Public Silence and Police Surveillance: Conflicting Attitudes to Bestiality in Colonial Otago

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When John Cole was acquitted of bestiality in January 1863 he burst into tears. The charge against him, that he "did feloniously, wickedly and against the order of nature attempt carnally to know a certain female dog and then with the said female dog feloniously did attempt to commit and to perpetrate the abominable crime of buggery," could have resulted in a death sentence if he had been found guilty of the act of bestiality.[1]

The case against John Cole, a store man, was based on the evidence of a single witness, George Smith, another store man with whom he shared quarters and who claimed he saw Cole "on his knees holding the back part of the dog in his hands." On pushing Cole away, Smith saw that Cole's "trousers were open and his penis in a state of erection."[2] The validity of evidence in cases where there is only one witness was often an issue mentioned by Supreme Court judges in their addresses to grand juries in the province of Otago, New Zealand, at this time.[3] These cases could come down to whose evidence was more believable in the eyes of the jurors. Although in this case it is difficult to determine what factors led the jurors to believe the prisoner over his accuser, the sympathetic reporting by the court reporters may suggest that Cole was more personable. As the *Otago Daily Times* reported:

> John Cole, a very decent looking young fellow, was indicted for having committed an unnatural crime at the Dunstan. The only witness was

[1] Regina v. Cole, Dunedin High Court (hereafter DAAC), D245, 247, Case 144, 1863, Archives New Zealand, Dunedin (hereafter ANZ).

[2] *Cole*, DAAC, D245, 247, Case 144. A store man was employed by shopkeepers to provide security at nights by sleeping on the premises of the store and working as shop assistants during the day. The town of Clyde at the time had only been established, and many shops were just tents or roughly constructed wooden buildings. With prices very high due to transportation costs, security of goods was important.

[3] For examples, see "Supreme Court—Criminal Sessions," *Otago Daily Times*, 5 December 1865, 4; "Supreme Court Criminal Sittings," *Otago Daily Times*, 6 December 1870, 3; "Supreme Court Criminal Sittings," *Otago Daily Times*, 5 September 1871, 2.

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> G. W. Smith, late store man with Patterson, at the Dunstan, in whose service the prisoner also was. The prisoner alleged that the charge had been trumped up to gratify malice. If time was allowed, he could get an unexceptionable character from the mayor of Geelong [Australia] and other gentlemen in that town; in which he (the prisoner) had parents, five brothers and sisters, a young wife, whom he has left not four months ago, and an infant son.[4]

This newspaper report paints a portrait that elicits a sympathetic response from readers. Here is a decent young family man, not long in Otago, well respected in his hometown of Geelong, who has been maliciously accused of a vile crime. Specific details of the crime were left out of the report, encasing bestiality in a silence that stands in complete contrast to the detailed reporting of other sexual crimes in Otago's newspapers at the time but reflects both traditional and contemporary attitudes toward it as a human activity.

This article examines six cases tried in Otago before 1872 to determine whether this silence in reporting cases of bestiality was a reflection of a common attitude within the community toward sex between humans and animals and whether tendencies toward silence influenced how police were able to put together cases against suspects.[5] The cases, which came from both local magistrates' courts across Otago and the Dunedin sittings of the Supreme Court, involved six men charged with the crime of bestiality. John Cole, whose case is detailed above, was the first person charged with bestiality in Otago in 1863. Four of the other cases involved men charged with bestiality or attempted bestiality with horses: George Henry (1865), John Gere (1867), George Ennis (1868), and Thomas States (1871). The remaining case from 1870 involved a young man, James Hutchings, who was charged with attempted bestiality with a cow.

Focusing on a colonial settlement during the third quarter of the nineteenth century provides an opportunity to examine attitudes toward bestiality within a quickly developing community during the nineteenth century, a period for which there is a dearth of academic studies. The majority of the research that has been done to date focuses on the early modern period, with some medieval, modern, and contemporary work, but there is very little on the mid-nineteenth century. Much of the early modern period is covered, with Carl Griffin's examination of animal abuse reaching into the

[4] "Supreme Court—Criminal Sessions," *Otago Daily Times*, 28 January 1863, 5.

[5] This article forms part of a larger study examining regulation of sexual behavior and attitudes toward sexual deviance within the newly established colony of Otago, on the South Island of New Zealand, between the arrival of the first colonists in 1848 and the introduction of a national Offences Against the Person Act at the end of 1867: Sarah Carr, "Preserving Decency: The Regulation of Sexual Behavior in Early Otago 1848–1867" (Ph.D. diss., University of Otago, Dunedin, NZ, 2014).

eighteenth and early nineteenth centuries.[6] Other scholarship has focused on the end of the nineteenth and into the early twentieth centuries.[7] The majority of this existing scholarship appears to suggest a surprising continuity of attitudes toward sex between humans and animals and some international consensus. Studies of early modern England, colonial America, early modern and nineteenth- and twentieth-century Sweden, and nineteenth- and twentieth-century Australia have identified a fairly common set of features in the prosecutions for bestiality from these countries.[8] First, those accused of bestiality in cases that have come to court have overwhelmingly been young males from rural areas, and often these young men are from marginalized populations.[9] Second, criminal prosecutions have been very rare events, with the notable exception of seventeenth- and eighteenth-century Sweden, and when prosecutions were successful, especially in the nineteenth and twentieth centuries, judges often appeared to be reluctant

[6] For the medieval period, see Joyce Salisbury, *The Beast Within: Animals in the Middle Ages* (New York: Routledge, 1994). For the early modern period, see Erica Fudge, *Perceiving Animals: Humans and Beasts in Early Modern English Culture* (Urbana: University of Illinois Press, 2002); Fudge, "Monstrous Acts: Bestiality in Early Modern England," *History Today* 50, no. 8 (August 2000): 20–25; John M. Murrin, "'Things Fearful to Name': Bestiality in Early America," in *The Animal Human Boundary: Historical Perspectives,* ed. Angela N. H. Creager and William Chester Jordan (Rochester, NY: University of Rochester Press, 2002); Carl J. Griffin, "Animal Maiming, Intimacy and the Politics of Shared Life: The Bestial and the Beastly in Eighteenth- and Early Nineteenth-Century England," *Transactions of the Institute of British Geographers* 37, no. 2 (April 2012): 301–16; John Canup, "'The Cry of Sodom Enquired Into': Bestiality and the Wilderness of Human Nature in Seventeenth Century New England," *American Antiquarian Society* 98 (1988): 113–34. There have also been a number of influential works from non-English-speaking countries, including Jonas Liliequist, "Peasants against Nature: Crossing the Boundaries between Man and Animal in Seventeenth and Eighteenth Century Sweden," *Journal of the History of Sexuality* 1, no. 3 (1991): 393–423; Jens Rydström, *Sinners and Citizens: Bestiality and Homosexuality in Sweden 1880–1950* (Chicago: University of Chicago Press, 2003); and Midas Dekker, *Dearest Pet: On Bestiality* (New York: Verso, 1994).

[7] Anne-Marie Collins, "Woman or Beast? Bestiality in Queensland, 1870–1949," *Hecate* 17, no. 1 (1991): 36–42; A. D. Harvey, "Bestiality in Late-Victorian England," *Journal of Legal History* 21, no. 3 (2000): 85–88; Andrea M. Beetz, "Bestiality, Zoophilia: A Scarcely Investigated Phenomenon between Crime, Paraphilia and Love," *Journal of Forensic Psychology Practice* 4, no. 2 (2004): 1–36; Rydström, *Sinners and Citizens*; Hani Miletski, *Understanding Bestiality and Zoophilia* (Bethesda, MD: East West Publishing, 2002); Piers Beirne, "Rethinking Bestiality: Towards a Concept of Interspecies Sexual Assault," *Theoretical Criminology* 1 (1997): 317–40; Piers Beirne, "On the Sexual Assault of Animals: A Sociological View," in Creager and Jordan, *The Animal Human Boundary*, 193–227; and Hani Miletski, "A History of Bestiality," in *Bestiality and Zoophilia: Sexual Relations with Animals*, ed. A. Beetz and A. Podberscek (West Lafayette, IN: Purdue University Press, 2005), 1–22.

[8] For early modern England, see Fudge, *Perceiving Animals*, 137–38; Fudge, "Monstrous Acts," 21, 25. For colonial America, see Murrin, "Things Fearful to Name," 124, 127, 138. For nineteenth- and twentieth-century Sweden, see Liliequist, "Peasants against Nature," 410–12; Rydström, *Sinners and Citizens*, 7–9. For nineteenth- and twentieth-century Australia, see Collins, "Woman or Beast?," 37–38.

[9] Beirne, "On the Sexual Assault," 209; and Collins, "Woman or Beast?," 37.

to apply the maximum penalties.[10] However, the lack of research for the middle part of the nineteenth century makes a suggestion of continuity in attitudes from medieval and early modern to modern periods difficult to substantiate, especially as this was a period in which criminal law underwent considerable change and modernization in European, North American, and Commonwealth countries.

Bestiality has remained an aspect of human sexuality that is rarely studied. A potential reason for this silence relates to the nature of the crime and how it has been viewed by Western societies since the early medieval period. Bestiality was perceived so negatively that its very name was censured: from the sixteenth and seventeenth centuries it was spoken about only as "that unmentionable vice," "a sin too fearful to be named," or "among Christians a crime not to be named."[11] It was feared that spreading information about this crime would lead to a spread in its practice.[12] However, this negative view was not always widely shared, and Joyce Salisbury, Hani Miletski, and Andrea M. Beetz have argued that sexual intercourse with animals may have been an expression of human sexuality for as long as animals have been domesticated.[13] Evidence from classical mythology and art, as well as from early European folklore, suggests that bestiality may have once been celebrated as a way for gods to interact directly with humans through the animals that the gods were inhabiting.[14] However, the Bible contains a clear prohibition against bestiality that has become deeply embedded in Judeo-Christian societies: "Neither shalt thou lie with any beast to defile thyself therewith: neither shall any woman stand before a beast to lie down thereto: it is confusion" (Leviticus 18:23). The punishment for such a sin that has informed the development of much of European laws against sodomy and bestiality also comes from Leviticus: "And if a man lie with a beast, he shall surely be put to death; and ye shall slay the beast. And if a woman approach unto any beast, and lie down thereto, thou shalt kill the woman, and the beast: they shall surely be put to death; their blood shall be upon them" (20:15–16).

During the nineteenth century, bestiality was generally perceived to be one of the most unnatural forms of sexual deviance, and it was a capital offense in New Zealand until 1867. However, in the six cases examined, the attitudes of witnesses and those who became aware of such activity suggests that many would have preferred to ignore it, and they tended to avoid becoming involved in a police case. The police, on the other hand, used

[10] Beirne, "On the Sexual Assault," 209; Collins, "Woman or Beast?," 37; Harvey, "Bestiality," 85.

[11] Beirne, "On the Sexual Assault," 197; Fudge, "Monstrous Acts," 21; Fudge, *Perceiving Animals*, 137–38.

[12] Rydström, *Sinners and Citizens*, 64.

[13] Salisbury, *The Beast Within*, 84; Miletski, "A History"; Beetz, "Bestiality," 2, 4.

[14] Salisbury, *The Beast Within*, 85; Beirne, "On the Sexual Assault," 196.

surveillance and followed up with witnesses in order to build up sufficient evidence to create a case against a perpetrator. Despite this diligence, no one was executed for bestiality in Otago during the period studied. This suggests that the juries were reluctant to convict these men of a capital crime, reflecting changing contemporary attitudes to sexual deviance and a greater acceptance of the fallibility of human nature.

When the first settlers departed for Otago from Britain in 1847, the leaders of the settlement envisioned a class-based society populated by law-abiding Scottish Presbyterians. This vision was never realized, since the 350 initial colonists were mostly working class, not all Scottish nor Presbyterian, and the Otago region was already home to members of the local Maori *iwi* (tribe), the Ngāi Tahu, former sealers and whalers from Australia, North America, and Europe, their Ngāi Tahu wives and children, and a handful of Australian farmers and their families. By the end of 1848 the settler population had risen to 561, but immigration was slow, only reaching 2,300 by the end of 1855. It was not until 1861, when gold was discovered less than one hundred kilometers (sixty miles) from the main town of Dunedin that the population increased substantially to approximately thirty thousand by the end of that year, with men outnumbering women by nearly four to one.

The settlement was administered politically from Wellington, on New Zealand's North Island, under Edward J. Eyre, lieutenant governor of the province of New Munster, and from Auckland, also on the North Island, under Sir George Grey, governor of New Zealand. Issues of state administration, including policing and the judiciary, were handled by these two Englishmen and their appointees within Otago until the establishment of provincial councils in 1852. Crime statistics for the first ten years of the settlement indicate that the majority of crimes were minor offenses such as drunk and disorderly conduct, petty theft, or sailors being absent without leave from their vessels. Throughout the 1850s policing levels were relatively low, with the number of serving officers as low as five in 1855.[15] The sudden increase in population in 1861 led to the appointment of a new police force and a range of new ordinances to maintain public order and decency. Total annual spending on the police increased from £987 in 1856–57 to £18,745 in 1862–63, the majority on salaries. This increase in police spending and the increase in summary convictions at the local magistrates' courts for minor offenses from 2,903 in 1860 to 11,357 in 1864 suggests that the early 1860s was a period of considerable upheaval not only demographically but also in the prioritization of law and order.

[15] Appropriation Ordinance 1856, No. 8 (Otago), in *Ordinances of the Province of Otago, NZ* (Dunedin: Provincial Government, 1862).

Statutory Regulation of Bestiality and the Evidence Available

Within Otago the various acts and ordinances of provincial and legislative councils and of both the New Zealand and British governments provide a definitive source for the infrastructure of the regulation of criminal behavior. In 1848 the laws of New Zealand were in essence the laws of England, generally because these were the laws that the administrators were familiar with. This assumption was enshrined in law in 1858 with the introduction of the English Laws Act, which applied the laws of England as of 14 January 1840 to the administration of justice in New Zealand "so far as such laws were applicable to the circumstances thereof."[16]

The laws that punished bestiality in nineteenth-century colonial New Zealand were based on Henry VIII's act of 1533, which made buggery with man or beast a capital offense.[17] Although originally meant to be in force only until the end of the next parliament, the law was reenacted three more times under Henry and then made permanent in 1541. This act was refined under Edward VI in 1548, with the slight amendments that lands and goods were not forfeit and that the rights of wives and heirs were safeguarded.[18] It was then repealed by Mary but reinstated under Elizabeth I in 1562 in its original 1533 wording. English law remained in force in New Zealand, with minor changes to admissible evidence under the 1828 Offences Against the Person Act, until the New Zealand 1867 Offences Against the Person Act.[19] At this time the death sentence was replaced with life imprisonment for a minimum of ten years for conviction of the act or two years for an attempt.[20] Despite bestiality being a capital crime, there is no evidence that any man was executed in New Zealand under this act, although a death sentence was given to John Gere in 1867 when he was found guilty. This sentence was later commuted by the governor to penal servitude for life.[21]

Bestiality has occasionally been examined as part of studies focusing on the history of homosexuality.[22] One major reason for this is the way that it has traditionally been defined in law. Bestiality, in common with sodomy, was perceived as an "unnatural" act, in that they were both alleged to go

[16] English Laws Act, 1858, 21 & 22 Vict., no. 2 (UK).

[17] An Acte for the punishment of the vice of Buggerie, 25 Hen. 8, c. 6; 32 Hen. 8, c. 3.

[18] H. Montgomery Hyde, *The Other Love: An Historical and Contemporary Survey of Homosexuality in Britain* (London: Mayflower Books Ltd., 1970), 52–53.

[19] Offences Against the Person Act, 1828, 9 Geo. 4, c. 31.

[20] An Acte againste Buggorie 1548, 2, 3 Ed. 6, c. 29; Treason Act, 1553, 1 Mar., st. 1, c. 1, s. 3; An Act for the punishement of the Vyce of Sodomye, 1562, 5 Eliz., c. 17; Offences Against the Person Act, 1867, 31 Vict., no. 5 (UK).

[21] Editorial, *Otago Daily Times*, 22 October 1867, 4.

[22] For example, see Robert F. Oaks, "'Things Fearful to Name': Sodomy and Buggery in Seventeenth-Century New England," *Journal of Social History* 12, no. 2 (Winter 1978): 268–81; and Zeb Tortorici, "Against Nature: Sodomy and Homosexuality in Colonial Latin America," *History Compass* 10, no. 2 (2012): 161–78. Both examine bestiality within wider studies of homosexuality.

against the laws of nature, sex being defined as an act between a man and a woman to ensure the procreation of children. As Mark Jordan has shown, the definition of sodomy throughout the medieval and early modern periods remained flexible.[23] This lack of terminological clarity has been exacerbated by the tendency to refer to sodomy as the crime that "cannot be mentioned," which has meant that the term has been used to describe a number of different activities. Sodomy is generally accepted to refer to a range of activities, including masturbation, sex between men or between women, between a person and an animal, or between a man and a woman in such a way that conception was impossible.[24] In other words, the term "sodomy" could include almost all non-procreative sexual acts, but its accepted definition tends to be much narrower. Likewise, the English term "buggery" was used interchangeably in the archival sources of nineteenth-century Otago with both "sodomy" and "bestiality."

By its nature, the study of state regulation of behavior is dependent for sources and evidence upon the records of the police and courts. These records were created when people acted in a way defined as illegal according to government statutes at the local, regional, or national level. There has been considerable discussion as to the validity or reliability of such sources in the study of sexuality.[25] In their very nature, what these sources can tell us is limited by the context in which they were created. They are also focused on individuals who stepped outside the legal norms of behavior, irrespective of whether these norms were perceived to be acceptable to the majority of the population. And we must also remain cognizant of the fact that the information provided as evidence in court cases was colored by the perceptions of the participants themselves.

Surviving court records from 1860s Otago usually provide a transcript of the evidence presented in court with regard to a specific case, as well as witness statements—the depositions—prior to a case going to court. The transcripts are generally a verbatim record of the evidence provided by the witnesses under questioning, but the actual questions asked are often not included in the depositions. For some cases the judge's notebook survives, providing not only his reflections about the evidence but occasionally his thoughts regarding the reliability of the witnesses and their evidence, especially any discrepancies he identified. Their usefulness can be limited by illegible handwriting or incomplete notations, since these notes were meant

[23] Mark Jordan, *The Invention of Sodomy in Christian Theology* (Chicago: University of Chicago Press, 1997).

[24] Katherine Crawford, *European Sexualities, 1400–1800* (Cambridge: Cambridge University Press, 2007), 156.

[25] See, for example, Stephen Robertson, "What's Law Got to Do with It? Legal Records and Sexual Histories," *Journal of the History of Sexuality* 14, no. 1, 2 (2005): 161–85; Shani D'Cruze, *Crimes of Outrage: Sex, Violence and Victorian Working Women* (London: UCL Press, 1998), 1–13; Karen Dubinsky, *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880–1920* (Chicago: University of Chicago Press, 1993), 4–6.

only for personal use and did not necessarily cover all aspects of the case. In order to build the fullest possible picture of the trials, it was therefore necessary to cross-reference and compare these different types of sources with each other to identify contradictions or discrepancies, especially with regard to the various statements provided by witnesses.

Information about these cases comes primarily from the court records, especially depositions, except for one of the cases—the Ennis case—where the court records have been lost, and I was forced to rely only on the judge's notebook and the newspaper report of the trial. I found absolutely no evidence of any form of social regulation, either formal, such as sermons, or informal, such as verbal or physical attacks or social exclusion of perpetrators within the community. Newspaper reports of the trials tended to be limited, with only the case against Cole, quoted at the beginning of this article, providing much detail about either the accused or the crime. This makes it difficult to say specifically how the Otago community at large felt about bestiality.

As a source of information, newspaper reports of trials occasionally provide a broader context for a trial than the court records. Whereas the court records were the script of the trials, the newspaper reports capture their drama. During the third quarter of the nineteenth century, court trials in Dunedin were reported in detail by the local newspapers, which provided not only a source of information about the evidence put forward in the case but also insights into the community's views of crime and criminal behavior, especially for high-profile and well-attended trials. However, the few bestiality cases that came to court are the exception to this. Of the six cases being examined, only the acquittal of Cole (1863) and the trial of George Ennis (1868) prompted newspaper reports of the trials that extended to more than two sentences. Unusually for the time, there were no details provided about the nature of the crime beyond the ubiquitous terms "unnatural offence" or "bestial crime." This contrast is often made more striking by the reporting of other cases heard at the same time and reported in the same columns, including assault, rape, and infanticide, which are full of the details of the actual crimes, including physical injuries, and lengthy quotes from witness statements.[26] This lack of reporting reflects the traditional attitude of silence around the act of bestiality.

The Offenders and Their Activities

Several of the studies that have been undertaken on bestiality across different periods highlight the small number of cases that came to court.[27]

[26] For example, the *Otago Daily Times* reported on a case of assault with intent to rape a child alongside a description of Gere's case ("Supreme Court—Criminal Session," *Otago Daily Times*, 3 September 1867, 5) and provided details about a case of infanticide immediately before reporting the case against Slater ("Supreme Court—Criminal Session," *Otago Daily Times*, 5 September 1871).

[27] Harvey, "Bestiality," 85; Murrin, "Things Fearfulto Name," 116, 118, 120, 122, 140.

Beetz has argued that the existence of laws against bestiality shows that it must have existed "to an extent sufficient to raise concerns amongst law makers."[28] These two points suggest that the actual occurrences of bestiality were being underreported. There are a number of reasons why this may have been likely. As with the majority of sexual acts, bestiality was a private act. Those who practiced it would hope not to be witnessed and often took steps to ensure privacy, such as seeking seclusion or keeping an eye out for possible witnesses.[29] Furthermore, the animals who were the unwilling partners in these acts did not have the means to complain, and fear of a community's reaction or shame led perpetrators to run away from threatened punishment.[30] Referring to cases in colonial New England, John Murrin has also suggested that witnesses were likely to agree to keep things quiet as long as they were all men and especially if the perpetrator was seen to be remorseful.[31] This argument contrasts with those of Jonas Liliequist on seventeenth- and eighteenth-century Sweden, where it appears that the sexual double standard was no protection, and men would turn in other men even if the punishment was death.[32] It should be noted that prosecutions were far more common in Sweden than in most other Western countries, where they were extremely rare. For New Zealand I have been able to identify fifteen cases tried between 1840 and 1871, including the six Otago cases discussed in this article.[33] The other New Zealand cases include six tried in Christchurch, two in Nelson, and one in Invercargill. None of these cases predate 1858, and only the first one, in 1858, resulted in a death sentence with a recommendation to the governor to commute the sentence.[34] With the exception of this case, prior to 1867 the sentence was invariably a prison term of two years' hard labor for being convicted of either an attempt to commit bestiality or actually committing the act.

A key feature of accusations of bestiality, as in many sexual crimes, was the difficulty in securing a conviction. This was in part due to the strict rules regarding admissible evidence and the need to secure reliable witnesses. Under the English 1828 Offences Against the Person Act, which was applicable to colonial New Zealand, proof of penetration was required, although an earlier provision requiring proof of the "emission of seed" was removed.[35] Securing a reliable witness was often a problem if the defendant took steps to hide his actions. In the cases that came to court in Otago, each

[28] Beetz, *Bestiality*, 5.

[29] Rydström, *Sinners and Citizens*, 61.

[30] Fudge, *Perceiving Animals*, 137.

[31] Murrin, "Things Fearful to Name," 139.

[32] Liliequist, "Peasants against Nature," 397.

[33] New Zealand's Lost Cases Project, Victoria University of Wellington, http://www.victoria.ac.nz/law/nzlostcases/search_cases.aspx. It should be noted that this website does not list all cases.

[34] *Nelson Examiner and New Zealand Chronicle*, 17 February 1858, 3.

[35] Offences Against the Person Act, 1828, 9 Geo. 4, c. 31.

of the accused appears to have tried to ensure privacy for the act. In the 1870 case against James Hutchings, the witness reported that Hutchings first tried to drive a cow into a gully and then regularly looked around, as if making sure he was not seen.[36] Likewise, in 1867 John Gere had got a mare into a cutting (a gully dug into a raised bit of land either as a quarry or in order to make the land more flat and useable) that could not have been seen from either river or road unless a witness stood on a rock above the cutting.[37] Thomas States actually barred himself into the stables in an attempt to secure privacy, while John Cole was accused of attempting the crime during the night, and both George Ennis and George Henry were seen in the stables very early in the morning.[38] This desire for seclusion indicates that the accused in each instance was aware that the activities were not acceptable within his community and were subject to prosecution and serious punishment if witnessed. However, the archival records do not allow us to ascertain the men's own thoughts and perceptions. In the records of the six cases tried in Otago, it is rare to have any statements recorded for the accused men in their own words, beyond pleading innocence of the crime. For details of the actions and statements of the perpetrators we are dependent upon the words of the witnesses as recorded in the depositions and indictments.

The Views of the Witnesses

Despite the steps taken by the defendants to hide their actions, there were often witnesses. The number of witnesses in each of the cases varies from one to three, and the role that their testimonies played illustrates how bestiality may have been perceived by members of the wider community. Bestiality was a capital crime prior to the end of 1867, but to secure a conviction for the act as opposed to an attempt, actual penetration needed to have occurred. Several of the witnesses prevaricated over the issue of whether they were able to see penetration. A number mention that the accused went through the motions as if having connections with the animal.[39] They had their trousers unbuttoned and open, but the witnesses could not confirm whether they had seen "his person"—his penis—in contact with the animal.[40]

In two of the cases, those against Gere and States, the primary witnesses actively sought out other witnesses to the crime. Gere was spotted by two employees of the Bank of New South Wales based in Clyde, and they called another resident of Clyde to witness Gere's activities in the cutting near the

[36] Regina v. Hutchings, DAAC, D256, 260, Case 4, 1870, ANZ.

[37] Regina v. Gere, DAAC, D256, 255, Case 13, 1867, ANZ.

[38] Regina v. States, DAAC, D256, 261, Case 4, 1871, ANZ; Cole, DAAC, D245, 247, Case 144; Regina v. Henry, DAAC, D256, 255, Case 13, 1865, ANZ; Judge's Note Book—Criminal Cases, J. Chapman 1868–70, DAAC, 21218, D437, 879, 4, ANZ.

[39] *States*, DAAC, D256, 261, Case 4.

[40] *Henry*, DAAC, D256, 255, Case 13, ANZ.

town. In this instance they did not interrupt Gere but continued to watch until he had finished his activities, although one of the bank employees, Edmund Campbell, stated that he turned away "immediately [when] I saw what was up," suggesting that he did not want to be seen to be interested.[41] William Spruce, the first witness in the States case, stated that "it was for his [Spruce's] own protection that he went for a witness."[42] The cross-examination of the witnesses during the trials may suggest why he felt he needed this protection, as the recorded responses suggest that the defense counsel may have tried to undermine the witnesses' credibility or motivation. Both witnesses in the States trial stated that they were on good terms with the accused and had never been on bad terms.[43] These statements from witnesses support a belief held by judges, lawyers, witnesses, and others in the community that accusations might conceivably be made for malicious reasons.

In the cases where there was more than one witness, the witnesses went almost immediately to the police. In the Gere case, the witnesses state that they saw him about half past four in the afternoon, and they went to the police at a quarter to five, with Gere being arrested shortly afterward as he was leading the horse up the road.[44] Ennis appeared to still be buttoning up his trousers when he was arrested, still in the stables.[45] States was arrested between midnight and one in the morning, only a few hours after being interrupted in the act by William Spruce and John Matheson.[46] This suggests that the witnesses had no doubts about the severity of the crime and the need to bring it to police attention. Unlike cases in colonial America, no witnesses made any attempt to cover up the crimes.

In contrast, in both of the cases against Cole and Henry, the single witness appears to have been slightly reluctant to contribute information to the prosecution, and neither of them seemed to have taken the crime very seriously. Having been told about the act, Henry's employer, George Cameron, offered him money and told him to leave, apparently hoping to be able to ignore what had occurred and to prevent public attention.[47] In his statement, the employer stated that while he did not send for the police at the time and had tried to pay Henry off, he claimed that he had intended to report the incident to the police later.[48] The witness to the activity, fellow employee Donald Cameron (unrelated to George), initially told their employer before later going to the police.[49] George Smith, the witness in the Cole case, stated: "I did not give information to the Police—I made

[41] *Gere*, DAAC, D256, 255, Case 13.
[42] *States*, DAAC, D256, 261, Case 4.
[43] *States*, DAAC, D256, 261, Case 4.
[44] *Gere*, DAAC, D256, 255, Case 13.
[45] Judge's Note Book, J. Chapman 1868–70, 4.
[46] *States*, DAAC, D256, 261, Case 4.
[47] *Henry*, DAAC, D256, 255, Case 13.
[48] *Henry*, DAAC, D256, 255, Case 13.
[49] *Henry*, DAAC, D256, 255, Case 13.

the constable promise not to say anything about it if I told him anything. I did not wish to prosecute the accused as I am going to Sydney. . . . The constable came to me I believe from what he said that he had heard something of it before."[50] This slightly disjointed comment indicates a reluctance to get involved with the police.

The actions of the majority of the witnesses in seeking out other potential witnesses and quickly going to the police suggests that once the witnesses were involved in the situation, they felt that the incidents were serious enough to involve the police, despite being unwilling later in the trials to confirm what they had actually seen. They also appear to have been very much aware of the potential for their reliability as witnesses and their own character and respectability to be called into question, which prompted a search for other witnesses in several cases. In other cases, such as that against Henry in 1865, however, the witnesses or those who had been made aware by the witnesses appear to have been reluctant to get the police involved at all, either because they did not see bestiality as a serious crime or because they felt that the punishment did not fit the crime, especially before 1867, when bestiality was a capital offense.

Police Approaches to Gathering Evidence

How legislation was interpreted and enforced locally depended very much on the perceptions of the enforcement officers, who had a certain amount of discretionary power. However, if they received information about suspicious activity, it appears that they would seek further information or evidence either by speaking to potential witnesses or by undertaking surveillance of suspects. Although this may seem to be standard police procedure, policing in Otago during the 1860s underwent a period of sustained professionalization. Prior to this period the police force had been made up of volunteers whose main area of responsibility was policing minor offenses. The use of surveillance is an example of this professionalization.

Despite the care that some men took not to be seen, their activities became public knowledge and known to local police. In the case against Cole, the witness claimed that he had not gone to the police but instead had been approached by the constable. As he testified in court, "I believe from what he [the police constable] said that he had heard something of it before."[51] However, the constable's statement in court is unclear as to whether he had prior knowledge of the incident: "From information I received I arrested the prisoner." This could indicate that he made the arrest based on the information he received from the witness as opposed to from any prior information, as claimed by the witness. Although the police normally would seek statements from witnesses after an arrest was made,

[50] *Cole*, DAAC, D245, 247, Case 144.
[51] Regina v. Cole, DAAC, D256, 247, Trial 114, 1863, ANZ.

in this instance the witness is suggesting that the constable was seeking evidence in order to make an arrest.

In the case against Hutchings, we know that arrest followed a planned surveillance operation, because the single witness was a police officer who began watching the boy's activities after having received information from an unknown member of the public. This person had seen Hutchings acting suspiciously over a period of two weeks, and there was sufficient concern for the police to put a constable on special duty in order to collect evidence for a prosecution.[52] The constable watched Hutchings from the time he arrived in the gully with the cows until he left. What is noteworthy in this case is Hutchings's perseverance; he made seven attempts to have intercourse with the cow but was not successful on any of them.[53] He singled out one cow for the attempts, following her around the gully and ignoring the others in the herd. Both the surveillance and Hutchings's perseverance suggest that in this instance, bestiality was not a one-off occurrence, nor was it opportunistic. The evidence suggests an element of planning and forethought, and the actions of the police suggest a professional approach to crime detection that was new to Otago at that time. Furthermore, behind the evidence presented in court was an unknown and unknowable witness who does not make an appearance but whose evidence to the police in the first place was crucial in initiating the surveillance by the police.

COMMENTS BY JUDGES AND JURIES

The newspaper reports of these cases can provide an idea of how this crime was perceived by the contemporary community through an examination of the accounts of the judges' addresses to the grand juries at the opening of the Supreme Court sittings. In these addresses the judges took the opportunity to comment on the nature of the crimes, the number of cases, and their relative severity, along with some of the pertinent legal points that might bear on the cases. The judges' publicly stated opinions also indicate how they expected the community, as represented by the jury members, to perceive these crimes. For example, in the 1865 case of George Henry, the judge commented to the grand jury: "There is also a case of bestiality, a very disgusting case, which we must take cognisance of, however much it may harm our feelings."[54] In other words, the judge sympathized with the jury that they would have to hear disturbing evidence regarding a crime that was not only "unnatural" but also "abominable" in order to serve the interests of justice and the right of law. There is an explicit assumption that they would find the details disgusting, but to maintain the silence surrounding this crime, none of these details were reported outside the court. Likewise,

[52] *Hutchings*, DAAC, D256, 260, Case 4.
[53] *Hutchings*, DAAC, D256, 260, Case 4.
[54] "Supreme Court—Criminal Session," *Otago Daily Times*, 5 December 1865, 4.

the judge for the trial of James Hutchings in 1870 provided an example of this code of silence: "There is also a case for unnatural offence. Upon that you will hear quite enough, and we shall hear quite enough, and I shall therefore make no comment."[55] Similarly, in George Ennis's 1868 trial, the judge noted: "The only other case [to be heard by the sitting of the Supreme Court] was one of bestiality, upon which the less he said, the better."[56] And when the judge for Thomas States's trial informed the jury about the cases that they would be hearing during that sitting of the Supreme Court, he introduced States's case: "Another case of an aggravated nature I shall not expatiate upon. Thomas States is charged with committing an unnatural crime. You will hear the particulars of the case, and I therefore need not offend your ears by giving you the story twice over."[57]

The comment made by the judge in relation to the States case was made directly after providing considerable detail about a case of infanticide, including injuries to the baby and the weapon used, which, it may be suggested, could be perceived as a more serious crime, the details of which were more disturbing to public sensibilities. These three comments taken together, as well as the complete lack of a comment by the judge in the cases of John Cole in 1863 and John Gere in 1867, illustrate that the judges in Otago were unwilling to expose the details of the crime to the public.

In the case of George Ennis, the judge used the sentencing as an opportunity to explain to the offender how his actions harmed not only himself but also his family, to the disgust of the community. The *Otago Daily Times* quoted the judge's address at length, highlighting his moral condemnation of the act:

> The judge: It is too frequently the case, when heavy punishment has to be inflicted, that the prisoner's family suffer very greatly. Twelve months ago, I must have caused sentence of death to be recorded against you. That sentence, however, has, for some years past, not been carried out; the punishment substituted being imprisonment for life. But the law has recently been altered; and the sentence for such a crime as that of which you have been convicted, maybe penal servitude for life—cannot be less than penal servitude for ten years. The jury have recommended you to mercy, on the ground of their common sympathy with the infirmities of human nature; but there should be some specific ground stated, when such a recommendation is made. I will not, however, pass upon you the highest sentence of the law, for I will hope that you may be brought to repent of this disgusting crime. The sentence of the Court is, that you be kept to penal servitude for 10 years—which, I repeat, is the lowest sentence I can pass for such a crime.[58]

[55] "Supreme Court Criminal Sittings," *Otago Daily Times*, 6 December 1870, 3.
[56] "Supreme Court—Criminal Session," *Otago Daily Times*, 2 September 1868, 2.
[57] "Supreme Court Criminal Sittings," *Otago Daily Times*, 5 September 1871, 2.
[58] "Supreme Court—Criminal Session," *Otago Daily Times*, 3 September 1868, 2.

The judge is clear about the severity of the crime and the need for due punishment to be handed down. Under the introduction of the Offenses Against the Person Act in 1867, bestiality was no longer a capital crime, but conviction carried a sentence of between ten years' penal servitude and life.[59] However, it is interesting to note that the jury's recommendation for mercy was based on sympathy for the "infirmities of human nature." This suggests that while the judge expected them to be disgusted, he also recognized that their condemnation of Ennis was tempered by a realization that some men are more likely to succumb to temptation, and allowances should be made for them. In light of the jury's recommendation, the judge handed down the lowest sentence possible.

Although bestiality was a capital crime, in only one case in Otago was a death sentence handed down. John Gere was initially given the death sentence in September 1867; however, the judge's notebook states that although guilty, "a death sentence should not be recorded."[60] It is not clear why the judge felt this; however, this case came to court only one month before the Offences Against the Person Act was passed, removing the death sentence for a conviction of bestiality. The judge was more than likely aware of the impending legal change and probably felt comfortable preempting it. However, despite the judge's notes, Gere was originally sentenced to death, a sentence that the governor commuted to penal servitude a month later, after the legal change came into effect. Gere was eventually released from prison in October 1873, having served six years of his sentence. This case occurred about fifteen years before the work undertaken in Britain to reduce prison sentences for men found guilty of bestiality, but it foreshadows the early releases handed out there.[61] Ennis was also found guilty but sentenced to penal servitude for ten years. He served most of his sentence and was released in June 1875.[62] In the other cases, the men were found guilty of the lesser crime of attempted bestiality, which carried a sentence of two years' imprisonment with hard labor. Both Henry and States received the full sentence, while Hutchings, only sixteen at the time of his arrest, was given only six months after the jury made a recommendation for mercy on account of his youth.[63]

Only the Hutchings case file states the age of the offender, but it is possible to determine the ages of most of the other men from other sources. Henry was thirty-three at the time of his arrest, Gere was twenty-five, and both Ennis and States were thirty-eight. There is no record of Cole's age or date of birth, but since he was referred to in the press as a young man and

[59] Offences Against the Person Act, 1867, 31 Vict., no. 5, s. 38(NZ).

[60] Judge's Note Book, J. Chapman 1867–68, 3.

[61] Harvey, "Bestiality," 86.

[62] George Ennis record of discharge from jail, *Otago Nominal Index*, June 1875, http://marvin.otago.ac.nz/oni/details.php?recid=434743.7, accessed 1 May 2016.

[63] Indictments Supreme Court Dunedin, December 1870 Sittings, DAAC, D256, 436, ANZ.

he was married with an infant son at the time of the trial, it is likely that he would have been in his late twenties. Of these men, only Gere matched the profile of offenders identified by other studies into bestiality—young men in rural situations—though with the exception of Hutchings, all of them were living in rural situations when charged. The evidence from Otago appears to support the theory of A. D. Harvey and Jens Rydström that offenders were more likely to be marginalized persons without access to other sexual outlets. Only Ennis claimed to have a family, although I have not been able to determine whether he was indeed married or whether he had children.[64] All of the men were resident in the more rural parts of Otago, often in farming communities, at some considerable distance from the urban center of Dunedin. Henry and States were both cooks at accommodation houses in Tokomairiro and Switzers, respectively; Ennis was a laborer in West Taieri; and Gere was a laborer in Clyde. Henry was "a colored man," originally from the West Indies, and States was from France.[65] Their ethnicity and origins may have made them more marginalized in a region dominated by British men. Even after the end of the gold rush, when the gender imbalance became less extreme, these men may still have found it difficult to find female companionship, especially in more rural districts.

I have been unable to find much evidence about what happened to these men after they were released from prison. Following his acquittal, John Cole continued to reside in Manuherikia and appears on the electoral role for 1865–66.[66] None of the others appear on the electoral rolls for Otago. I found no marriage or death records for any of the others, making it impossible to say whether they resettled back into the communities that they had lived in prior to their arrests or whether they chose to start new lives elsewhere.

Conclusion

This analysis of the six cases from Otago follows a pattern already tracked in other national cases in demonstrating that offenders were more likely to be marginalized men in rural areas without access to other sexual outlets and that bestiality was very rarely convicted in comparison with other crimes. Since we know that some witnesses were prepared to avoid going to the police if the offender left the area, we might speculate that the crime was underreported. There were a range of public reactions, including attempts to pay off perpetrators, searching for more witnesses to back up the evidence

[64] An online search for New Zealand births and marriages has resulted in no records matching George Ennis.

[65] *Otago Police Gazette* (Dunedin, NZ), 1861–68, and 1871–77, Hocken Collection, University of Otago, Dunedin.

[66] John Cole, Electoral Roll 1865–66, *Otago Nominal Index*, http://marvin.otago.ac.nz/oni/details.php?recid=23549.18, accessed 1 May 2016.

of the initial witness, animosity between the accused and the witness, and prevarication by witnesses in the trials as to what had actually occurred. Most of these reactions suggest an unwillingness to be party to another man being convicted of a capital crime prior to the end of 1867. Combined with the fact that two of the juries requested mercy in sentencing, this could be taken as evidence that the Otago community, as represented by the witnesses and jurors, perceived the recommended sentences to be too severe for the crime and felt some sympathy for the offenders' human fallibility. Changes to the infrastructure of policing within the settlement and a more professional approach to policing, including the use of surveillance by the police to secure admissible evidence, highlight an increased concern with public order and decency at the time. However, this professionalism and focus on decency did not result in an increase in convictions. As with many sexual crimes, the difficulty of assembling admissible evidence complicated the process of ensuring a guilty verdict, and the prevailing attitude of silence toward bestiality made securing the necessary evidence more difficult.

About the Author

Sarah Carr recently completed a PhD in history and gender at the University of Otago that examined the regulation of sexual behavior in early Otago (1848–67). Having started out as a medievalist with an interest in dead languages but having taken a few diversions along the way, she has published articles on a range of topics, including colonial sexuality, Viking history, and quality assurance in higher education.