibilities, the defining qualities of femininity were beauty, chastity, modesty, and subservience. Women had to embody respectability in all aspects of their lives and in cases of sexual violence a woman's character was the crucial factor in determining the outcome. Although character was a malleable concept, Montrealers intuitively knew what types of behaviour fell outside the preserves of respectability. This idea is perfectly captured in John Moritz's affidavit in support of Louis Duteau who was accused of attempted rape against Margaret Bouilli in 1828. Moritz, a schoolmaster, affirmed:

> Qu'il connaît Margaret Bouilli, qui est êxtremement laide et d'un extérieur qui n'est point appétissant mais tout au contraire... que Margaret Bouilli est dans

16 Anna Clark, *Women's Silence, Men's Violence: Sexual Assault in England 1770-1845* (London: Pandora Press, 1987); Shani D'Cruze, *Crimes of Outrage: Sex, Violence and Victorian Working Women* (Chicago: Northern Illinois University Press, 1998); Karen Dubinsky, *Improper Advances: Rape and Heterosexual Conflict Ontario, 1880-1929* (Chicago: University of Chicago Press, 1993); Carolyn Strange, "Patriarchy Modified: The Criminal Prosecution of Rape in York County, Ontario, 1880-1930," in *Essays in the History of Law: Volume 5, Crime and Criminal Justice* (Toronto: University of Toronto Press, 1994).

17 Some of the earlier historiography described rape as the random acts of sexually frustrated men whose only release was to rape. See, for example: Roy Porter, "Rape-Does it Have a Historical Meaning?" in *Rape*, eds. Sylvana Tomaselli and Roy Porter (London: Basil Blackwell, 1986); and Edward Shorter, "On Writing the History of Rape," *Signs* 3/2 (1977). For an early feminist interpretation of rape, see Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Simon & Schuster, 1975).

> l'habitude de se promener tard les soirs où les femmes soigneuses de leur réputation ne se promenent pas.[18]

Duteau's statement makes clear that women were expected to act in a way that embodied ideals of chastity and respectability. Women who strayed from this narrowly defined ideal forfeited the patriarchal protection afforded them by the law. Rape was a heinous crime, provided the victim was a helpless female whose sexual purity could not be questioned. If there was any doubt about a woman's moral character, if she showed any signs of autonomy – as Margaret did by going out alone at night – then it was not rape.

The case of the King vs. Louis Boutron dit Major further highlights the importance of a woman's character in cases of sexual assault. On a Saturday afternoon in October 1811, a woman named Bazinet was returning home from work in the chill fall air, with no coat to protect her from the elements. At around two o'clock, she stopped in a tavern to warm herself. According to her deposition, she encountered Louis Major who offered her a ride in his cart. Bazinet was tempted to accept the ride and avoid the inclement weather, but declined given "la réputation du dit Major d'être un ivrogne."[19] However, upon Major's insistence she finally relented and climbed into his buggy. Shortly thereafter, as they were passing through the woods, Major allegedly made lewd and obscene remarks to her and asked her to have sex with him. According to her deposition, Bazinet indignantly refused. Major stopped the cart and allegedly threatened to take her by force if she did not consent. Frightened, Bazinet tried to throw herself from the cart but Major roughly seized her before she could escape. They struggled for a time and finally Major "excité par la colère et la passion," tackled her to the ground and dragged her into the woods, where she claimed he raped her.

Bazinet constructed her story very carefully. She included her reluctance to accept a ride from a man who had a reputation in the parish as a drunkard in order to sway the jury in her favour. She portrayed herself as an almost pathetic figure: a poor working-woman walking home in the cold without a coat. Additionally, she was careful to mention Major's fondness for drink in an attempt to tarnish his character. In her account, she was the innocent victim of a violent, intemperate man and clearly deserved the protection of the gentlemen of the jury.

However, the accused countered her story by presenting an alternate version of events that cast severe doubts on Bazinet's character. Louis Provost, a friend of Louis Major, swore in an affidavit,

18 CKB, King vs. Louis Duteau, June 1828.

19 CKB, King vs. Louis Boutron dit Major, October 1811.

> qu'il y a trois ans Marie-Charlotte Bazinet a demeuré chez le déposant pendant quatre ou cinq mois, avec son mari. Que Marie-Charlotte Bazinet passe dans la Paroisse pour une vaut-rienne, une ivrognesse et une femme donnée à la débauche et le déposant le croit fermement d'après quelques faits dont il a une connaissance personelle.[20]

Provost is tantalizingly brief about certain facts of which he claims to have personal knowledge, but he nevertheless recited a litany of gendered transgressions in order to discredit Bazinet. In addition to soliciting a ride from a stranger, which in and of itself made her judgment questionable, she was known throughout the community to be lazy and a drunk. As if that were not enough, Provost included the charge of debauchery for good measure. Provost's strategy proved effective because judges and juries drew from a vast pool of social assumptions about what constituted proper feminine behaviour and assessed the women who appeared before them according to stringent standards of modesty, subservience, and chastity. After Provost's testimony, it became clear to the jury that Bazinet's comportment did not adhere to the norms of feminine respectability.

Discrediting a woman's character was an effective, but by no means exclusive, method for accused men to defend themselves in court. Often, as in the case against Louis Major, an alternate version of events was presented. This strategy was effective because it raised the spectre of a false accusation and played on the jury's fear of convicting an innocent man. In an affidavit in support of Major, innkeeper Joseph Dagenais stated that on October 19 he was having lunch with Major when Bazinet burst into his establishment. She asked Dagenais' permission to warm herself by the hearth, adding that she was on her way home from work and had no mantle to shelter her from the cold. Moved by the woman's plight, the innkeeper suggested to Major that he should give this woman a ride,

> ce qu'il refusa de faire en disant qu'il ne la connaissait pas, qu'alors cette femme demanda au dit Major s'il voulait l'amener ce qu'il hésita de faire mais sur les représentations du déposant [Dagenais], Major dit à cette femme, "Si je vous amène, c'est par charité et il faudra que je vous habille et que je vous prête mon capot"...Que la ditte Bazinet n'a jamais refusé d'embarquer dans la charette du dit Major, mais au contraire a solicité le dit Major plusieurs fois à l'emmener...Que lorsque Bazinet allait embarquer dans la charette du dit Major elle lui a dit "Puisque tu me fait [sic] le plaisir de m'amener et de me prêter ton capot, je t'embrasserez [sic] tout le long du chemin!", ce que Major refusa d'accepter.[21]

20 Ibid.

21 Ibid.

This account diverged significantly from Bazinet's original complaint and transformed the case into a contest of credibility that pitted a woman's word against the word of men, namely Major, Provost, and Dagenais. Each man's testimony drew on various elements designed to discredit her version of the event; her sobriety, her work ethic, and her chastity were all assessed and found lacking. Further, Bazinet's original account of her reluctance to accept a ride from Major is markedly different from Dagenais' description of her bold and suggestive discourse. Indeed, the innkeeper's description of Bazinet's coquettish banter buttressed Major's defence by providing a stark contrast to Dagenais' sombre depiction of a reluctant yet chivalrous Major, who against his better judgment took pity on the woman and agreed to drive her "par charité." In the end, the grand jury chose to believe the gallant Major over the cheeky Bazinet and did not return a bill of indictment.

This case also raises some interesting questions about what historian Christine Stansell has called "heterosexual sociability." In a rapidly urbanizing and industrializing place like Montreal, there were plenty of opportunities for heterosexual sociability as women ventured further outside the bounds of familial supervision. Indeed the case files show many instances where women were offered a drink, a sweet, or money in exchange for some form of sexual favour as they encountered men in their neighbourhoods. When women entered this new territory, "they left behind the protections of kin and neighbors [sic] provided in enforcing men's sexual propriety."[22] Assuming Bazinet and Major did indeed engage in banter and pleasantries, this interaction can be seen as part of a barter system through which women traded sexual favours in exchange for men's generosity.[23] Bazinet, tired after her workday and walking home in the chilly fall air, was perhaps willing to flirt and kiss Major in exchange for a ride home in his buggy. This is in no way to suggest that she deserved to be raped or invited the assault. The point is to show how ambiguous gender relations could be: men and women were perpetually negotiating and renegotiating appropriate expressions of heterosexuality. As the nineteenth century provided ever-increasing possibilities for women to express and explore their sexuality, "it was also dangerous ground where the same mobility that gave women some degree of freedom – the continual movement of people in and around each other's lives – also rendered them more vulnerable" to sexual assault.[24]

Given uneven gender power relations, it is not surprising to find that women were often cheated by the heterosexual barter system. Karen Dubinsky

22 Christine Stansell, *City of Women: Sex and Class in New York, 1789-1860.* (Chicago: University of Illinois, 1987), 86.

23 Ibid., 87.

24 Ibid., 89.

and Adam Givertz have argued that "some men" – as exemplified by Major – "believed that their more favoured position in the heterosexual barter system gave them a right to sexual conquest or ownership."[25] Further, as demonstrated by Bazinet and Major's alleged physical struggle, some men may have believed that "every sexual encounter required a bit of a struggle to overcome most women's veneer of reluctance."[26] Men often took by force what women were not willing to give freely. Perhaps Major felt entitled to sex with Bazinet in exchange for his generosity.

Despite their disadvantaged position, women plaintiffs who came before the courts were savvy enough to manipulate and appropriate the restrictive nineteenth-century ideals of feminine comportment to their own advantage. The case files for the district of Montreal suggest that women crafted narratives of their sexual assault in an effort to conform to the dominant assumptions about proper women. The case files are replete with allusions to chastity, virginity, female helplessness, and good character, which suggest that these women knew what kind of attributes would most likely sway a judge and jury in their favour. Indeed, it was an unspoken appeal to the chivalry of these men: if the plaintiff could persuade the judge and jury that she was a respectable woman, the court was almost honour-bound to vindicate the plaintiff's claim and, in turn, her reputation.

Unfortunately, this strategy was severely limited as the nineteenth-century conceptualization of appropriate character was so circumscribed and so exacting in its expectations that under the intense scrutiny of the courts, most women fell short. The evidence suggests that this "good" character defence, however well it was crafted, could be easily deflected by the accused. Consider the case of Marie-Geneviève Denoyeau who accused her wealthy employer Jacques Dorion of rape. Denoyeau told the court that her husband had left for military service, leaving her alone to look after the farm and her five children. Forced to take a job to support her family, she went to work for Dorion. Denoyeau tried to depict herself as a good wife and mother who worked hard to provide for her family in the absence of her husband. Clearly, her strategy was to draw on many elements of feminine respectability in an attempt to convince the court that she was a "good" woman worthy of their protection. To further depict herself as a helpless woman, she told the jury how her very life had been at stake in addition to being raped:

25 Karen Dubinsky and Adam Givertz, "'It Was Only A Matter Of Passion': Masculinity and Sexual Danger" in *Gendered Pasts: Historical Essays in Femininity and Masculinity in Canada*, eds. Kathryn McPherson et al. (Toronto: Oxford University Press, 1999), 67.

26 Marybeth Hamilton Arnold, "'The Life of a Citizen in the Hands of a Woman': Sexual Assault in New York City, 1790-1820," in *Passion and Power: Sexuality in History*, eds. Kathy Peiss and Christina Simmons (Philadelphia: Temple University Press, 1989), 39.

> [Dorion] threw her on a bed where he enjoyed her against her will by penetrating her body with his privy member, using her as a husband used her and had his will of her. She remained in the same bed with the defendant in a state of alarm and against her will, the defendant threatening her, he talked of having his gun loaded and told witness if she endeavoured to stir he would use it which made witness alarmed for her life.[27]

Denoyeau portrayed herself as a poor woman forced by circumstances to live without the protection of her husband and who, while providing for her children, had been raped and held captive at gunpoint by her employer.

Yet despite her attempt, the defence easily refuted her good character by merely hinting at the possibility of sexual impropriety on her part. Edward Dorion, the twelve-year-old son of the defendant, struck the first blow. He testified that on the day of the alleged rape, he had seen Denoyeau and his father sharing a bottle of wine and kissing, and that she had offered no resistance. Further, he claimed to have seen Denoyeau follow his father upstairs to his bedroom "seemingly of her own consent." (Ironically, Dorion was not censured or criticised for his role in this alleged seduction.) To further discredit her, Dorion called several witnesses who swore "she was a common woman" and that her youngest son was illegitimate. Her brother-in-law said, "she has always been a whore and will always be so" and that he had heard Denoyeau say she expected three or four dollars for what had happened at Dorion's. Another man said that she was "by report and by discourse a woman of bad character" and "worthless."[28] Denoyeau's character was now irreparably damaged. To the jury she was an adulteress, a woman of loose morals who drank, caroused, and fornicated with her employer during her husband's absence. For good measure, the defence included bastardy and prostitution in her growing list of sins. Denoyeau became the archetype of the bad woman, guilty of all the feminine vices: lust, greed, and deceit. Interestingly, while Denoyeau could "prove" she was a hard worker and good provider, caring for her family in her husband's absence, and the defence could not "prove" she was an adulteress or prostitute, the ideal of female chastity was so compelling that the mere suggestion of female sexual impropriety was sufficient to neutralize other elements such as being a good worker and good mother. Thus it seems clear that sexuality was really at the core of the ideal of good womanhood and that any other quality or trait a woman exhibited was secondary.

As these defendants' affidavits and defence witnesses' testimonies suggest, men "who were able harness any number of prevailing stereotypes about

27 Notebooks of Judge James Reid, Criminal Cases: Volume 1, May 1816. National Archives of Canada (NAC), MG 24 B173.

28 Ibid.

women's sexuality and morality had a greater chance of raising doubts about the character and hence the veracity of the complainant's story."[29] Yet it would be erroneous to assume that the character of the defendant was entirely irrelevant to the proceedings.

As has been argued by Angus McLaren, Gail Bederman, and others, the nineteenth century saw the emergence of a new discourse on masculinity that was steeped in the values of the emerging middle-class. In an attempt to legitimize their social position and differentiate themselves from other classes, the bourgeoisie considered the "ability to control powerful masculine passions through strong character and a powerful will as a primary source of men's strength and authority over both women and the lower classes."[30] By curbing his basest instincts, a man "took pride in his powerful will that vanquished laziness and lust"[31] and demonstrated to his peers that he was not a victim of his own physical impulses. To the Montreal bourgeoisie, a good man was temperate, honest, hardworking, and possessed enough self-command to avoid unmanly excesses. The working-class men charged with sexual offenses were aware of this discourse of masculinity and were quick to draw on some of its elements in an attempt to persuade the middle-class judge and jury that they, too, could be considered respectable men, despite their class differences.

Indeed the evidence for the District of Montreal suggests that men accused of sexual violence used these notions of ideal masculinity as a veritable shield against convictions of sexual violence. Consider the rape case of the King vs. Luke Bowen. Accused of the rape of eleven-year-old Mélanie Poutré, Bowen self-righteously declared: "I am altogether innocent of the crime so false imputed to me."[32] To construct his defence, he had several of his acquaintances testify on his behalf and vouch for his character. Jacob Halenbeck, a yeoman of Dundee, provided an affidavit on behalf of Bowen, which is representative of this kind of tactic. He declared that:

> I have known Luke Bowen, gentleman of Dundee some eight or nine years. I am his nearest neighbour, he is a man that has large property of some value and is one of the rich yeoman of that place. I have always known him to a perfect, honest man, a man of good behaviour and good morals and that I do not think he could be guilty of the crime he is now accused of.[33]

29 Dubinsky and Givertz, 69.

30 Gail Bederman, *Manliness and Civilization: A Cultural History of Gender and Race in the United States, 1880-1917*, (Chicago: University of Chicago Press, 1995), 12.

31 E. Anthony Rotundo, "Body and Soul: Changing Ideas of American Middle-Class Manhood, 1770-1920," *Journal of Social History* 16 (Summer 1983): 27.

32 CKB, King vs. Luke Bowen, December 1830.

33 Ibid.

Clearly, Bowen had several elements working in his favour. He was a man of some wealth and social standing within his community that virtually guaranteed his status as a "respectable" man. Halenbeck made a point of mentioning Bowen's financial successes in order to signal to the courts that the defendant was a man of substance, much like the judge and jury. Further, the affidavits by Halenbeck and the other witnesses drew on elements of dominant nineteenth-century masculinity, such as honesty and morality, in order to buttress Bowen's claims of innocence. Bowen was praised as a good neighbour and a good worker in order to communicate to the jury that such a successful and well-respected man could not possibly be guilty of such a vile and "unmanly" crime as rape. Unlike a woman's character, which was predicated solely on sexual reputation or private matters, a man's character was based on his actions within the community or the public arena. Never was a man's sexual reputation an issue in the sexual crime case files for the District of Montreal.

Ideas about masculinity appear to be central to the criminal court's understanding of sexual violence. A man who could present himself as hard-working, sober, truthful, and law-abiding in his day-to-day relationships with other men could easily deflect charges of sexual crimes. Thus, an integral part of the defence strategy was to portray the accused as an ordinary man, well-liked by his peers. Recall the case of Louis Major who was accused of raping Marie Charlotte Bazinet after she had accepted a ride in his buggy. Major called militia Captain Antoine D'Amour to testify on his behalf. In his affidavit D'Amour swore:

> qu'il connaît depuis environ vingt ans le dit Louis Boutron... Laboureur. Qu'il l'a toujours connu pour un parfait honnête homme, un homme sobre, loin d'être un ivrogne, que le déposant a eu le dit Major sous son commandement pendant deux ans et qu'il l'a toujours trouvé un homme fidel [sic] et obéissant.[34]

Though not as wealthy or socially prominent as Bowen, Major could nevertheless adapt this defence of ideal masculinity to sway the jury in his favour. By drawing on desirable elements of nineteenth-century masculinity such as sobriety, loyalty, and obedience to one's superiors, men of lower social standing could sway the jury in their favour. Major's good character and reputation were suitably established by another respectable man, and the jury was convinced that Major was a good man despite his inferior social position. He was acquitted.

Since rape was conceptualised as a truly heinous and monstrous crime by the statutes and the courts, it followed that a rapist must be a vile monster eas-

34 CKB, King Vs. Louis Boutron dit Major, October 1811.

ily identified by his peers. As Karen Dubinsky has argued, the existence of various rape myths suggests that to the public consciousness, rapists were *not* ordinary men. In nineteenth-century popular imagination, rape was conceived as an irrational crime committed by a depraved and deranged man; "the villain in this scenario [wa]s always a stranger, lurking in the shadows, ready to pounce."[35] Not surprisingly, the courts were unable to reconcile this demonized image of a rapist with the ordinariness of the men who appeared before them. If the accused was well-liked by his peers, hard working, and respectable, he was virtually guaranteed an acquittal. Conversely, if the accused was an intemperate "stranger" with few links to the community, he was deemed to be lacking the necessary manhood to curb his animal nature, and could thus be convicted. Such men were considered a threat not only to the purity of women, but also to the bourgeois male ideal that was predicated on moderation and self-control.

Nineteenth-century "rape myths" that depicted rapists as mysterious strangers or lustful monsters obscured the fact that most assailants were known to the alleged victim (see table IV), were accepted by the community, and showed no outward signs of "perversion." A discussion of a rape case that resulted in conviction will provide an example of a man who was clearly not considered a member of respectable male society.

Table IV
Relationship of Accuser to Accused[36]

Relationship	# of Cases
Family Member	3
Employer of Accused	1
Employee of Accused	7
Acquaintance	26
Co-worker	2
Stranger	9
Not Disclosed	2

On April 27, 1813, sixty-six-year-old Ursule Marchand set out to run some errands. On the Grand Chemin, she passed by a man sitting on a tree trunk. According to her deposition, she noticed that he was wearing two hats and that he was "borgne," meaning one-eyed. After walking a little distance, she heard a noise and turned around to see the same man behind her. He seemed agitated

35 Dubinsky, *Improper Advances*, 37.

36 Table IV shows that while society believed in a variety of "rape myths" that construed rapists as shadowy and monstrous characters, the records reveal that women brought charges of sexual violence against "ordinary" men they knew or encountered in their daily activities.

and looked as though he would do her harm. As he came upon her he said, "Voulez-vous couchez avec moi?" Taken aback by such a request, Marchand replied, "Quoi! Vous n'avez point honte de faire une demande semblable à une femme de mon âge?"[37] At this point, the man grabbed her violently, threw her in the ditch, and forced her on her knees "et dans cette posture assouvit sa passion."[38] After the rape, he left her and took the road towards the Richelieu River. She fled in the opposite direction and sought refuge in the house of François Harnois where she immediately recounted her ordeal. The authorities soon apprehended a man fitting Marchand's description of her attacker. Racicot was brought to trial, speedily convicted of rape, and sentenced to hang.

The twelve men of the jury who heard this case had no trouble returning a conviction. There was absolutely no doubt as to Marchand's moral character. She was a widow, out in broad daylight running her daily errands; she did not stray from the feminine ideal and was thus credible. Perhaps because she was a widow in her sixties, she was considered asexual and as such, freed from any suspicion that she solicited the attack. Therefore, the jury was satisfied that this rape was a perversion of each man's duty to protect chaste and helpless women from malevolent men. A crime such as this one was not only an "attack on a woman's purity, but also an attack against the basis of the social order"[39] and the perpetrator must be punished.

Racicot easily fit the construction of the "perfect" rapist: he was a strange man (*borgne* meaning literally, one-eyed, but also figuratively, shady and disreputable), who had been seen earlier in the day drinking rum, further casting doubts on his character. In addition he was a transient, a "stranger" with no ties to the community, and with no-one to vouch for his good character. In short, he did not embody any of the masculine ideals held by the bourgeoisie. As historian Angus McLaren argued, when society "stigmatised what it took to be dangerous forms of male sexual behaviour, it was not primarily preoccupied with protecting potential female victims."[40] Rather, it sought to buttress the power of "normal" (read respectable) men. In this case, Racicot became the social "other" against which "normal" men could evaluate their manliness. Rape was an unmanly expression of masculine sexual desire because it reflected a weak character that succumbed to lust. If an accused man was considered "unmanly" by his peers or if he exhibited behaviour that fell beyond the preserves of "respectable" masculinity, than a conviction was more likely.

As reflected in the evidence, the very meaning of rape was a contentious issue. In an attempt to untangle the often-contradictory accounts of the partici-

37 CKB, King vs. Pierre-Victoire Racicot, May 1813.

38 Ibid.

39 McLaren, 7.

40 Ibid.

pants, medical doctors were sometimes asked to supply expert testimonies in cases of sexual violence. This use of the doctor as "expert" was a direct consequence of the nineteenth-century professionalization of medicine. As John Warner argues in his groundbreaking book, *The Therapeutic Perspective*, scientific advances like the advent of chloroform and the germ theory led to a greater self-confidence within the medical profession and a growing sense of obligation to share their expertise with society. As their social role and importance expanded, physicians played a crucial part in shaping social perceptions about female sexuality. As "scientific experts," their views on "sexuality and rape were highly regarded and frequently accepted by the general public."[41] At the same time, medical historiography has pointed out the patriarchal assumptions of the nineteenth-century medical profession and demonstrated that, as a profession, medicine was often openly distrustful of women and their sexuality.[42]

This understanding has significant implications for the question of sexual violence because doctors were often asked to examine women's bodies and provide their expert opinions as to whether or not a rape had been committed. Their "expertise" was shaped by the same gender and sexual assumptions held by the judge and jury, and doctors used the same assumptions about proper female comportment to evaluate a woman's credibility. Indeed, doctors often identified the accused as the "victim" of the "malicious and criminal purposes"[43] of the accuser.

The case of J.B. Drolet, accused and convicted of rape in the District of Quebec, was one such case that provoked the consternation of the good doctors of that city. According to *The Quebec Medical Journal*, Drolet had been wrongfully accused and convicted of a crime he did not commit. Although no medical evidence had been introduced at his trial, the doctors did not doubt that the woman had had sexual intercourse, as "the state of the parts as reported by the women who examined the accuser appears to place it beyond doubt."[44] Rather, they pointed to evidence "which confirm[ed] our opinion that the act was to a

41 Elizabeth Anne Mills, "One Hundred Years of Fear: Rape and the Medical Profession," in *Judge, Lawyer, Victim, Thief: Women, Gender Roles and Criminal Justice*, eds. Nicole Hahn and Elizabeth Stanko (Boston: Northeastern University Press, 1982), 33.

42 For more on the gender assumptions made by nineteenth century medicine, see Edward Shorter, *History of Women's Bodies* (New York: Basic Books, 1982); Cynthia E. Russett, *Sexual Science: The Victorian Construction of Womanhood* (Cambridge, Mass.: Harvard University Press, 1989); Ornella Moscucci, *The Science of Woman: Gynaecology and Gender in England, 1800-1929* (Cambridge: Cambridge University Press, 1991); and Wendy Mitchinson, *The Nature of Their Bodies: Women and Their Doctors in Victorian Canada* (Toronto: University of Toronto Press, 1991). The role of the medical profession in cases of sexual violence will be explored more extensively in my doctoral dissertation.

43 *The Quebec Medical Journal*, December 1826, p. 262.

44 Ibid.

certain degree voluntary on her part, and therefore the prisoner's offence is very materially altered."[45] According to the editors, there was simply not enough resistance on the part of the accused to support an accusation of rape. The size and strength of the woman would make it impossible for her to be overpowered, as she claimed, by the accused. They concluded that if she truly had not wanted to have sex with the accused, she would have devised a strategy to prevent it. The doctors were appalled that as a result of a woman's accusation, an innocent man had been sentenced to death. The doctors concluded their case analysis by stating that "a respectable number of citizens are now praying for a commutation of punishment, and we sincerely wish their prayer may be accomplished."[46]

In the next issue of *The Quebec Medical Journal*, the editors referred again to the Drolet case and felt vindicated by some new developments:

> In our last number, we took occasion to dwell on the importance of this science [medical jurisprudence] and on its necessity in the cause of justice and humanity...but more particularly in the notice we gave of a trial of rape which lately took place in this city; and although the convict was then under sentence of death, we did not hesitate to express our expression of his innocence, and we feel no little gratification, from hearing that some circumstances have since appeared which corroborate our assertion, and in consequence of which our equitable Governor has set the captive at liberty...But, however satisfied we may be of having discharged our duty in the protection of innocence, we cannot but regret that these investigations should not be made during the trial, which would in many cases, save to an honest and useful citizen, the disgrace of an unmerited sentence which stamps his character with an ignominious and lasting reprobation.[47]

Beyond congratulating themselves on a job well done, these doctors were also claiming that their scientific expertise was absolutely necessary to the administration of justice. Indeed, this passage reflects the contest for public credibility between the medical and legal professions in the nineteenth century.[48] The editors of the journal had discharged their duty to the public by bringing to light the false accusation against Drolet by a woman who was obviously a liar, obviously of bad character. Their concluding remarks, bemoaning the damage a woman such as her could inflict against a man's reputation, reflect the popular [male] fear of false accusations and facile convictions. Although the conviction rate for the District of Montreal demonstrates that these fears were

45 Ibid.

46 Ibid.

47 *The Quebec Medical Journal*, January 1827, p.5.

48 James C. Mohr, *Doctors and the Law: Medical Jurisprudence in Nineteenth-Century America* (Baltimore: Johns Hopkins University Press, 1993).

unfounded, throughout the nineteenth century there was a concern "that women might use criminal charges as a tool of vengeance, or to protect themselves when discovered in the act of consensual intercourse"[49] and ruin a man's life. The case files reveal that women in Montreal did at times make false accusations of rape – but the risk of men being convicted on such allegations was minimal, as is reflected in the low conviction rates. Nevertheless, the editors of *The Quebec Medical Journal* insisted on the importance of medical evidence in cases of rape.

Certainly rape was perceived by most to be a grievous crime deserving of harsh punishment as evinced by its categorization as a capital crime; but rape was also a highly contested site of gender relations. The fear of sending an innocent man to the gallows – as demonstrated by the Drolet case – created an "almost obsessive preoccupation with data collection and corroboration of the woman's testimony."[50] Medical works of the period stressed the need to carefully consider the medical evidence when examining women who claimed they had been raped in order to ascertain if an attack had indeed occurred. After all, to deprive a man of his property, reputation, and life merely on a woman's word seemed incongruous to doctors, judges, and juries. Because doctors' claims to expertise in medico-legal questions involving rape rested on their assumptions about the female body and sexuality, "it implied that the maintenance of the public order depended on the medical surveillance of women's sexual functions."[51]

The Drolet case reflected medical ideas about sexual violence very similar to those being expressed at the time in a book by Theodric Romeyn Beck, titled *Elements of Medical Jurisprudence*. Beck was eminent American physician and a professor at the Institute of Medicine and Law, whose manual generated widespread interest. Beck's book received international praise and "the booming sales and the strong demand for revised editions, demonstrated beyond doubt that Beck had performed a valuable service to physicians and attorneys."[52] The editors of *The Quebec Medical Journal* warmly praised *Elements of Medical Jurisprudence* as a work that "had been so minutely investigated, that few cases can occur in practice on which it will be found necessary to seek elsewhere for farther information."[53] One of the sections of Beck's tome deals specifically with rape and provides insight into the medical profession's attitude towards claims of sexual violence.

Beck, like other medical writers of the period, contributed to a debate on whether rape was even possible. As he proposed,

49 Backhouse, 221.
50 Mills, 30.
51 Moscucci, 107.
52 Mohr, 22.
53 *The Quebec Medical Journal*, 4.

> I have intimated that doubts exist whether a rape can be consummated on a grown female in good health and strength. It has been anxiously inquired whether this violence, if properly resisted...can be completed?...I am strongly inclined to doubt its probability. The opinion of medical jurists generally is very decisive against it. An attempt...may be possible, but the *consummation* [original italics] of a rape...seems impossible, unless some very extraordinary circumstances occur. For a woman always possesses sufficient power, by drawing back her limbs, and by the force of her hands, to prevent the insertion of the penis, whilst she can keep her resolution entire.[54]

This attitude had serious implications for women who brought charges of sexual assault to the criminal justice system, as medical evidence was often used to determine the guilt or innocence of the accused. If juries were told that rape could rarely occur to an adult woman, the mere fact that the accused showed physical signs of having had sexual intercourse implied consent. If a woman truly did not want to have sex with the accused, the doctors believed, than she would have found some way to resist him.

By virtue of their specialized knowledge, "doctors searched women's bodies, both the surfaces visible to anyone and the private parts visible only to those with sufficient expertise and ethical sanction to examine them, for certain marks and physical conditions"[55] that would support a claim of rape. The case files for the District of Montreal contain numerous references to contusions, abrasions, lacerations, and bruises, which demonstrate that medical experts understood rape in bodily terms. They expected to find physical evidence. Doctors looked for signs of physical struggle that would indicate that a man "used more than the degree of physical force considered an intrinsic part of [ordinary, consensual] sexual intercourse."[56] This approach reinforced society's idea that rape was such a brutal and awful crime that a raped woman would surely bear the physical marks to "prove" she had been attacked. Doctors claimed the ability to interpret or decipher the marks left on a woman's body and "objectively" ascertain the veracity of her account. In a society that was beginning to accept the idea of medicine as a science, the medical expert could play a crucial role in shaping an understanding of rape and sexual violence.

So mistrustful were doctors of their patients' claims of sexual assault that they sometimes entirely dismissed women's accounts of the assault and imposed their own expert interpretation on the facts. Josette Lareau claimed that she was raped in the fields by François Bessette, after which she was con-

54 Beck, 85.

55 Stephen Robertson, "Signs, Marks, and Private Parts: Doctors, Legal Discourses and Evidence of Rape in the United States, 1823-1930," *Journal of the History of Sexuality* 8/3 (1998): 363.

56 Ibid., 350.

fined to bed due to the extent of her injuries. Dr. William Wood, a surgeon, was called in to perform an examination of Lareau's body and "l'a trouvée indisposée, de ces indispositions communes aux femmes, et le dit déposant aurait attribué au froid et à l'humidité qu'avait éprouvée cette femme, qu'il ne se serait aperçu d'aucune marque de violence ou contusions commises sur sa personne."[57] Lareau told the doctor she had been raped and had the physical marks to prove it, but Dr. Wood dismissed her account and attributed her indisposition to the weather. By claiming the right to define sexual assault as the preserve of experts, medical discourse greatly limited women's ability to define sexual violence on their own terms. Indeed the evidence suggests that medical doctors (and in turn the judge and juries who deliberated the cases) were more likely to "listen" to women's bodies than to women's words.

As demonstrated by the statutes, jurisprudence in Lower Canada treated rape and assault with intent to ravish as serious crimes deserving of harsh punishments. According to the letter of the law, the victim could be any woman who was sexually assaulted against her will and without her consent. The accuser's reputation before the assault was irrelevant to the proceedings and a woman's testimony carried as much weight as a man's. However, the clarity of the legislation was soon muddied when it was applied in the courts, as society grappled with multiple and discordant understandings of sexual violence. Each participant understood rape on his or her own terms: the accuser knew it as a personal attack, the accused conceived of it in terms of a negotiation of his sexual access to women, judges and juries defined rape in terms of dominant ideas about appropriate gender behaviour and relations, and medical doctors used science to further their own socially informed opinion of rape. The evidence for the District of Montreal suggests that when a case of sexual violence was tried in the theatre of the court, it was the untangling of these various and at times contradictory ideas about rape that were at the core of the proceedings.

Although the law was clear that a woman's character was irrelevant in cases of sexual violence, once a charge was laid before a justice of the peace, the accuser's respectability was immediately questioned. Ideals of feminine respectability governed all areas of a woman's life, but in the legal system, chastity was primordial. That is, how a woman behaved in the company of men determined whether her story was believed. The model woman was defined in terms of the abstract and malleable concept of respectability, thus making character a crucial issue in cases of sexual violence. Furthermore, doctors adopted a medical discourse that reflected an overt mistrust of women's accounts of sexual violence. As women came before the court, ideal notions of women's proper comportment merged with a patriarchal legal system and an unsympathetic medical profession to produce a climate in which women's words were suspect.

57 CKB, King vs. François Bessette, August 1819.

Notions of masculinity were also pivotal in cases of sexual violence. Indeed the evidence for the District of Montreal suggests that if men accused of sexual violence could convince the judge and jury that they embodied an ideal masculinity, the accused were virtually assured of being acquitted. In the popular imagination, it was simply inconceivable that a man of good character could ever be guilty of such a heinous crime as rape. Conversely, if an accused man was considered "unmanly" by his peers or if he behaved in such a way that deviated from the preserves of "respectable" masculinity, than a conviction was more likely to be returned. Such men were considered to be a threat not only to the chastity of women, but also to the masculine bourgeois ideal which was predicated on self-control.

When nineteenth-century assumptions about gender identities are examined, a practical definition of sexual crime emerges. Women who laid a charge before the criminal courts had to embody prescribed norms of "victimhood" – they had to convince the courts that they had not crossed any boundaries of propriety either by socializing with their attackers or engaging in some other "transgression." But most importantly, women had to prove they were chaste, respectable women of good character, who merited the protection afforded them by the law. Conversely, men who were convicted of sexual crime also fit a prescribed role, that of the "unmanly" man. Convicted rapists were considered by the courts – and indeed by society – to be weak-willed men incapable of controlling their lust and who thus fell visibly short of the dominant standards of ideal manhood. Justices of the peace, judges and juries, as well as medical doctors, applied bourgeois ideals of masculinity and femininity to determine the veracity of a woman's complaint of sexual violence. Essentially, rape was the assault of an ideal woman by an "unmanly" attacker. Any deviation from this narrowly constructed script seriously reduced the chances of a woman obtaining a conviction.