All societies regulate sexual behaviour and sexual expression, though how they do so, and to what degree, varies enormously. The reasons are not far to seek. Sex is a powerful human instinct, and its expression is intimately bound up with personal and social identity. The fruit of sexual congress is not only essential for the reproduction of society but also closely linked, often via the transmission of property and power, with the aspirations of families and individuals. At the same time, many religions embody some form of sexual proscription. Regulation of this area of human life is therefore an essential skein in the tangled web of social discipline.

Much of this regulation is implicit, fashioned from an early age by socially conditioned feelings of shame and embarrassment that channel expectations, shape emotions and restrain behaviour. These deeply engrained ideas and beliefs are closely associated with gender roles that constrain, if they do not dictate, socially determined patterns of ‘appropriate’ conduct and sentiment for boys and girls as they grow into men and women. Historians nowadays accept that sexuality cannot be understood in essentialist terms; it is to a great extent culturally and socially constructed. Yet, in most societies, sexual identities are shaped in such a way that they seem to the inhabitants ‘natural’ and ‘decent’, while alternatives appear disgusting or unnatural, if not actually unthinkable. But there are tensions inherent in these cultural constructs, revealed by the embarrassed laughter, sometimes escalating into hostile derision, which is often released by sexual ‘matter out of place’. At a lighter level of human interaction, the relish that many societies display – especially in relatively uninhibited situations such as relaxed, same-sex gatherings of people who know each other well – for bawdy stories, dirty jokes and salacious gossip demonstrates the perennial power of sexual instincts, the difficulty, if not impossibility, of keeping them in rein – even supposing that it is desirable to do so – and the capacity of the human mind to find creative displacements.
Although any society’s inherent ideas about male and female, right and wrong, natural and unnatural, decent and indecent exert a powerful force, they are invariably complemented by institutions and social arrangements that in more overt ways constrain liberty of action. Some, such as conventional restrictions on dress, personal movement and the freedom of the sexes to meet and interact, themselves may appear part of the natural order of things, the unspoken assumptions of the society, though today’s debates about the hijab, niqab and burqa show how easily such matters, far from being taken for granted, may become politicized. Others may be more palpable demonstrations of social power and hence more open to questioning, negotiation or challenge. The role of families or of particular family members, such as a right claimed by fathers to arrange the marriages of sons or daughters and, more fundamentally, to restrain their sexual activities, is particularly important. But the range of kin or affines who may be involved in such matters and the nature and scope of family intervention vary greatly. In many societies the wider community of friends, neighbours and more distant connections also has a role to play in sexual regulation, though usually one which is ill-defined and subject to contest. Other social entities, from trade associations such as guilds to the youth groups that exist in some cultures, may also play a part.

Global Perspectives

Much of this is commonplace and either easily related to our own everyday experience or common knowledge. But using the law to regulate sexual behaviour and punish misconduct is a more arresting phenomenon. In present-day Britain we are familiar with the panoply of institutions – from the former Child Support Agency to the Family Division of the High Court – that deal with the divorces that are such a remarkable feature of contemporary Western society and the financial and other issues associated with them. It is also a familiar fact that some sexual acts are subject to the criminal law, but only those which the legislature reckons to be outside the extreme limits of acceptable behaviour – in England comprising rape (only quite recently extended to include marital rape), underage sex (including child sexual abuse) and certain forms of incest. Far more contentiously, until the 1960s, same-sex activities between men were also criminalized. But other forms of sexual behaviour, unless conducted in public places, have long been regarded as private matters and not subject to legal regulation, far less criminal sanctions. Thus, the Street Offences Committee that reported in 1928 took for granted that the English common law ‘has never
taken upon itself the prohibition by criminal sanctions of voluntary illicit intercourse between the sexes.

Yet, not all societies and legal systems are like this, Islam offering the most famous contrast. Shari’a law, a set of traditions based on the Quran, prescribes that sexual intercourse between unmarried persons is punishable by flogging, while adultery renders the guilty person liable to death by stoning. Less well known is the fact that over many centuries the Chinese imperial codes identified illicit sexual relations as a public crime and prescribed draconian punishments.

In fact, there have been numerous societies, from ancient times to the present, in which sexual misconduct has been subject to criminal sanctions. Yet, the subject has not attracted as much attention as one might suppose. The concentration of sociologists on Western industrialized societies has meant that the legal regulation of ordinary consensual sexual relations has not much presented itself as an object of study, except with regard to prostitution. Sexual regulation was of some interest to the social anthropologists of the early and mid-twentieth century but rarely top of their agendas unless in relation to the study of incest. In any case, the kinds of small-scale societies they tended to study, in which legal proceedings were usually unwritten and barely distinguishable from communal action, did not usually lend themselves to much emphasis on legal codes and legal institutions. Lawyers have a more fundamental interest in the subject, not least as a result of recurrent efforts to redefine, or justify the limits of, legal intrusion into personal life.

This is true not only in the West. For example, Islamic fundamentalism and the problems of applying Shari’a law in societies such as modern Pakistan and Nigeria have raised urgent issues and hence stimulated some important empirical, as well as theoretical, research.

Among historians, one major area of interest has been ancient Greece and Rome, the latter being of particular significance because Roman law was to have such a major influence in medieval and modern Europe. The problem faced by ancient historians, however, is the paucity or at least fragmentary nature of the sources. While high-quality work has been

---

done on, for example, the Athenian adultery laws and Roman prostitution, the actual impact of the law on ordinary people’s sexual lives on an everyday basis is little understood. Only for later periods and for certain locations is it possible to study sexual regulation not only from law codes and legal commentaries but also on the basis of detailed examination of records of actual court proceedings and with a sound knowledge of the cultural and social contexts in which those proceedings occurred. By no means are all of these confined to Europe and Europeanized America; areas such as Ottoman Syria and Palestine and early Qing China have also been the subject of detailed studies.

**Late Medieval and Early Modern Europe**

But it is Europe from the late fifteenth century to the early eighteenth century that has seen the greatest concentration of recent historical work on sexual regulation and related topics such as marriage formation and divorce. This is so for a number of reasons. Late medieval and early modern Europe was one area—perhaps it will eventually emerge, the pre-eminent location—where systematic attempts were made to regulate sexual and other forms of personal behaviour by legal means. The precise arrangements varied considerably from region to region. The late medieval church and its successor churches in Catholic and Protestant areas after the upheaval of the Reformation played an important part, as also did a multitude of municipal and state courts. Moreover, many of these courts and analogous institutions kept more or less detailed records, some of which have survived—often in bulk. Further, the major developments of the period reinforced contemporary interest in, and debate about, moral (including sexual) regulation and among modern historians have generated a multitude of theories and controversies, including some broad conceptualizations of political, social and cultural change under such labels as ‘the civilizing process’, ‘the reform of popular culture’ and ‘social disciplining’.

---


6 Judith E. Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley, CA, 1998); Matthew H. Sommer, *Sex, Law and Society in Late Imperial China* (Stanford, CA, 2000).
The dominant line of argument sees the Reformation as a watershed. It takes as axiomatic, often on the basis of limited evidence, that around 1500 the church courts were virtually moribund as agents of sexual regulation and that other tribunals were likewise of limited efficacy. The shock of Reformation changes stimulated the overhaul of old procedures and the search for new arrangements. More basically, the reformers rejected the ideal of celibacy, except in special cases, and jettisoned the idea that matrimony was a sacrament while at the same time exalting marriage, household and family as a set of institutions blessed by God and fundamental to church and commonwealth – a set of changes that inevitably stimulated a reappraisal of many aspects of the inherited pattern of sexual regulation. These new initiatives, already a feature of the Lutheran and Zwinglian churches, became in the developing Calvinist tradition part of a broader project of ‘reformation of life’ (reformatio vitae) to complement the reformatio doctrinae of the early Reformation. Among other things the period witnessed, in many areas that became Protestant, a rejection of ideas and institutions conducive to prostitution, redefinitions of the law of divorce and stronger measures against adultery and, indeed, any sexual activity outside marriage. These developments were accompanied by important institutional changes. In many Protestant cities and principalities, the existing church courts were drastically remodelled or replaced by new ‘marriage courts’, ‘discipline lords’ and the like; often, in the process, the boundaries between the secular and spiritual authorities were redrawn. The Counter-Reformation Catholic church responded by reviving, revising or simply reinforcing its own disciplinary institutions, which in southern Europe included varieties of Inquisition court. More broadly, the religious and political culture shifted in ways that greatly tightened sexual

---

regulation in Catholic states and regions as diverse as Bavaria, France and Catalonia.\(^8\)

Work on sexual regulation in post-Reformation Europe is now extensive and often of high quality. However, it does have its limitations. Its relation to broader themes of social and moral discipline and of religious and cultural change mean that in many cases the specifically sexual aspects of the subject are not treated in much depth and detail. Often marriage and divorce are the real centre of interest.\(^9\) Moreover, many studies focus on a particular court or tribunal, to the relative neglect of other agencies that may have shared jurisdiction or otherwise had an impact on similar areas of people’s lives. As a research strategy, this is understandable, especially when records are analysed over lengthy periods to reveal not just short-term fluctuations but also long-term trends, with a view to charting major social, religious or other cultural changes. In any case, the records of complementary jurisdictions often do not survive. But the dangers are obvious, in particular, the likelihood of underestimating the intensity of regulation and the possibility of receiving a distorted picture of major patterns.\(^10\)

Another limitation of this corpus of work on continental Europe is its chronological scope and, in particular, the fact that the period before the Reformation remains relatively neglected. There have been interesting studies of late medieval prostitution, emphasizing public tolerance to the extent that in some areas municipally licensed brothels were allowed to trade. This fact is sometimes used to underpin the notion of a Reformation watershed, a marked increase in the scope and intensity of sexual regulation from the mid-sixteenth century, a model that derives added plausibility from the fact that in the generations following the Reformation, a wider...

---


range of behaviour – from tippling and drunkenness to mixed dancing – was deemed to be morally transgressive and subjected to discipline, while all over Europe Catholic and Protestant authorities alike made great efforts to improve the quality of the clergy and to instil higher standards of religious belief, knowledge and commitment among the lay population.\(^{11}\)

However, it is also widely recognized that already in the later fifteenth century many cities and states in Europe were issuing ordinances or taking other action to restrain sexual behaviour more firmly. Depending on emphasis, this trend may be presented either as the precursor of the major shift associated with the Reformation or in support of an alternative model that sees post-Reformation moral discipline merely as an intensification (even in some respects simply a continuation) of already well-established patterns of public policy.\(^{12}\) Either interpretation is consistent with the fact that, to judge by recent research, in some areas ecclesiastical courts were more active and effective in the fifteenth century than has often been supposed.\(^{13}\) But, in any event, it is only for a few areas that sexual regulation in its entirety has been studied in detail. Among other reasons for this lack is a paucity of records, so many having disappeared either through the lapse of time or as a result of deliberate destruction in Protestant areas of pre-Reformation church records. Given that many of the arguments about post-Reformation changes assume knowledge of what

---


went before, the lacuna is a severe handicap to understanding what happened before and after the Reformation watershed.

Reformation of Manners in Yorkist, Tudor and Stuart England

Enough work has already been done to locate the English experience firmly in this wider European context. Indeed, for the period after about 1570, England is among the best-studied areas from this point of view. Some of this work relates directly to changes in marriage law and to the operation of the ecclesiastical and secular courts and will be referred to extensively in following chapters. The broader theme that has most relevance to English society is captured in the phrase ‘reformation of manners’, a contemporary concept that has been appropriated by modern historians and may usefully be explored here to set the scene for what follows. In Tudor and Stuart England, the term ‘manners’ was ambiguous. It could carry its modern sense of polite behaviour and deportment. But its more usual meaning approximated more closely to what we would call ‘morals’, albeit with the emphasis on externals of behaviour rather than on an inward state of mind. In brief, it was the stock translation of the Latin word *mores*. Discourse often centred on ‘ill’, ‘evil’ or ‘corrupt’ manners, but this was balanced by a strong ideal sense of ‘good’ or ‘sound’ manners which were thought to be fundamental to a well-ordered society. The word ‘reformation’, furthermore, did not in this period necessarily bear the associations with religious upheaval that it does today. Rather it meant ‘improvement’ or ‘reform’, whether a major overhaul or a relatively minor correction or amendment. The word did, however, connote decisive action, as like as not by legal means. So ‘reformation of manners’ could embrace both routine regulation and more radical efforts, often taking the form of ‘drives’ or campaigns, to alter people’s behaviour.

Writers on the subject of ‘reformation of manners’ sometimes had in mind an educational setting and the behaviour of children and adolescents. In this context, fathers and mothers, schoolmasters and tutors, masters and mistresses were the agents of discipline. In the wider world and among adults, the task of correction lay with the public authorities. They had the duty not only to pass and enforce sound laws to inculcate good ‘manners’ but also to repress bad behaviour. Sometimes such ill ‘manners’ were conceived in terms of the organic and medical imagery of disease and hence seen as ‘infirmities’, ‘imposthumes’ and ‘ulcers’ that required ‘salves’,

14 For periods later than those reviewed here, see Weeks, *Sex, Politics and Society.*
‘remedies’ or (sometimes sharp) ‘medicine’, lest they spread their deadly corruption. Alternatively – sometimes in conjunction with the medicinal metaphors – they were thought of more legallyistically and expressed in a series of overlapping concepts: ‘faults’, ‘sins’, ‘vices’, ‘crimes’ and ‘enormities’, the repression and punishment of which lay with the public authorities or, in default of effective action on their part, with God.15

The public regulation of morals (including sexual behaviour) through legal institutions, which could administer condign punishment, was thus crucial to the idea of ‘reformation of manners’. By the end of the middle ages, this framework was well established. The church’s jurisdiction over ‘religion and manners’ had been a reality at the grassroots level at least from the thirteenth century.16 Sin was primarily a matter between the individual and God, and in pre-Reformation times (and even afterwards to some extent), hidden sins were dealt with in the secrecy of the confessional. But when offences became a matter of scandal and an affront to the Christian community, they were punishable in the ‘external forum’ of the spiritual courts. These were supposed to operate both pro salute animæ and pro correctione (or reformatione) morum – for the health of the soul and for the reformation of manners.

These courts, and the corpus of ‘canon’ – that is, ecclesiastical – law that governed their activities, had developed in the high middle ages. Patchily surviving records show that in some areas they were already in vigorous operation in the fourteenth century.17 By the late fifteenth century – from

which point more records begin to survive in more or less continuous series – the spiritual courts formed an omnipresent set of interlocking institutions that were comparable to the royal courts in complexity and probably exceeded them in the scale of their activities. Amid the huge amount of business they conducted, matters concerning marriage and sexual transgressions always loomed large.\(^\text{18}\)

But the secular courts also were increasingly concerned with ‘reformation of manners’, and the theme is reflected in numerous royal proclamations and acts of parliament of the late fifteenth and sixteenth centuries. For William Lambarde, the Elizabethan author of one of the best-known handbooks for justices of the peace, ‘corruption of manners’ and ‘amendment of manners’ were key themes, to which he returned time and again in his charges to the juries at quarter sessions.\(^\text{19}\) The antecedents of this rhetoric will be traced in later chapters. Suffice to say here that the Yorkist and early Tudor kings, as part of a process whereby the crown appropriated the rhetoric of ‘reform’ of the ‘commonweal’ or ‘common wealth’, took an increasing interest in ‘reformation of manners’. Admittedly neither Lambarde nor earlier and later writers on the theme were concerned exclusively – or even primarily – with sexual behaviour. The ‘manners’ that required reformation included a wide range of what contemporary moralists and social commentators considered to be ‘vices’ and ‘disorders’, including concerns as apparently diverse as usury; excesses in apparel; playing cards, dice and other ‘unlawful games’; vagabondage; ‘picking’ or petty theft and, increasingly, drunkenness, tippling and alehouse-haunting. Morally speaking, the main targets were the overlapping

---


concepts of idleness, waste and excessive consumption. But sexual transgressions and the social ills to which they gave rise were a real target for concern, not least because they were often perceived as being closely related to the other species of disorder.

There were ambiguities, however. The main targets of some of these strictures were labourers, servants and apprentices; their activities were subject to the firmest regulation, while laws were often framed to protect in particular the property and interests of their masters and employers. More broadly, moral reform in the secular courts appears as part of a wider pattern of sumptuary regulation – rationing the good things of life. But this was always understood in hierarchical terms – greater wealth and higher status bestowed the right to consume more goods and of higher quality. Manifestly this logic was at odds with Christian principles that made no distinction of rank in their demand for chastity. Inevitably, this complicated the framing and application of secular laws designed to regulate sex, as proceedings in parliament in the late sixteenth century and early seventeenth century were to demonstrate with particular clarity. However keen they were to decry the sins of the poor, noble and gentry legislators were markedly unwilling to contemplate harsh restrictions and swingeing punishments that might have an impact on their own behaviour and demean their status.

Nonetheless, as succeeding chapters will reveal, secular judges were more active in the sphere of sexual regulation than has often been supposed. Marjorie McIntosh has demonstrated that the jurors and local office holders who assisted in the running of manorial courts leet and borough and city courts also had a part to play. The relationship between the temporal and ecclesiastical courts is of double-sided significance. On the one hand, the two jurisdictions can be seen, especially in the period covered by this book, as in de facto alliance, operating together, albeit sometimes uneasily, as a powerful system of social discipline. These were the antecedents of what English Calvinists were later to prize as the mutual support of ‘magistracy and ministry’. On the other hand, partly for reasons already stated, contest and conflict between the temporal and spiritual powers and among the various local and central courts in the secular sphere were also in

20 Alan Hunt, Governance of the Consuming Passions: A History of Sumptuary Law (Basingstoke, 1996), esp. chaps. 11 and 12.
evidence. In the short run, such tensions made the ideal of ‘magistracy and ministry’ hard to achieve in the late sixteenth century. In the long run, they were to contribute to a process – recently subjected to penetrating scrutiny by Faramerz Dabhoiwala – by which the public regulation of sexual morality was increasingly contested in the seventeenth century and gradually decayed in the eighteenth.  

Historiographically, the theme of ‘reformation of manners’ was first investigated thoroughly with reference to the Societies for Reformation of Manners – voluntary associations that sprang up in the wake of the Glorious Revolution of 1689 to initiate large-scale prosecutions against prostitution and other forms of ‘vice’. But the idea had already received glancing attention in accounts of the moral activism of the 1650s, which Oliver Cromwell himself characterized as ‘reformation of manners’. From the 1970s onwards, some of the context and antecedents of these developments came to light as it emerged that in the seventy years or so before the civil wars, church courts, assizes, quarter sessions and city, borough and manor courts had mounted thousands of prosecutions to combat sexual transgressions along with such offences as running unlicensed alehouses, drunkenness and ‘tippling’, unlawful games, lax religious observances and a variety of other activities that contemporary officials saw as ‘vice’, ‘sin’ or ‘disorder’. More recent work is gradually establishing the pattern of regulation and moral activism in the fifteenth and early sixteenth centuries – but this has hitherto remained (as on the continent) a relatively neglected period and hence is the particular focus of this book.  

State Building and Sexual Regulation

The theme of ‘reformation of manners’, and within it the issue of sexual regulation, is of interest not only in itself but also for the light it sheds on


26 The findings of the earlier phases of this work are summarized in Keith Wrightson, *English Society, 1580–1680* (London, 1982), chap. 6.

27 Ingram, ‘Reformation of Manners’, esp. pp. 57–64; McIntosh, *Controlling Misbehavior*. 
broader developments. The extent to which sexual behaviour was subject to legal sanction; the courts that dealt with it, whether ecclesiastical or secular, royal or local; and the nature and severity of the penalties that they deployed are all matters that bear on the growth of the state in early modern England, itself a complex and contested field. While many of the arguments and assumptions that constituted Sir Geoffrey Elton’s notion of a ‘Tudor revolution in government’ no longer pass muster, this phrase remains of use in capturing the idea of a bundle of important governmental initiatives that occurred in the reign of Henry VIII, the implications of which continued to be played out under his successors in the second half of the century and beyond. Among other things, the pretensions, if not the actual scope, of government were extended to cover an increasingly wide range of religious, social and economic issues, so royal power came to impinge far more directly on the lives of ordinary people. But, as some historians have long recognized, these developments did not come out of nowhere, and their antecedents must be sought in the late fifteenth century, if not earlier. As the recent work of John Watts indicates, this was an important period for the English monarchy, as an increasingly confident body of government officials, whose classical Latin studies imbued them with a strong sense of the pre-eminence due to princes, sought to give substance to a resurgent royal power through the effective exercise of legal and administrative authority. The development already noted – the appropriation of the rhetoric of reform and the association of the crown with ‘reformation of manners’ – is thus integral to and must be understood as an important element in the development of the Tudor state.28

The social and cultural significance of these changes was enhanced by the peculiar relationship between the machinery of English government and the wider social structure. Recent work, particularly that of Steve Hindle, has defined ‘the state’ to include not merely the crown itself, ministers and crown officers and the institutions of central government, but also local government in the counties, cities, boroughs and parishes of England and the army of minor officers – petty constables, churchwardens, overseers of the poor – who made these institutions work. These were ‘ordinary people’ in the sense that usually they served for short terms (chosen either on a rota basis or by local election), were unpaid and were

not of particularly high social status. On this view, the English state may be seen as supported by a high degree of popular participation, perhaps even as much a ‘bottom up’ as a ‘top down’ phenomenon. Active involvement in ‘reformation of manners’ was an important element in this dynamic, and this was so as much in the early and mid-Tudor periods as in the decades after 1570 emphasized by Hindle.\footnote{Steve Hindle, \textit{The State and Social Change in Early Modern England, c.1550–1640} (Basingstoke, 2000). See also Michael J. Braddick, \textit{State Formation in Early Modern England, c.1550–1700} (Cambridge, 2000), esp. chap. 4.}

Yet, it is equally important to recognize that state development in this period was in a sense an arrested or at least truncated process. A striking feature of the medieval English polity – a variant on patterns found elsewhere in Europe – was a fundamental distinction between temporal and spiritual matters and a corresponding division between legal systems, royal and ecclesiastical. By the late middle ages, many sources of conflict had been resolved, and the two systems worked on the basis of mutual recognition and support. Nonetheless, there remained the potential for serious clashes between the universalist claims of the papacy and the crown’s demand for obedience within the realm.\footnote{Benjamin Thompson, ‘Prelates and Politics from Winchelsey to Warham’, in Linda Clark and Christine Carpenter (eds.), \textit{The Fifteenth Century, Vol. IV: Political Culture in Late Medieval Britain} (Woodbridge, 2004), pp. 69–95.} Even within England, tensions persisted on such matters as sanctuary and benefit of clergy, while there was piecemeal encroachment on ecclesiastical court jurisdiction. More strikingly, around the turn of the sixteenth century there were some major adjustments of the boundary between the two jurisdictions. Debt suits, formerly handled in the guise of ‘breach of faith’, were gradually driven out of the church courts. In a parallel development, the royal judges denied the spiritual courts’ jurisdiction over slander where the matter at issue was cognizable in the royal courts (particularly cases concerning theft and other felonies), and subsequently, King’s Bench and Common Pleas developed their own jurisdiction in these areas. On this basis it has been asserted that ‘by the time the “official” Reformation arrived, a jurisdictional reformation . . . had already happened.’\footnote{Helmholz, \textit{Roman Canon Law}, pp. 25–7, 30–4 (quotation p. 33).}

Yet, although successive Acts of Supremacy made the monarch Supreme Head (1534) or Governor (1559) of the Church in England, a fundamental division between the spiritual and temporal powers persisted. In the wake of the breach with Rome, the crown and its advisers did seriously consider dismantling the ecclesiastical jurisdiction and transferring most, if not all,
of the business of the church courts to their secular counterparts. This could have radically altered the nature of the English state and would certainly have transformed the way in which sexual behaviour was publicly regulated. In the event, the spiritual courts survived, and secular court encroachment on jurisdiction over sex and marriage was severely limited. Indeed, in most respects the inherited division between secular and ecclesiastical jurisdiction in this sphere was in the reign of Queen Elizabeth powerfully reaffirmed.

It is in fact one of the major themes of this book that over the period there occurred an important process of jurisdictional winnowing. In the late fifteenth century, a wide range of secular tribunals – especially borough and city courts – worked in tandem with the church courts to restrain sexual behaviour outside marriage. In these areas, as in the spheres of debt and defamation, the boundaries between ecclesiastical and secular jurisdictions were sometimes quite blurred. By the beginning of the seventeenth century, as a result of changes that had begun earlier but were stimulated by issues arising from the breach with Rome and the establishment of the Royal Supremacy, the divisions were much more clear-cut. Sexual regulation was recognized to be primarily a matter for the spiritual courts.

Deviations from this principle did exist but were limited. On the one hand, civic authorities in London and some larger provincial towns were able to claim some jurisdiction over sexual matters on the basis of local custom backed by royal charters. The work of the London Bridewell was by far the most striking example — to the extent that some contemporaries denounced it as an unjustifiable anomaly — and it is notable that Bridewell’s handling of sexual offenders diminished sharply from about 1620. On the other hand, acts of parliament brought certain matters within the jurisdiction of secular courts or the justices of the peace, namely, bigamy (made a felony in 1604) and bastard-bearings when the illegitimate child was likely to charge the poor rates (acts of 1576 and 1610). Before the passage of the notorious and short-lived Adultery Act of 1650, other parliamentary attempts to extend secular jurisdiction in this sphere made little headway.

**Sexual Regulation and Religious Reformation**

Another major topic to which ‘reformation of manners’ relates is the nature of the English Reformation or, as Christopher Haigh would have

---

32 See Chapter 9.
it, ‘reformations’. Since the 1980s, Haigh, J. J. Scarisbrick, Eamon Duffy and others have established a new orthodoxy that stresses the strength (by and large) of the eve-of-the-Reformation church; the absence of any strong popular demand for religious change; the limited, if not minimal, significance of Lollardy (the native English heresy) and the restricted penetration of Lutheran or other continental Protestant ideas before the late 1520s at the earliest. George Bernard’s study of areas of ‘vitality and vulnerability’ in the late medieval church subjects the issues to detailed scrutiny but is essentially congruent with this vision.\(^{33}\) On this view, the so-called Henrician Reformation was instigated by the crown for its own purposes. Admittedly, the Royal Supremacy and the dissolution of the monasteries massively altered the ecclesiastical landscape, while royal sponsorship of the vernacular Bible, half-hearted though it turned out to be at first, was another notable break with the past. But doctrinally and liturgically, the changes were incoherent and never constituted a Protestant church.

The boy-king Edward VI and his advisers did establish the framework of a Protestant church, while their iconoclastic policies were highly destructive of the apparatus and institutions of Catholic doctrine and worship. Nonetheless, it is argued, their rule was too brief to have a deep impact on the real beliefs of most ordinary people. Hence, the efforts of Mary I not merely to restore Catholicism, including the obedience to Rome, but also in some measure to reform it had the potential for success and were frustrated only by the queen’s early death without offspring and the decision of her successor to reverse her policies. But Elizabeth was in some respects an equivocal supporter of Reformation; the advance of Protestantism was hampered by a groundswell of religious conservatism and even hostility, and it took decades, if not generations, for England to become in any sense a Protestant nation, let alone a nation of Protestants.\(^{34}\)

The slant of this set of arguments depicts Protestantism in terms of ‘a difficult labour and a sickly child’. But without doubt it did eventually


become a powerful force, generating a rich variety of forms of spirituality and religious behaviour. Diarmaid MacCulloch has gone so far as to describe it as ‘a howling success’, and even Haigh, in his more recent work, has acknowledged some of the achievements of those who built a Protestant church under Elizabeth and the early Stuart kings.\(^{35}\) As has long been recognized, the work of the ecclesiastical courts, and more broadly a campaign of ‘reformation of manners’ espoused by urban magistrates, justices of the peace and local officers such as churchwardens and petty constables, were integral to this development.\(^{36}\) In this sense, sexual regulation is recognized to have been a major element in the ‘long Reformation’. Its role in the decisive period of policy changes in the mid-Tudor decades needs to be explored further. Ian Archer has drawn attention to the role of Protestant reformers from the 1540s in appropriating the rhetoric of sexual reformation by spearheading an attack on vice, especially in the city of London, but there is more to be said on this topic.\(^{37}\) Even less attention has been paid to the creative efforts of churchmen and some provincial city and borough authorities, to an extent in the reign of Edward VI and then in the first two decades of the Elizabethan regime, to establish a framework of institutions capable of carrying out far-reaching reform in sexual ‘manners’. Among other things, this involved a rethinking of the practice of judicial penance to bring it in line with Protestant doctrine, together with debate on and experimentation in the use of secular punishments to combat sexual transgression – both developments occurring in the broader context of a penal regime that increasingly favoured the use of corporal punishment. These are major themes of the closing sections of this book.

Sexual regulation also impinges on the prehistory of the Reformation – the word ‘origins’ begs too many questions – opening up lines of interpretation that either complement or bring into question recent approaches. As against those historians who insist that in the decades around 1500 there was not much wrong with the church, R. N. Swanson and others stress that – as might be expected in continental perspective – at the end of the


fifteenth century and in the early decades of the sixteenth there existed powerful currents of questioning and reform within the church, in part in response to lay criticism. The fact that in the 1530s these initiatives were to be swamped by an entirely different and extremely powerful current of ‘reformation’, emanating from the crown, should not obscure the fact that this was a dynamic, not a static, situation. A related theme is the existence of great diversity of religious belief and pious practice in England well before continental Protestant ideas began to have an impact. The patchy persistence of Lollardy in some areas is merely one dimension of this diversity, which current work is beginning to explore more thoroughly. From another viewpoint, the church’s renewed assault on heretics in the decades preceding the Reformation represents a powerful effort to promote orthodoxy, based on belief in the sacrament of the Eucharist as indeed corpus christi. Compelling dissidents to recant, if this was at all possible, and burning the relatively small numbers of the obdurate were measures designed both to limit the dangers of ‘contagion’ and to send a powerful deterrent and, more broadly, educative message to reclaim waverers and rally the faithful.

Plainly, the issue of heresy had a particularly high profile not least because of its associations with sedition and the fact that statutes of 1401 and 1414 enabled the church to hand obdurate and relapsed heretics over to the secular arm to be burnt. But it is the contention of this book that new initiatives towards more intense sexual regulation and tighter control of marriage represent another area that may fruitfully be explored in the contexts of diversity, reform and the imposition of orthodoxy. The extent to which ordinary people were or were not amenable to the Catholic vision of sexual relations and of marriage – the sacramental status of which was reaffirmed at the Council of Florence in 1439 – is an important index of religious commitment and identity. At present, the topic receives scant attention even in the most recent and sophisticated studies of pre-Reformation English piety.

39 The literature on Lollardy and the church’s response is vast. For a recent review, see Bernard, Late Medieval English Church, chap. 9.
Another theme that demands further attention is ‘anticlericalism’. It is widely accepted that this is at best a slippery notion – or perhaps a blunt instrument – and that it would be misleading to think in terms of widespread criticism of, or hostility to, the clergy among the mass of the people on the eve of the Reformation. If there were criticisms, they were usually directed at individuals, and what was demanded was redress of these particular complaints in accordance with the traditional values to which the bulk of the clergy no doubt strove to aspire. The behaviour of sexually immoral clerics, for example, provoked demands for the disciplining and reform of those guilty of such behaviour – not a fundamental rethink of the clerical role and the advocacy of a married clergy according to Protestant doctrine. Nonetheless, there are grounds for thinking that the sexual transgressions of clergymen were a matter of more widespread complaint and graver concern than Haigh and others have been willing to recognize. Moreover, there is evidence that when the time was ripe, some lay people deliberately seized on cases of clerical immorality as a means of bringing the church into disrepute. This, in turn, suggests that there did exist deeper currents of hostility towards church and clergy that cannot be ignored.

Demography

Of course, not all the existing literature bearing on sexual regulation is related directly to ‘reformation of manners’, far less to state development or religious ‘reformation’. The main focus of the work of historical demographers is quite different, yet they have established a demographic framework within which legal sanctions on sexual behaviour may be considered and have generated important ideas about the underlying (and not necessarily conscious) motives for such regulation. Peter Laslett, a pioneer in historical demography, saw the issues in terms of ‘personal discipline’ to ensure ‘social survival’: that is to say, he assumed that society generated mechanisms to restrain sexual relations outside marriage to ensure that the scarce resources of the pre-industrial world were not swamped by unbridled procreation. These mechanisms included legal sanctions, but they fitted into a wider pattern of customs, practices, assumptions and prescriptions that together formed a demographic regime that operated to restrain fertility.42

The nature of this regime from the mid-sixteenth century onwards has been explored in detail by E. A. Wrigley and R. S. Schofield.\(^{43}\) The extent to which it was a truly homeostatic or self-regulating system and the emphasis that Wrigley and Schofield place on fertility rather than mortality factors in explaining the course of population change have been questioned.\(^{44}\) However, its key features are not in dispute; indeed, some are characteristic not only of England but of north-west Europe generally. The first was a relatively late age of first marriage (on average, the middle to late twenties) for both men and women, the effect of which was to shorten the female reproductive span and so restrict fertility. In the seventeenth century, a complementary feature of the demographic landscape, likewise tending to reduce the number of births, was a relatively high proportion of people who never married; this characteristic also applied to the sixteenth century but was then much less marked.

Associated with both these demographic features were the social institutions of apprenticeship and service. Servants – whether in husbandry or domestic service – were usually engaged for a year at a time, whereas apprentices were legally bound to serve for much longer periods (seven years or more in some cases) while they learned a trade. They were alike, however, in that they usually lived in the households of their masters or mistresses, who legally assumed a position *in loco parentis* and who exercised over them very wide powers, including that of ‘lawful correction’. Crucially, the marriage of servants was very strongly disapproved of and usually forbidden to apprentices. Socially, the importance of apprenticeship and service in early modern England can hardly be exaggerated; from a demographic standpoint, the effect was to prolong adolescence for many years beyond physical puberty.

Another factor tending to delay marriage was a widely though flexibly enforced ‘rule’, or rather deeply engrained assumption at all but the highest social levels,\(^{45}\) that couples should not live with parents or other relatives but establish a new household. This meant inheriting or otherwise acquiring a house or cottage, or at least some kind of lodging or tenement – not always easy in this period. A complementary belief, widely and strongly


\(^{45}\) The situation was different among the aristocracy and higher gentry. For dynastic reasons, they often arranged marriages in which one or both partners were very young and provided houseroom for the couple in the early years of the union.
held on both moral and prudential grounds, was that couples intending marriage should accumulate the wherewithal to ensure that they could maintain themselves adequately. As one man stated in a London marriage case in 1488, quoting a contemporary proverb that was still widely cited a century or more later, more was needed in a household than ‘four bare legs’ in a bed. By the very end of the period covered by this book and onwards into the early seventeenth century, this was a desideratum that for many couples was becoming increasingly difficult to achieve. The underlying reason was a long phase of demographic growth, particularly marked in the period 1570–1630, which put pressure on resources and increased both the proportion and the absolute numbers of poor people. The social and economic effects were compounded by price inflation – the precise causes of which remain controversial and a variety of changes in production, distribution and land use. The upshot was a difficult economic climate in which the features of the demographic regime already outlined were intensified.

‘The peasants and the craftsmen of Tudor and Stuart times,’ Laslett concluded, ‘seem on the whole to have been cautious about the procreation of children and the formation of families . . . they were well enough aware that the fund of food and conveniences of life were strictly limited.’ Hence, sex outside marriage was the object of strong disapproval. In support of his case, Laslett adduced low rates of illegitimacy. As a generalization, this holds true, though the more recent work of Richard Adair has shown that the matter is not as clear-cut as appeared at first sight. Numbers of bastard births appear much more obtrusive if they are compared with numbers of marriages or first births rather than with all births. Moreover, in some parts of the north and west, particularly Cheshire and Lancashire, even illegitimacy ratios calculated in the normal way were quite high (more than 5 per cent) in the late sixteenth and early seventeenth centuries. There are other reasons to suppose that a rather different sexual regime operated in the north-west, at least before about 1600, and this is a main reason why this particular study confines itself to the south.

Elsewhere in England, illegitimacy ratios were much lower. It is true that in most areas the proportion of bastard births to all births was rising in the later part of Elizabeth’s reign, but numbers peaked around the turn of the century and subsequently declined. Bridal pregnancy was much

46 LMA, DL/C/A/001/MS09063B, fo. 15v; Wrightson, English Society, p. 82.
48 Laslett, World We Have Lost, pp. 155–6.
commoner – parish register analysis suggests that perhaps a fifth of all brides were ascertainably pregnant when they got married – though again the figures seem to have declined in the seventeenth century, at least in some parishes in some areas.\footnote{Richard Adair, *Courtship, Illegitimacy and Marriage in Early Modern England* (Manchester, 1996). See also Peter Laslett, Karla Oosterweel and Richard M. Smith (eds.), *Bastardy and Its Comparative History* (London, 1980), chaps. 1–6 and 8.} However, the bridal pregnancy statistics are not fatal to the theory of regulated sexuality. As Keith Wrightson nuanced Laslett’s argument, ‘restraints upon sexual activity . . . [only] crumbled once marriage was in sight . . . popular attitudes, though far from loose, were simply more flexible than those of society’s professional moralists.’\footnote{Wrightson, *English Society*, p. 85.}

Wrigley and Schofield discuss English demography with scant reference to the effects of legal regulation and other direct social constraints; behaviour is presented as conforming to implicit rules and responding to economic indicators such as wage rates. But unquestionably the late sixteenth- and seventeenth-century demographic regime is better understood in its full legal context. Whatever the limits on enforcement – and they were many – the Statute of Artificers of 1563 reinforced apprenticeship and service and increased the restrictions on young people. The impact of the poor laws was of even more profound and far-reaching significance, already in some areas (particularly major towns) by the late sixteenth century and more generally after the passage of the great codifying statutes of 1598 and 1601. Again, an important effect was to direct many young people, whether they willed it or not, into service or apprenticeship, while local concerns to keep poor rates as low as possible (or at least to use them to best effect) led to restrictions on the movement and other patterns of behaviour of potentially ‘chargeable’ people. Attitudes towards idleness and waste hardened, as did condemnation of sexual transgressions and what were seen as irresponsible attitudes towards marriage.

These arguments and explanations make most sense in the period of steeply rising population after about 1570. The relationship between sexual regulation and demographic stress in the preceding hundred years is less clearly evident. In the absence of parish registers before the 1540s – indeed survivals are quite sparse until the later part of Elizabeth’s reign – the kinds of evidence on which Wrigley and Schofield depended are simply lacking, so the nature of the demographic regime itself remains very uncertain. Virtually nothing is known about specific indicators such as illegitimacy rates before 1538, though such evidence as exists suggests that bastardy was at a relatively high level in the 1540s but had fallen back by the early decades.
of Elizabeth’s reign. It seems likely that – at least for the middling and lower ranks of society – a pattern of relatively late age at marriage, associated with household or farm service and with apprenticeship, was already in existence in the fifteenth century. However, there are strong indications that high mortality, especially in towns, played a much more important role than it did later. Peaks of mortality occurred at intervals in the 1470s and 1480s, while the decades around 1500 appear to have been especially lethal. The combination of high age at marriage and high mortality kept population levels low, probably under 2.5 million in the country as a whole. There may have been population growth in the 1460s, subsequently arrested, but overall there is little sign of marked demographic upturn before the 1520s, and even then population increases were subject to severe interruption. The years 1556–60 witnessed a severe influenza epidemic: estimates of mortality vary, but the evidence suggests that at least 8 per cent and perhaps as many as 15 or 20 per cent of the population died.

It might be thought that, in contrast to the later situation, attitudes towards sexual transgression in this ‘low-pressure’ demographic regime would be relatively relaxed. The situation is more complicated. As McIntosh has pointed out, some places did indeed suffer the stress of increasing population, often the result of in-migration, even in the late fifteenth century – in particular, this was true of certain market centres in the orbit of the metropolis. Elsewhere the difficult circumstances that were in many areas the concomitant of low population levels were not necessarily conducive to tolerant attitudes. There were also medical concerns, centring on the plague and – especially after the arrival of syphilis in England in the closing years of the fifteenth century – on sexually transmitted disease, though this issue is far less prominent in the records than might have been expected. However, it is plain that opinions and behaviour were also shaped by religious ideas and ethical concerns, by

---

53 McIntosh, Controlling Misbehavior, p. 141.
inherited prejudices and by notions of orderly and disorderly conduct that were not directly related to the demographic regime. As will be seen, in towns and cities and even, to some extent, in the countryside, sexual transgression was viewed more broadly as a threat to the peace and a disruption of neighbourhood and civic values. More positively, city and town councils self-consciously asserted jurisdiction over sexual offenders to claim the moral high ground associated with the Christian moral order. Underpinning these initiatives, in the late fifteenth and early sixteenth centuries the church was — as subsequent chapters will make plain — increasingly insisting that to be legally and socially acceptable, marriage must be solemnized in a church wedding blessed by a priest and followed by a nuptial mass. This striking development inevitably sharpened the distinction between licit and illicit sex.

That said, the marked hostility to fornication, bastard-bearing, bridal pregnancy and even to the marriage of poor people that is visible in the early seventeenth century is much less evident in the late fifteenth and early sixteenth, whether in popular attitudes or those of legal officers. Indeed, this contrast is one of the key findings of this book. It was a dictum of the church courts in this earlier period that they acted ‘in favour of marriage’, and the fact that a couple planned to marry or were prepared to consider this course of action was grounds for leniency far more often than it was to be later. More fundamentally, sexual relations between young people free to marry were in themselves of limited interest to the authorities. They were far more concerned about householders behaving irresponsibly. This might be through their own illicit relationships with individuals within the household (maidservants, for example) or with the wives or husbands of other people; or by allowing or, worse still, promoting illicit sex to take place on their premises. This was indeed a major issue. There is abundant evidence that not only in the environs of London but also in provincial towns and even in some rural areas, sex trade in one form or another was a prominent feature of the social landscape. Neither church nor state authorities publicly condoned this situation, and they made considerable efforts to combat it. But these aspirations were undercut by a variety of institutional obstacles, of which the licensed brothels known as the Southwark ‘stews’ were the most blatant; by the attitudes and actions of numerous individuals — both clergy and lay people, sometimes of prominent social status — who behaved as if the rules did not apply to them; and by the vested interests of many people, women as well as men, for whom the trade in sex was a source of profit, or at least part of the ‘economy of makeshifts’ that helped the poorer sections of society to make some kind of
living. To summarize in a few words, in the century before 1570, ‘adultery’, ‘keeping a whore’ and ‘promoting bawdry’ were of more concern to the authorities, and also to ordinary people, than simple ‘fornication’ between unmarried youngsters or courting couples, and engaging with the challenge of sexual trade – a cause to which a wide variety of interests could rally – was one of the main stimuli to periodic efforts at moral reform.

**Sexuality and Gender**

Also crucial to understanding sexual regulation is the study of sexuality and gender. The relationship between the sexes is integral to the latter concept, but in practice, women have tended to remain the main focus of inquiry, albeit more recent studies have given increasing attention to masculinity or ‘manhood’. Still influential is Thomas Laqueur’s identification of a ‘one-sex model’ of gender difference, rooted in anatomical and humoral theory, which is supposed to have prevailed from late classical times to around 1700. However, Laqueur has been criticized for basing his work on limited evidence and for oversimplifying and in some degree distorting the ideas he discusses. Moreover, in so far as the idea of the one-sex body existed, its impact and influence outside the pages of medical and anatomical treatises are open to question. Certainly it is not one that features significantly in church and secular court prosecutions for sexual transgressions, either in the form that accusations took or in the responses of defendants to the charges against them.

To an extent the same may be said of the broader framework of contemporary medical and philosophical ideas about male and female, men and women. It was a sixteenth-century truism that the characteristics or ‘temperaments’ of the two sexes were shaped by the relative balance of the ‘four humours’ (blood, phlegm, yellow bile and black bile), which were, in turn, related to the ‘four elements’ (fire, air, earth and water). Men were ruled by the hotter, drier humours, women by those that were cold and moist. As a result, women were conventionally, indeed proverbially, thought to be mentally as well as physically weaker than men. They were

---


less rational, more subject to their passions and hence susceptible to bodily temptation or even to be sexually voracious.

While such ideas did not monopolize thinking about the sexes, they were certainly an important force, part of the framework of ideas of late fifteenth- and sixteenth-century society. They are reflected in the material used in this book to the extent that men – especially young men and those in the prime of life – were characteristically assumed to be powerfully attracted to women and likely to give vent to their passions if they were not restrained by their own powers of reason and self-control, backed up by the strictures of the law and social pressure. In the act itself, men were conventionally viewed as the prime agents. They had the ‘carnal knowledge’ or the ‘use’ of women’s bodies; more euphemistically, they ‘meddled’ or ‘lay’ with them; in the language of the street, they ‘fucked’, ‘swived’ or ‘japed’ them. Women were characteristically viewed as more passive yet also powerfully inclined to sexual activity in certain circumstances – most obviously if they were of age to marry and had hopes or expectations of marriage; if they were already married but had unfulfilled desires for children; or if they were widows whose sexual desires had been previously aroused but were now frustrated. Some women, generally viewed with disfavour in these sources, were seen as lusty individuals with an insatiable appetite for sex. A much larger group was thought to be willing, either for greed or need, to sell their bodies for money or other benefits. Such straightforward assumptions account for virtually all the cases found in the records. Scarcely ever did defendants in court attempt to explain their behaviour by reference to their ‘humours’. Frustratingly for the historian, they rarely offered any other deeper insights into why they had, or had not, done the things of which they were accused. In the records of court proceedings, as also the writings of moralists, legists and theologians that underpinned them, the emphasis was on acts rather than intentions. So, while such sources tell us a great deal about the behaviour of men and women, questions of sexual identity remain elusive, while even issues of agency – especially female agency – are only partially open to investigation.57

One issue that these sources bear on much more directly is the ‘double standard’, the idea (as stated by Keith Thomas in a pioneering study) ‘that unchastity, in the sense of sexual relations before marriage or outside

57 Useful introductions to ideas about sexuality in this period include Ruth Mazo Karras, Sexuality in Medieval Europe: Doing unto Others (New York and London, 2005); Katherine Crawford, European Sexualities, 1400–1800 (Cambridge, 2007).
marriage, is for a man, if an offense, none the less a mild and pardonable one, but for a woman a matter of the utmost gravity'. 58 Laura Gowing has used the evidence of slander suits in the London church courts to argue that this notion is inadequate and misleading: rather, the way the reputations of the two sexes were constructed was incommensurable. Men, she insists, were rarely made culpable for their sexual transgressions and never defined by them; women, however, ‘were at the pivotal centre of the circulation of blame and dishonour for sex: responsibility was channelled entirely through them’. 59

It is now widely accepted that this is both a simplification and an exaggeration. Gowing relied heavily on church court evidence, but the tight legal restrictions within which these tribunals operated confined them largely to sexual defamation. Study of slander litigation in other courts and of attributes of honour, reputation and ‘worth’ as they emerge from a variety of other sources very much modifies the picture. In much better accord with the facts is the long-established view that the double standard in England in this period was a matter of degree, not an absolute dichotomy. 60 This argument has been reinforced by Bernard Capp’s studies of the possibilities open to resourceful – sometimes opportunistic and unscrupulous – women to exploit men’s fear of being disgraced for adulterous behaviour or begetting illegitimate children. As Capp’s evidence indicates, it was men in positions of special trust or responsibility, such as clergymen, who had the most to lose from such attacks, but to an extent, other men were vulnerable too. Yet more evidence to support this view will emerge in succeeding chapters. 61

An interesting feature of much recent work on sexual slander, gender and related issues is that the authors make only passing reference to criminal prosecutions for sexual transgressions. Though obviously aware that the church and, to a lesser extent, the secular courts played an important role in this sphere, they give little sense of the intensity of such regulation, how far its impact varied in different places and how the pattern changed over time. The premise of this book, in contrast, is that

such matters are of crucial importance. It is a disagreeable matter in any circumstances to be defamed as a whore in the open streets or publicly accused of fathering an illegitimate child. But if these events took place in a society in which such matters were regularly the subject of legal prosecution, where people were commonly expected to observe their neighbours’ behaviour and to evaluate their sexual ‘honesty’, and where charges of fornication, adultery, bigamy and the like could lead to humiliating and in some cases extremely painful punishments, social ostracism or ejection from house and home, the jeopardy is all the greater and the social and psychological drama of the confrontation all the more intense. This was above all true in London, where the mesh of sexual regulation was especially fine. In the streets and alleys of the metropolis, especially in the city itself, sexual reputation was of intense and tangible importance. This context needs to be understood if the significance of being denounced as a ‘whore’, a ‘bawd’, a ‘whoremaster’ or the like is to be fully appreciated.

The church had always insisted that adulterous men and women were both guilty in the sight of God; indeed, some theologians argued that men were more culpable because they were the more reasonable of the two sexes and hence better able to resist temptation. To what extent the late fifteenth- and early sixteenth-century church courts did hold men to account for their sexual misdeeds and how far secular tribunals followed suit are therefore issues of prime importance. Valuable work on this theme has already been done by Karen Jones and Shannon McSheffrey, among others, but the issues are further explored in the following chapters. It will not be surprising to find that women were indeed often at the sharp end of legal action against sexual transgression. Far more striking is that often the courts rigorously pursued the menfolk too. Indeed, in some tribunals, men were the main targets. More basically, it is incontrovertible that legal regulation of sexual behaviour in both men and women was so important as to be a defining feature of late medieval and early modern society. The gradual disintegration of this system of moral surveillance from the later seventeenth century onwards was to represent a big step towards the emergence of a recognizably modern society, but that development was a long way off when Queen Elizabeth died in 1603.

63 Shannon McSheffrey, Marriage, Sex, and Civic Culture in Late Medieval London (Philadelphia, 2006); Karen Jones, Gender and Petty Crime in Late Medieval England: The Local Courts in Kent, 1460–1560 (Woodbridge, 2006), esp. chap. 5.
64 This is the main theme of Dabhoiwal, Origins of Sex.
This book is an attempt to analyse in detail this pattern of sexual regulation and to investigate the course of change down to the end of the sixteenth century. For several reasons, it is confined to sexual transgressions that took place between men and women and were at least notionally consensual in nature. There is no attempt to treat systematically rape, child sexual abuse, bestiality, same-sex relationships (whether between men or women) or masturbation. The last, sometimes referred to as (or subsumed with) ‘sodomy’, sometimes described as ‘voluntary pollution’, was denounced by the church as a grave sin. Some cases found their way into the records in monastic contexts, and the issue was to feature quite prominently in the findings of the commissioners investigating the state of the smaller monasteries in 1536, but the practice was not generally regarded as a matter for the courts. Presumably it was dealt with in private confession or, after the Reformation, left to the individual conscience.65 David Crawford states that a man from Light (Kent) was prosecuted by the court of the bishop of Rochester for masturbation in 1523. In fact, the charge was ‘for myslyvyng and abusyng his body as he hath openly sheuyd and confessed’, a formula that might refer to virtually any sexual transgression. The fact that a female partner was not specified is not conclusive; the man may have had sex with one or more unnamed prostitutes, and/or the fact of transgression may have been betrayed by venereal disease. The culprit was said to have left the vicinity, suggesting a charge of some gravity. Even if this was a prosecution for masturbation, it was an isolated instance.66 Equally rare are references to sexual activities between females. In 1555, a Sussex maidservant was accused of reporting that the daughters of two local householders ‘did put in theyr ffyngers one into anothers privyties’ when they were alone together in a pigsty. While their ages were not stated, they were evidently young and unmarried, and what they were supposed to have done may well have been simply a matter of sexual experimentation.67

Most of the other acts and practices listed in the preceding paragraph were, or became, felonies during this period. The sources required to study them are different from those relating to the mass of heterosexual

67 WSRO, Ep.II/9/1 (Archdeaconry of Lewes, Detection Book, 1550–7), fo. 103v (I owe this reference to Paul Cavill).
transgressions and demand a separate methodology, if not a longer time scale to make sense of changing patterns. 68 Moreover, some of these offences came before the courts very rarely indeed. In principle, this raises compelling questions about the ‘dark figure’ between numbers of prosecutions and actual transgressions. In practice, it makes serious analysis impossible. On the basis of modern ideas about the incidence of same-sex inclinations and contemporary denunciations of ‘sodomy’ as an unnatural crime, it might be expected that homosexual practices would feature prominently in legal records. There were some places in Europe where this was so. An extreme case was Florence, where in the seventy years from 1432 to 1502, the ‘Office of the Night’ investigated some 17,000 men – in a city of only 40,000 people – for same-sex activities. Bruges – roughly the same size – saw over a hundred convictions for sodomy in the period 1385–1515, including ninety executions. 69 On a more limited scale, sodomy was a target of Catholic Inquisition courts in Spain and Italy, while there were prosecutions in many Protestant towns and cities in Europe, including Geneva – though not all Calvinist cities reflected a similar interest. 70

In England, apart from a limited number of cases revealed by visitations of monasteries, there is a distinct paucity of cases. An act of 1534, re-enacted in 1563 after repeals in 1547 and 1553, subsumed sodomy and bestiality into the new felony of ‘buggery committed with mankind or beast’. 71 In 1541,


71 25 Henry VIII c. 6, repealed by 1 Edward VI c. 12; 2 and 3 Edward VI c. 29, repealed by 1 Mary st.1 c. 1; 5 Elizabeth I c. 17.
Nicholas Udall, headmaster of Eton, was (among other misdeeds) accused of buggery when he appeared before the Privy Council. In Elizabeth’s reign, Edward de Vere, earl of Oxford, was smeared with charges of buggery with a number of boys, while Christopher Marlowe was said to have opined that ‘all they that love not tobacco and boies were fooles’; both Oxford and Marlowe were at the same time accused of holding views that were sceptical of Christian religion, if not downright blasphemous. But actual prosecutions under the acts of 1534 and 1563 were very few. Problems of evidence and the strictness of the penalty (death by hanging) only partly explain this dearth.

In earlier times, ‘buggery’ in the sense of bestiality was in principle a matter for the ecclesiastical authorities, but examples are rare. In 1520, a Grinstead (Sussex) man had to clear himself of the slander that more than two years before he had ‘committed’ ‘against nature’ with a cow; a neighbour’s son had seen him at it and upbraided him with the words ‘thou lewde felow what dost thou?’, later spreading the story to others. The previous year the holy water clerk of Tingewick (Buckinghamshire) had been reported for unnatural carnal connection with a horse; a local woman had spotted him in the act.

Before 1534, ‘buggery’ in the sense of sodomy was also primarily a matter for the church courts, but in rare instances and in special circumstances cases did crop up elsewhere. In 1385, the mayor and aldermen of London were perplexed by a transvestite male prostitute who had sexual relations with both men and women. In 1492, a fellow of Merton College, Oxford, was expelled, after careful investigation by the warden, for abusing several youths; the matter was hushed up as far as possible.

Throughout the late fifteenth century, Italian galley fleets regularly put into the port of Southampton. Partly to accommodate demand from their crews, the town...
had a licensed brothel of the kind common in parts of southern Europe but extremely rare in provincial England. But some of the galleymen had same-sex predilections that occasionally caused trouble. In 1491–2, one of them was fined the substantial sum of £3 6s. 8d. ‘by cause he wold a dealed with a boye unlawfully’. Two years later, goods to the value of £20 were seized from another of the visitors who ‘shamefully delt with a boye’; the large forfeit may indicate that severe injury had been occasioned.\(^\text{77}\)

It is sometimes suggested that sodomy cases must have been more common but that the records are lost or were deliberately destroyed; if so, it is surprising not to find at least some echoes in the quite extensive sources that do survive. The paucity is striking. In her study of the local courts in Kent in the period 1460–1560, Karen Jones encountered ‘no accusations of homosexual activity’ whatsoever. From another source it is known that in a dispute over the priory of Folkestone in 1463, Brother Thomas Banns was described as ‘notoriously excommunicated, and [accused] of a crime most foul ... (for which Almighty Providence has destroyed many cities and towns) ... by him confessed, and he also judicially convicted’ or, more pithily, as ‘a fals sodomyte’ who ‘for opene and proved sodomyte stante accursed’. But there is no doubt that cases were extremely uncommon.\(^\text{78}\)

Likewise, Richard Wunderli found, among more than 21,000 defendants before the court of the bishop of London’s commissary in the period 1470–1516, only one man accused of sodomy – or rather with having publicly declared that he had committed sodomy with a named individual – while another possible reference occurs in an obscurely worded defamation case.\(^\text{79}\)

The paucity of slander suits featuring accusations of buggery or sodomy, in London as elsewhere, is especially telling. Even in the most heated slanging matches in alehouses or on the open streets, it would seem that people did not raise accusations of same-sex acts or predilections.\(^\text{80}\)

\(^{77}\) Cheryl Butler (ed.), *The Book of Fines: The Annual Accounts of the Mayors of Southampton*, Vol. I: 1488–1540 (Southampton Records Series 41, Southampton, n.d.), pp. 17, 38. I am grateful to Steven Gunn for drawing my attention to these cases. On brothels licensed and unlicensed, see Chapters 4 and 5.


\(^{80}\) This issue is addressed in Mario DiGangi, ‘How Queer Was the Renaissance?’, in Katherine O’Donnell and Michael O’Rourke (eds.), *Love, Sex, Intimacy, and Friendship between Men, 1550–1800* (Basingstoke, 2003), pp. 128–47.
Prosecutions were perhaps more likely to occur in higher ecclesiastical courts, but even so, they were rare. In the bishop of Lincoln’s court of audience in 1529, William Baly of Kirby Bellars (Leicestershire), aged forty, confessed that six years before he had twice committed the ‘sodomitical sin’ with John Jolybrand, a married man living in the same place, and a couple of times the last summer had ‘uncleanly’ stroked another local man’s ‘privy members’. Jolybrand admitted the two acts of sodomy, one in bed and the other standing up, and confessed that Baly had also fondled his genitals on several occasions. However, he denied committing sodomy himself and claimed that none of these contacts had led to ejaculation on his part.  

A moderately explicit account like this is at odds with another possible explanation for the paucity of cases, namely, that the authorities deliberately avoided references to what was conventionally described as the ‘sin not to be named’ (peccatum non nominandum), a matter thought so detestable that even its perpetrators would be expected to feel a strong sense of shame. Yet, fifteenth-century moralists wrote explicitly of ‘sodomy’ in the sense of same-sex physical contacts, assuming that either men or women might be subject to this ‘sin’. Perhaps, as may be implied in these texts, this was another matter that was characteristically dealt with in private confession rather than the ‘external forum’ of the courts.

A more basic reason for neglect is that same-sex acts and emotions did not easily mesh with the conceptual framework of procreation, marriage, household and neighbourhood that, as will be seen in Chapter 2, underpinned the authorities’ concern with sexual regulation. Writing of late fifteenth-century London, Shannon McSheffrey has further speculated that the city’s sexual culture was one ‘in which the idea of same-sex relations was deeply repressed’; any such relations would have ‘remained outside public discourse, below the documentary radar’. ‘Sodomy’ was to come to the surface in Reformation polemics, notably in the works of John Bale, but how far this affected the ideas of ordinary people is uncertain. Alan Bray’s suggestion, as applicable to the period before the passage of the 1534 buggery act as afterwards, is that in England as a whole there was an extreme disjunction between abhorrence of ‘sodomy’ in principle and, in practice, a reluctance on the part both of the actors themselves and of neighbours and friends to recognize it in most concrete situations.

81 LA, DIOC/Cj4, fo. 54v.  
common homosexual practices actually were can only be a matter of speculation, while affective aspects and questions of sexual identity are even more elusive. What is quite clear is that the pursuit of same-sex relationships was effectively not part of the normal pattern of legal regulation.\textsuperscript{83}

Quantification and Other Methodological Issues

Methodological issues will mostly be discussed as they arise, but one matter needs to be addressed at the outset. The records of the secular and ecclesiastical courts hardly lend themselves to sophisticated statistical analysis; this is particularly true for the period before about 1570 because survivals are mostly extremely patchy, in some cases fragmentary and, as will be seen, often extremely difficult to interpret. Questioning the value of any attempt to quantify the records of Calvinist church discipline, Judith Pollmann has highlighted further problems. Having compared the activities of the Utrecht consistory with the detailed personal journal of one of the church elders for the years 1622–4 and 1626–8, she found that only nineteen of the sixty-eight matters that he noted were recorded in the official record and that this minority of cases was by no means representative of the whole. Underlying the recorded acta was a complex of principles and disciplinary processes that shaped what went into the record and what did not in ways that are often inaccessible to the historian.\textsuperscript{84}

Pollmann recognizes that selectivity may have been greater in the context of an essentially voluntary system of church discipline such as operated in the Dutch Republic compared with the systems that had a ‘judicial character and civic repercussions’, as in Scotland and Geneva\textsuperscript{85}; clearly, this caveat needs to be applied to English church court materials and other judicial records used in this book. But it would be a mistake to use this to explain away Pollmann’s criticisms. On the contrary, the underlying issue cannot be emphasized too strongly. As was said in the Prologue, action against sexual transgressors, whether in the secular or the ecclesiastical courts, was the product of complex interactions between initiatives from the authorities and the participation of ordinary people – of various ranks

\textsuperscript{83} For a broader approach, see Tom Linkinen, \textit{Same-Sex Sexuality in Later Medieval English Culture} (Amsterdam, 2015).
\textsuperscript{85} Ibid., 438.
and conditions and of both genders – in local settings where much (if not most) of what was important to people’s lives was done orally, face to face and in exchanges varying in tone from friendly discussion to hard-nosed bargaining and blunt threat. Suspicions of misbehaviour might or might not coalesce into accusations, and even these might well be dealt with by warning and reproof, or – before the Reformation – in the confessional, rather than by denunciation to the authorities. The courts themselves filtered the cases that came to their attention, while recording practices were always flexible and varied greatly from court to court. Undoubtedly not all cases ended up in the formal record. Moreover, the relationship between court records and the complex processes of social discipline to which they relate was not stable and cannot be assumed to have been consistent over time.

It follows that conclusions about the intensity and scope of discipline cannot be simply ‘read off’ from the numbers of cases. Historians of the drink trade have long been aware that very large numbers of prosecutions, at first sight indicative of intense discipline, may in fact be a disguised form of licensing system.86 At least to some extent the same principle may apply to some areas of sexual regulation, notably prostitution. Such complexities obviously pose problems of interpretation or, to put the matter more positively, they generate part of the interest of the subject in posing hard questions about the changing relationships between legal institutions and the societies in which they were embedded. But it does not therefore follow that we should not count. At the least, the numbers of recorded cases provide a minimum indication of the incidence of legal regulation and a starting point for discussion of the nature, scope and purpose of what was done.

**Preview**

This book is based on extensive reading of a wide range of secular and ecclesiastical court records, supplemented by related sources – the works of moralists, legal commentators and contemporary chroniclers, for example – and compared with the findings of other scholars.87 Sharper focus and detailed analysis are provided by the close examination of surviving


87 Preference has been given to moralists whose works (whenever they were first written) were put into print in the decades around 1500 and may therefore be supposed to have had some contemporary relevance.
materials for particular years or groups of years, or occasionally periods shorter than a year when the nature of the sources so dictates. On this basis, ensuing chapters explore both the pattern of prosecutions for sexual transgressions and, where possible, the underlying contours of people’s behaviour, which changed considerably over the period in question. Chapter 2 establishes the context by emphasizing the massively important role that marriage, household and reputation played in late fifteenth- and sixteenth-century English society. The next six chapters focus on the fifty years or so before the Reformation. The overall paucity of source materials and the patchy coverage of what does survive make it impossible to do full justice to this complex period. In particular, some of the changes that may have occurred within this half century cannot be fully recovered; hence, the emphasis is not chronological but rather on variations in different social, administrative and political environments (Map 1).

Since England was a predominantly rural society in this period, Chapter 3 concentrates on country areas and on the ecclesiastical courts – far and away the most important agents of sexual regulation in such regions – using samples of material drawn mainly from Leicestershire and from the western part of the county of Sussex (archdeaconry of Chichester). In Chapter 4, urban communities, particularly Exeter, Colchester, Salisbury, Leicester and Nottingham, are investigated, with particular attention to the special arrangements that many cities and boroughs had developed to regulate the sexual behaviour of their inhabitants and the ethos of urban government that underpinned these activities. Albeit in a different religious context, these regimes foreshadowed the moralism that became characteristic of such towns in late Elizabethan and early Stuart times.

In Chapter 5 the spotlight moves to urban and suburban communities close to London, including the borough of Southwark, where there existed the famous London ‘stews’, a string of licensed brothels within the jurisdiction – to the church’s no small embarrassment – of the bishop of Winchester. What this chapter emphasizes is that the rest of Southwark, Westminster and even the adjacent suburbs were by no means areas of sexual lawlessness. On the contrary, they witnessed some major efforts at moral regulation involving secular as well as ecclesiastical courts. The focus then shifts to London itself, and the city’s complex and, in many ways, idiosyncratic arrangements for dealing with sexual offenders are

88 For example, the records of particular ‘visitations’ (explained in Chapter 3) may be the appropriate focus for the study of some church court materials.
reconstructed in their entirety for the first time. These topics are the subject of Chapters 6 and 7. Together they reveal that well before the Reformation, London experienced an extraordinarily intense regime of sexual regulation, articulated by both the ecclesiastical and secular courts, embedded in a peculiarly active form of ‘neighbourhood watch’ and rooted in a powerful and proud ethos of civic morality. If the ecclesiastical side of this regime was beginning to slacken in the early decades of the sixteenth century, secular initiatives were growing in strength, encouraged in part by crown as
well as specifically city pressures and further stimulated by the growth in the population of London and perceived problems of vagrancy with which it was associated. Chapter 8 draws together materials from all the jurisdictions previously surveyed to focus on clerical immorality on the eve of the Reformation. It is argued here that this was quantitatively more important, and a greater source of lay resentment, than many recent accounts have suggested.

In the next three chapters of the book, covering the half century or so after 1530, the emphasis shifts more decisively to change. Chapter 9 examines the ways in which the religious and jurisdictional changes of the Reformation destabilized and temporarily weakened the institutions of sexual regulation in many areas, yet in London triggered an anti-vice campaign of great intensity. Reconstructed for the first time, this spectacular campaign of moral activism, persisting for several years around 1550, was a major event of the English Reformation that deserves more attention than it has hitherto received from historians. Chapters 10 and 11 investigate the re-establishment of moral regulation in the early decades of Elizabeth’s reign. This was a period not only of recovery and consolidation but also of striking innovation. In London, Bridewell Hospital – founded by Edward VI but under threat in the reign of Mary – developed as a key institution of social discipline, dealing with numerous cases of sexual transgression as well as many other forms of disorder and petty crime. Meanwhile, major efforts, hitherto little noticed, were made in the 1560s and 1570s to revitalize the church courts. While some of these initiatives faltered or were abandoned, others proved durable, forming the basis of the courts’ activities in the late Elizabethan and early Stuart periods. At the same time, many provincial towns and cities redoubled their efforts against sexual transgressions, making increasing use of public shame sanctions and sometimes even harsher means of punishment. Since there were jurisdictional and other legal obstacles, the outcome in different towns was very varied. Often the firm alliance of ‘magistracy and ministry’ to which godly Protestants aspired was to prove elusive.

By the 1580s, the world was changing. The beginning of a sustained rise in the population of England as a whole, with an even more dramatic increase in the size of London, had social effects that made the task of sexual regulation seem even more urgent, yet magnified the problems of pursuing it successfully. The situation was further complicated by the so-called puritan movement and other ecclesiastical conflicts of the period, by the increased sensitivity to jurisdictional boundaries that brought some forms of legal action into question and by the social and political
conditions associated with the long wars with Spain from 1585. This new world of sexual regulation in the closing decades of the reign is the subject of Chapter 12. Many aspects of it have already been well studied, but they can now be seen in a wholly new light by contrasting them with what had gone before.