Abduction and Rape in Ireland in the Era of the 1798 Rebellion

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Introduction

In this journal in 1994 and 1995 James Kelly published two important and interrelated articles on the subject of the criminal treatment of women in eighteenth-century Ireland. The first examined the phenomenon of the abduction of heiresses, the second explored rape. Kelly made the best use of the limited and unsatisfactory sources available for the study of criminal activity in Ireland in this era. In the absence of the legal records (destroyed in the Four Courts fire in 1922), he necessarily relied heavily on newspapers and the still-surviving calendar of presentments and affidavits for much of his evidence. More recently Neal Garnham used the only surviving (and incomplete) indictment books, for counties Armagh and Tyrone, to conclude that rape is not a useful crime for determining the levels of violence in eighteenth-century Ireland. Brian Henry in his study of crime in late eighteenth-century Dublin, and Bob Reece and Barbara Hall in their studies of early Irish transportation to New South Wales, have all relied predominantly on newspapers for their information.

Newspapers as sources have both strengths and weaknesses; they can give detail and colour, but they cannot supply the sort of sustained evidence that a series of official annual criminal statistics can offer. Such an archive for Ireland will, unfortunately, never be found, but by chance there has survived a short run of official data for the years 1797, 1798 and 1799, printed as appendices in the last three volumes of the Journal of the Irish House of Commons. Together with

3 Brian Henry, Dublin Hanged: Crime, Law Enforcement and Punishment in Late Eighteenth-Century Dublin (Dublin, 1994); Bob Reece, The Origins of Irish Convict Transportation to New South Wales (Basingstoke, 2001); Barbara Hall, A Nimble Fingered Tribe: The Convicts of the Sugar Cane, Ireland to Botany Bay, 1793 (Coogee, 2002); idem, A Desperate Set of Villains: The Convicts of the Marquis Cornwallis, Ireland to Botany Bay, 1796 (n.p., 2003).
4 Journals of the House of Commons of the Kingdom of Ireland, 19 vols. Dublin, (1796-1800), vols. xvi (1798), xvii (1799) and xix (1800) (hereafter Commons Jn. (1798), Commons Jn. (1799), Commons Jn. (1800)).
a data base of more than 2500 court-martial defendants tried in the period 1798-1801, which I have been compiling over many years, it becomes possible to assess the extent of criminality in Ireland in the years of rebellion. This article concentrates on abduction and rape and uses new evidence to offer observations which both supplement and revise interpretations presented by earlier historians. It broadens Kelly’s focus on abduction of heiresses to examine other forms of abduction; links some accusations of rape with consensual abduction ritual; suggests some limitations of newspapers as reliable sources; and assesses the impact of the 1798 Rebellion on the incidence of rape in the last years of the eighteenth century.

The Sources

The data reported to the Irish House of Commons and printed in three successive volumes of its Journal were collected by Rev. Foster Archer, Inspector General of Prisons. He obtained them from the local county inspectors of gaols, who in turn had received some from the clerks of the assize courts in the Irish counties and some from county gaolers. Each report, as printed, is divided into counties and begins with a statement by each local inspector on the state of the gaols in his region. Next follows the official court schedule, usually divided into Lent (spring) and Summer sections, for the county assizes and, where applicable, the city assizes, quarter sessions and commissions of oyer and terminer in Dublin. These schedules lay out in tabular form the names of prisoners tried, their offence, the verdict, the sentence and ‘observations’, this last covering whether a condemned prisoner was hanged or respited and sometimes the designation ‘U.I.’ (United Irishman). Following these tables comes lists of those prisoners under sentence who were either still in gaol on the 1st of January after their trials or who were in gaol for debt. Finally, there is a list of prisoners, with their offences, who were on remand awaiting trial. At the end of each report Archer printed a basic statistical analysis, by county or particular jurisdiction (municipalities like Drogheda, for example), based on the numbers of prisoners tried in each jurisdiction in the year as a whole. The statistics of individual types of crimes were not tabulated, although it is possible to do so using the printed schedules.

In theory, therefore, it is possible, if only for three consecutive years of the late eighteenth century, to ascertain exactly who was tried in the civil courts in Ireland and for what offence; the verdict; the sentence; and whether a capital sentence was carried out. In practice, however, there are a number of problems. The first relates to the comprehensiveness of the data. There is no reason to suppose that the schedules are particularly inaccurate, but in a few cases Archer was unable to extract the full data from the clerks. He received no information for either assize in Queen’s County or for the Lent assizes in Cavan in 1797, for example, and there were imperfect returns from Kilkenny in 1798 and, much to his annoyance, from Tipperary in 1798 and 1799. Moreover, owing to their disturbed state, counties Wexford and Wicklow failed to hold assizes in the summer of 1798 and the latter in the spring of 1799. As, however, the numbers

5 Commons Jn. (1799), p.cccxxx.
tried nationally each year varied from nearly three thousand in 1797 to just over two thousand in 1799, the impact of the missing assize data on national crime rates is likely to be small, although regional crime rates might be marginally more distorted.

The second possible problem relates to the number of cases heard as opposed to the number of prisoners tried. In most cases where there were multiple defendants involved in one crime, their names are bracketed together, but as those found guilty are always separated in the schedules from those acquitted, it is not always clear exactly how many were tried together for a single offence. This has some implications for the study of rape, as in a very small number of cases it remains unclear whether someone cleared of rape had committed an offence separate from someone who had been found guilty.

The third problem relates to the possibly unrepresentative nature of the years under examination, for they cover the period of the greatest unrest in Ireland for the whole century. Without comparable data for other years, it is impossible to know whether the huge number of persons tried in each of these years was normal; whether the significant number of cases of murder, burglary and robbery were typical; or whether the number of crimes arising from the rebellion and needing to be tried led to the manipulation of the assize schedules, resulting in some other crimes that might have been included in the calendar in other years being dropped. There seems little doubt that the government’s determination from 1797 aggressively to use the courts to combat political subversion, and in the post-rebellion period to consolidate its military victory, makes these years at least in some respects untypical.

Finally, from late May 1798 until December 1801 courts-martial were carried out in many parts of Ireland. Unusually, these military tribunals often sat in counties where the civil courts continued to function. Both forms of court tried rebel offenders and courts-martial on a very few occasions even tried prisoners for what were clearly non-rebellion offences. In any study of the incidence of rape, the offences tried at military tribunals obviously need to be taken into account. My court-martial data base includes trials for rape in 1799 (the only year that courts-martial tried rape defendants in these three years) and can be added to the civil data to offer comprehensive figures for the incidence of rape trials in this period.

The availability of this new evidence raises some concerns about the reliability of newspaper sources when considering cases of abduction and rape, particularly their number and fluctuations over time. Using newspapers as his main source, Kelly noted with regard to abductions that there appeared to have been a downturn in numbers in the 1790s, his data agree showing only seven reported cases, compared with thirty-three in the previous decade. In fact, the Journal data, with sixteen cases tried in the three years and another one remanded until 1800, suggest that abductions were more common in the 1790s than the newspapers reported (see Table 1). The same point may be made about rape

6 National Archives Ireland (hereafter NAI), Prisoners’ Petitions and Cases (hereafter PPC), Nos. 115, 657; NAI Rebellion Papers (hereafter RP) 620/3/58/10; 620/3/23/9; 620/3/23/7; Trial of William Laurie et. al., TCD, Sirr Ms. 872.  
Both Kelly and Henry believe that, on the basis of press evidence, rape was a crime in decline in the last decade of the century. Using an admittedly rather crude comparative yardstick, the Journal evidence shows that rape cases were more prevalent in the last years of the century than they had been in earlier decades.

Table 1: Abduction of Women 1797-1799

<table>
<thead>
<tr>
<th>YEAR</th>
<th>No. of Cases</th>
<th>Persons Tried</th>
<th>Nos. Guilty</th>
<th>Nos. on Remand</th>
</tr>
</thead>
<tbody>
<tr>
<td>1797</td>
<td>2</td>
<td>3</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>1798</td>
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<td>7</td>
</tr>
<tr>
<td>1799</td>
<td>4</td>
<td>12</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>TOTALS</td>
<td>16</td>
<td>36</td>
<td>1</td>
<td>17</td>
</tr>
</tbody>
</table>

The explanation for these different conclusions almost certainly lies with the newspaper editors' choice of what was newsworthy in this era. Reportage of the war with France; the rebellion in 1798 and its aftermath; the politics of Union; the resignation of William Pitt in 1801 and Emmet's rebellion in 1803 all consumed gallons of newspaper ink in these years. In particular, if something newsworthy occurred at the same time as the assizes were being held, the usual space for criminal reports diminished. One example was in February-April 1799 at the time of the spring assizes, when the usual crime columns were filled by long accounts of the political debates on the Martial Law Bill. Newspaper conductors thus marched to the beat of their own drum. They felt no compulsion to report every case that arose and were likely to concentrate only on those abductions and rapes which had a sensational element or which occurred in regions of the country that they thought would interest their readership.

This editorial focus on the lurid can be seen in the reporting, despite its occurrence in the immediate aftermath of Robert Emmet's émeute in July 1803, of an under-age abduction and rape case in Dublin that led to the transmission of venereal disease. This was an example of sexual procurement, a rare event distinct from the forms and motivations of abduction associated with young heiresses or with young couples seeking to overcome parental disapproval to their marriage. It nevertheless was reported under the heading 'abduction'. It involved Sarah Rogers and her daughter Sarah Harris, who decoyed a young servant maid, Susanna McAllen, away from her place of work in Castle Street to Arthur Hill, where she was imprisoned for three weeks. At 2 a.m one morning she was taken to a lane near the Bluecoat Hospital, where a man threw her to the

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ground and began to sexually assault her. Her cries attracted the attention of the local watchman, who was, however, bribed to leave the scene without intervening. His transaction completed, the man disappeared. A while later Harris took Susanna to the Lock hospital, where venereal disease was confirmed. As a result, Harris tried to throw her into the Liffey, but a passer-by intervened and apprehended her. Harris was found guilty of the capital offence of assisting in the rape of an infant under twelve; her mother was acquitted; and the man was never found. The fact that the assault was pre-planned and occurred in the middle of the night in the open suggests the possibility that it was prompted by the widespread belief that sex with a young virgin could cure venereal disease.

The planning, and no doubt the expense, involved in this case suggests the rapist was of high status and it was usually more traditional abductions involving similar figures that caught newspaper editors' attention. One such case involved William Ruxton of Co. Monaghan, the nineteen-year old natural brother of a member of the Irish parliament. In 1800 William was sentenced to death for burglary and for the abduction of a fourteen-year old girl, whom he intended to marry. The judge recommended, however, that the sentence be reduced to life transportation. Ruxton's influential relatives persuaded the authorities to allow him to be sent for general service in the army overseas, a penalty that was regarded as less degrading than transportation.

One abductor who was transported and whose case Kelly has highlighted was Sir Henry Browne Hayes, the former sheriff of Cork who pursued his quarry from 1797 until he was finally brought to trial in February 1801. The case was sufficiently salacious to make the London newspapers, where Hayes became a laughing stock and the subject of ribald squibs. The Times, for instance, claimed that Hayes had written a long letter to a noble lord, in which, among other vulgarities, he advised 'him not to enter into Crack Castle with any sort of violence', a comment which perhaps gives an insight into the ton's attitude to women, as well as being a response to the rumour that when it came to the point, Sir Henry had been impotent.

Sir Henry was a widower with a daughter when he took a fancy to a Quaker heiress, Miss Pike, who rejected his suit. In July 1797 he tricked her into taking a carriage with a friend and abducted her en route to Cork. His plan was to use a bogus priest to marry her, but he was thwarted when Miss Pike attracted the attention of a passer-by. Despite being outlawed, Sir Henry remained openly on his estate until Miss Pike began to suspect that he might be planning another abduction. In June 1800 she offered a reward of £500—an enormous sum—for his arrest. A courageous and determined woman, and as a Quaker no doubt immune to the idle gossip and hypocrisies of the world, Miss Pike made a statement under oath 'that she is now under apprehension of his attempting a

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10 Freeman's Journal, 6 August 1803. It is likely that Harris was hanged; her name is not on any Botany Bay transport indents.
12 Belfast News-Letter, 4 April 1800; NAI, PPC No. 562.
13 Kelly, 'Abduction', pp. 35-36; Freeman's Journal, 10 February 1801.
14 The Times [London], 18 August 1797; Kelly, 'Abduction', p.35.
similar violence [to that of 1797], and that he is lurking for that purpose in the
neighbourhood of Cork'.

Sir Henry, who was certainly eccentric and possibly desperate, appeared to
take the threat lightly. It was said that he persuaded his barber to turn him in to
the authorities for the reward. Perhaps he was aware, as the 1797-9 data
suggest, that a trial would probably not result in a guilty verdict. Only one person
was convicted of abduction in those three years and he was given a mere three
months in prison. If Sir Henry imagined the authorities would not take the case
seriously, his illusions were soon dispelled, for not only was he found guilty, but
he was also sentenced to death, without the judge recommending a conditional
pardon. Although he had his sympathisers—Sergeant James Murray of the 56th
Regiment was court-martialed for offering to help Sir Henry escape from
prison—it required the use of his powerful influence with the Freemasons to
ensure that his sentence was remitted to
transportation.

The focus of editors on the sensational and the high-born does not mean that
newspaper reports should be ignored as untrustworthy sources; rather, it suggests
that they should be used with caution. They can, after all, give information on the
social status of both victims and perpetrators that the official data cannot. As
Kelly has demonstrated, they can also capture the violence surrounding, and the
squalid nature of, the crimes of abduction and rape, as well as sometimes giving
a voice to the unhappy women victims. Nevertheless, press reports cannot be a
strong basis on which to reach reliable conclusions on the scale and the
geographical distribution of abductions over time.

Abduction of Women

Sir Henry Hayes was in one respect typical of a significant proportion of his
fellow abductors: he was a man of Munster. Kelly has shown that in the period
1761-1800 nearly 55 per cent of all abduction cases occurred in that province.

Another one-third of his cases were tried in Leinster (half of those in Co.
Kilkenny, abutting the main areas of Munster abductions), leaving only a handful
(10 per cent) occurring in the provinces of Connaught and Ulster. His newspaper
data has led Kelly to conclude that in the second half of the century 'the
abduction phenomenon was concentrated in a region incorporating the south
Leinster counties of Carlow and Kilkenny and the Munster counties of
Waterford, Tipperary, Cork and Limerick'. Although the Journal data cover too
few years to be of any comparative statistical value, they do support Kelly's
evidence regarding Munster as the centre of abductions (see Table 2). It appears,
however, that uneven newspaper reportage may have masked another abduction
'hot-spot' in Ulster, covering a broad swathe from Co. Donegal in the north-west,
through the counties of Tyrone, Monaghan and Cavan to north Co. Louth, where

15 The Times, 16 June 1800.
16 Freeman's Journal, 25 November 1800, 10 February 1801; Dublin Evening Post, 19 September
17 Dublin Evening Post, 19 September 1801.
18 Kelly, 'Abduction', p.41.
19 Ibid., p.25.
the only Leinster conviction occurred in these years. This was also a region
where rape trials were common in this period (see below).

Table 2: The Geography of Abduction 1797-1799

<table>
<thead>
<tr>
<th></th>
<th>1797</th>
<th></th>
<th>1798</th>
<th></th>
<th>1799</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ulster</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>4</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>Leinster</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Munster</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>5</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>Connaught</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>TOTALS</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>10</td>
<td>21</td>
<td>5</td>
</tr>
</tbody>
</table>

The incidence of abductions in the North raises the issue of consensual rather
than forced abduction among social groups below the lesser gentry and strong
farmers in the late eighteenth century. It is well known that what was rather
romantically described by an English surgeon as ‘the sweetheart business’ and by
Scottish traveller Henry Inglis as ‘sham cases of abduction’ was very common in
the northern and midland counties of Ireland in the decades leading up to the
famine.\(^{20}\) The process was usually driven by parental disapproval of a match,
resulting in the carrying away of the young woman by friends or relatives of the
young man. The practice might today be viewed as a new and provocative,
although highly ritualised, stage in marriage negotiations which had broken
down. It sought to persuade the parents of the young woman to change their
minds and allow the marriage, the assumption being that in the aftermath of the
abduction the female’s reputation had been irrevocably ruined and that her
parents would be forced to accept a \textit{fait accompli}.

Kelly does not focus on this consensual type of abduction, but he seems to hint
that the practice was not as common at the end of the eighteenth century as
nineteenth-century commentators subsequently claimed.\(^ {21}\) The \textit{Journal} data
suggest, however, that, especially in the northern counties of Ireland, abduction
was more likely to be associated with a contested pre-marriage process than a
forcible kidnapping of a wealthy heiress. None of those recorded in the \textit{Journals}
was described as having been involved in abduction; all were either accused of
‘running away with’, or ‘carrying off’, a girl, a young woman or a woman. The

\(^{20}\) V.A.C. Gatrell, \textit{The Hanging Tree: Execution and the English People 1770-1868} (Oxford, 1994),
p.465; Henry Inglis, \textit{A Journey throughout Ireland} (1835), in \textit{Strangers to that Land: British
Perceptions of Ireland from the Reformation to the Famine} ed. Andrew Hadfield and John
McVeigh (Gerrards Cross, 1994), p.216; S.J. Connolly, \textit{Priests and People in Pre-Famine

former construction certainly suggests some form of collusion on the part of the abductee; the latter, perhaps, is more ambiguous. Both descriptions may have come from either the initial depositions laid before magistrates which set the legal process going, or from gaolers or county clerks, who had close knowledge of the background to the offences committed by their prisoners. They certainly conform to the language used by contemporaries to describe consensual abductions, where 'running away with' in the North meant taking a girl to the home of a relative of the prospective groom, preparatory to the renewal of inter-family negotiations.22

It is noticeable that in only two cases, one from County Clare and one from County Sligo, is it made clear that the victim was carried off by force.23 Moreover, in only one case was a socially-prominent abductor involved, in what was almost certainly an heiress abduction, and this occurred in Munster. At the summer assizes for the county of Cork in 1798 Henry Spread, Esq, was acquitted, with Laurence Hegarty and Robert Daly, of carrying off a young lady (the only time the abductee was so described).24

The evidence of consensual abduction is admittedly sparse and, as not one of these cases appears to have been the subject of a newspaper report, it remains impossible to delve far beyond the surface. But as the 1797-99 data strongly suggest that a very large proportion of abduction cases failed to lead to a conviction (and that a significant number of prisoners held on charges of abduction never came to trial), it remains a reasonable possibility that many of them were consensual abductions. The Journal data on rape also tend to support this conclusion, for there is good evidence in a few cases to show that some men were accused of abduction but subsequently tried for rape, while others were accused of rape but subsequently tried for abduction.25

Rape

There are a number of features of the crime of rape and the law on sexual assault in the eighteenth century that are uncontroversial, both for England and for Ireland: that most rapes went unrecorded; that most rape trials ended in acquittal; and that, as a socially and culturally constructed crime, the definition of rape two hundred years ago is very different from its definition today. There are, nevertheless, still some issues which are unresolved, one of which is the changing incidence of the crime in Ireland in the eighteenth century. As mentioned above, it is generally believed that rape cases in Ireland were declining in number in the 1790s. Finding reliable decadal data to confirm this is extremely difficult. Henry’s data is concerned only with Dublin, while Kelly’s conclusions are based on impressionistic evidence. It is, however, possible to use the data that Garnham drew from the Co. Armagh indictment records to form a framework with which the 1797-99 data can be compared. Garnham found that

22 See, for example, E. Estyn Evans, Irish Folk Ways (London, 1998), p.284.
23 Commons Jn. (1800), pp. dccxlii, dcccxxx.
24 Commons Jn. (1799), p.ccli.
25 See the cases of John Daly (or Dowley), Cork, James McGinley (Waterford) and John Shea (Limerick), Commons Jn. (1799), p.ccli; Commons Jn. (1800), pp. dccccxxvi, dcecv; Dublin Evening Post, 30 July 1799.
between 1736 and 1760 Co. Armagh grand juries found true bills for 54 per cent of the indictments placed before them. He also found that there were 60 rape incidents placed before grand juries in the forty years between 1736 and 1775. If we therefore assume that only half of these were found to be true bills, the average number of rapes tried in Co. Armagh was 0.75 per annum. If we also assume that the same proportion of rape cases occurred every year in each of the other 31 Irish counties, the judges were dealing with just over 23 rape cases annually. In the years 1797-99 the average number of cases tried throughout the country was nearly 32, about 40 per cent more, despite data not always being available from some regions (see Table 3). Garnham also discovered that 88 individuals were indicted in his 60 rape cases. Using the same process of calculation as above, this would suggest that on average just over 32 individuals were tried in Ireland for rape each year between 1736 and 1775. The average for 1797-9 is 43.3, an increase of 35 per cent.

**Table 3: Rape 1797-1799**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>No. of Cases</th>
<th>Persons Tried</th>
<th>Nos. Guilty</th>
<th>Sentenced to Execution</th>
<th>Executed</th>
<th>Respite</th>
<th>Not Guilty</th>
</tr>
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<tr>
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<td>23</td>
<td>27</td>
<td>4</td>
<td>4</td>
<td>1</td>
<td>3</td>
<td>23</td>
</tr>
<tr>
<td>1799*</td>
<td>31</td>
<td>51</td>
<td>10</td>
<td>10</td>
<td>3</td>
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<td>15</td>
<td>15</td>
<td>4</td>
<td>11</td>
<td>115</td>
</tr>
</tbody>
</table>

*Includes court-martial cases

The above calculations show that, far from declining, both the incidence of and the numbers involved in rape cases by the late 1790s had increased substantially. The methods used to reach these conclusions are rather crude and vulnerable to the criticism that grand juries may have made true bills of more than half of the rape indictments placed before them. If so, the number of rape trials in Garnham’s period may be underestimated here. On the other hand, Co. Armagh was one of the more populous counties and was part of a region where consensual abductions were not unusual. It is thus possible that counties with smaller populations had, on average, fewer rapes than Co. Armagh. In the three years 1797-9 only 17, 14 and 11 counties respectively had rape trials (see Tables 4.1-4.2). Eight counties had no rape trials at all in these three years. If this pattern had existed earlier, the annual number of rape trials in the forty years up to 1775 will have been overestimated. Moreover, given the acutely disturbed state of

27 Ibid., p.174.
28 Ibid., p.172, Table 10.2.
Ireland at the end of the century, the atypicality of the years 1797-9 must also be taken into account (the Rebellion may have increased the incidence of rape but diminished its reporting). Despite these reservations, however, what little statistical evidence remains from the period cannot sustain the newspaper-based conclusion that rape was declining at the end of the century. The trend was more likely to have been in the opposite direction.

**Domestic Rape**

However numerous they were, most rapes occurring in late eighteenth-century Ireland may be placed in one of four categories: domestic; opportunistic; ritualised; and insurgent. Although there are obvious overlaps between these categories—with domestic and ritualised being separated primarily by motive, and opportunistic and insurgent by political conditions—they do have some heuristic value for the last years of the century. Domestic rape characteristically took place within the home and was usually committed by the head of the household or his sons on servants. How common the practice was in Ireland will never be known, for it was rarely reported in the newspapers. Like incest, it remained a family secret. Estimates of domestic rape in contemporary England, however, suggest that about three-quarters of rape offenders brought to trial were known to the victims and about one-quarter lived in the same household. If ritualised rapes are included, it is possible that similar results would be found for Ireland.

**Ritualised Rape**

Ritualised rape was an integral part of 'the sweetheart business', a tangled web of lower-class courtship practices that could involve consensual abduction, bundling (a form of family supervised courtship in which the couple slept in the same bed, sometimes separated by a bolster), pre-marital pregnancy or unfulfilled promises of marriage from a young man desperate to have sexual relations with his girlfriend. According to Kelly, the increasing number of rape allegations in Co. Tipperary in the late 1780s were in part 'a preliminary to a couple agreeing to marry'. A generation later, numbers were even greater. Henry Inglis was struck by the large numbers of rape cases put down for trial, forty at one Ennis assize he attended in 1834. 'In nine cases out of ten', he noted, 'the crime is sworn to, merely for the purpose of getting a husband; and the plan generally succeeds'. Unfortunately, Inglis failed to mention the details of the circumstances surrounding the rape charge to which he refers, although he overheard the 'earnest' negotiations being carried on by relatives of the accused just before the trial, which ended in an acquittal.

When considering the high incidence of rape trials and the very large number of acquittals at the end of the eighteenth century, it is hard not to conclude that

30 Kelly, 'Rape', p.106.
31 Inglis, in *Strangers to that Land*, p.216.
the law was being used by the lower orders as a means either of gaining revenge or of forcing a courtship dispute to a conclusion. If non-consensual abduction is viewed as a man forcing the issue of marriage with a reluctant partner and consensual abduction viewed as a way of circumventing family opposition, ritualised rape charges brought in Ireland ought to be viewed as women, or possibly their families, forcing the issue of marriage after courtship practices had gone too far. It was the distaff’s side’s equivalent of non-consensual abduction, pressuring the partner to accept the marital consequences of his actions; not so much a malicious, as a false, prosecution. This is probably the explanation for a rape case brought to the Co. Armagh assizes in the spring of 1805. John McCan and Bryan O’Hare were two of three men acquitted of rape. They had, however, married their victims before the trial, ‘as reparation to the females they had injured’. As a result, no-one came forward to prosecute them. It is hardly possible that the young women involved were prepared to marry strangers who had assaulted them. Rather, like Elizabeth Burn in London in the same year—who accepted an offer of marriage from porter Thomas Stapleton after he acknowledged attempting to rape her—they used rape accusations as an extreme form of courtship negotiation.

Access to the law was not closed to the lower classes in the eighteenth century, either in England or Ireland, and a significant proportion of prosecutors came from below the gentry level. Bringing a case of rape to trial, however, then as now, required the victim to demonstrate considerable courage and fortitude. The process could be expensive; the prosecutor would have to face her alleged attacker in court; she was likely to be minutely examined on oath (owing to the possibility of malicious prosecution and the capital nature of the crime); and she knew that her reputation would be ruined, whatever the outcome of the trial. It is legitimate to ask if a woman, probably quite young, would be prepared to undergo such an ordeal with the sole intention of securing her man. It seems unlikely. But if the accusation is seen as a negotiating threat rather than as evidence of a determination for revenge; if it is seen as an exercise in pre-marital brinkmanship; if it is seen as possibly instigated or supported by the woman’s family; then it becomes clear why, over a period of ninety years from 1740 an average of only three rape cases a year were tried at the Old Bailey in London, while the assizes in Co. Roscommon and in Co. Sligo had seven cases and five cases respectively in just one year, 1797 (see Table 4.1). We are looking at different types of rape, the former opportunistic and aggravated, the latter simple and ritualised. It also helps to explain why such a high proportion of rape cases in civil courts in Ireland ended in acquittal. Either the prosecutor failed to appear

32 Belfast News-Letter, 24 April 1805.
33 The Times, 3 September 1805.
36 For the Old Bailey, see Simpson, ‘Blackmail Myth’, p.120.
37 For the distinction between simple and aggravated rape, see Edelstein, ‘Accusation’, p.370, n.78.
because a satisfactory resolution had been achieved, or, if her bluff were called, she was likely to make an unconvincing witness. Her intention had been to place her lover’s head in a marital, not a hempen, noose.

Table 4.1: The Geography of Rape by County, 1797-1799

<table>
<thead>
<tr>
<th>COUNTY</th>
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<th>1799</th>
</tr>
</thead>
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<tr>
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Yearly Number Key:
1. Number of cases
2. Number of cases tried
3. Numbers found guilty
4. Numbers found not guilty
5. Numbers sent for execution
6. Number of execution sentences remitted
Table 4.2: The Geography of Rape by Province, 1797-1799

<table>
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<th>Provincial Totals</th>
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<th>1799</th>
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</tr>
<tr>
<td>Connacht</td>
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<td>1</td>
</tr>
<tr>
<td></td>
<td>31</td>
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<td>10</td>
</tr>
</tbody>
</table>

Yearly Number Key:
1. Number of cases
2. Number of cases tried
3. Numbers found guilty
4. Numbers found not guilty
5. Numbers sent for execution
6. Number of execution sentences remitted

Opportunistic Rape

Kelly has noted that most rapes reported in the newspapers in eighteenth-century Ireland were opportunistic, carried out with little premeditation in open spaces both by gangs and by individuals. Women on their own were particularly vulnerable. Conditions in Ireland in these years greatly increased the number of women forced to live alone, even if only temporarily. On both sides of the political divide thousands of men left their homes in the summer of 1798, either to join the rebel forces or the yeomanry. By the autumn the normal prisons and myriad different holding places—including converted public buildings, floating tenders (on Belfast Lough, in Dublin harbour and at Waterford) and the massive new military camp at New Geneva—were filled with rebel prisoners. Hundreds of rebels were either on the run or had escaped abroad, while the dead had left widows in their thousands. Whole towns had suffered major damage by fire and battle, from Saintfield and Antrim in the north to Prosperous and Carlow in the south. Rebels burned the homes of yeomen while they were away on duty; the military burned rebel strongholds in retaliation. At Randalstown Captain-Lieutenant John Slessor of the Royal Irish Artillery was ordered to burn the town,

38 Kelly, ‘Rape’, pp. 90, 92, 97.
39 Ironically, only a month before the rebellion broke out, 120 houses and barns were burned in Tipperary city by an accidental fire; see The Times, 25 April 1798.
which was soon effectually done by sending artillermen in different directions with port-fires. The houses being mostly thatch were soon in a blaze. Only those who witness such distressing scenes can form any idea of them.40

Dublin, it was said, was 'crowded with the widows and orphans of those who had fallen in battle.41 Women in their hundreds, whose relatives were in prison, criss-crossed the country, seeking help for, or news of, their menfolk. As Dublin Castle was the seat of government, where final decisions on sentences were made, numerous female relatives thronged the city, bringing letters of reference and petitions which they hoped would persuade the authorities to free their husbands and brothers. The wife of James Fullerton, for example, with six small children to look after, walked to Dublin from Donaghadee, Co. Down, with three recognizances and a petition containing the names of twenty-nine 'principal inhabitants', in a vain attempt to gain her husband's release.42 Mary Ann, wife of William Browne, was equally unsuccessful when, after leaving her two infant children 'in great distress' on their small farm in Coolnacuddy, Co. Wexford, she personally delivered a petition to Dublin Castle.43 Fullerton and Browne were transported to New South Wales. Mary Brennan, the mother of eighteen-year old labourer Michael, appears to have have had more success. She spent a fortnight in Dublin, 'without the smallest means of support', in her quest.44 Some women walked enormous distances on behalf of their imprisoned menfolk. The elderly mother of Patrick Murphy, a yeoman who had deserted at the battle of Castlebar in September 1798, walked from Galway to New Geneva in Co. Waterford in hope of seeing him.45 He sailed on the transport Atlas II to Botany Bay, together with Mayo United Irish captain Thomas Rigney, whose wife travelled more than 140 miles to Dublin to plead for him. She begged her way to the capital, leaving four of six children 'to beg in the country'.46

On the face of it, the dislocations of these years should have increased the opportunities for rape by strangers. The trial data for 1797-9, however, suggest otherwise, with the number of cases in 1798 dropping to a level comparable with the notional average for previous decades (see Table 3). There are three possible reasons to explain this sudden (and what appears to have been a temporary) decline. The first is that more opportunistic rape cases than usual went unrecorded, with the victims reluctant to swear informations before distracted magistrates whose prime concern lay with tracking down and punishing local treason. The absence of many magistrates from their localities, as they sought safety in fortified towns or across the Irish Sea, may also have meant that some rape victims were unable to give their information swiftly enough. For, technically at least, they were allowed forty days after the attack to report the event, but ideally were expected to act much more quickly, so that any physical

42 NAI, State Prisoners’ Petitions (hereafter SPP), No. 595.
43 NAI, PPC, No. 263.
44 NAI, SPP, No. 437.
45 NAI, PPC, No. 512.
46 NAI, PPC, Nos. 567, 569.
evidence was still identifiable. The decline in the number of trials in Leinster, in 1798 the main seat of rebellion, might support these suppositions (see Table 4.2).

The second possibility is that opportunistic rape remained at the same level (or even rose), but that ritualised rape declined as a result of the social and political upheavals disrupting opportunities for courting. In 1798 young men were more likely to be carrying a torch for firing thatch than for their sweethearts, whether they were rebels or loyalists. Moreover, the strict enforcement of curfews throughout the country had the capacity to disrupt secret trysts as well as secret political meetings. Punishment under the Insurrection Act or martial law for being abroad after midnight and before dawn was potentially draconian, with transportation to Botany Bay or induction into the army being the most severe. Table 4.2 suggests that such a scenario may have applied in Connaught, the site of a French army invasion in August and September 1798. The single case of rape in Co. Roscommon and the two cases in Sligo were tried at the Lent assizes, before the rebellion broke out. No cases were tried at the Summer assizes.

The third possible reason to explain the decline of rape trials in 1798 lies with the conduct and ordering of the assizes. The failure to call assizes in Cos Wicklow and Wexford while the rebellion was at its height has been mentioned previously. In other counties, where the judges did sit, the court schedules were usually filled with political offences, as local magistrates sought to clear their regions of the disaffected. Government legal officials, such as High Sheriff Thomas Archer in Wicklow and crown solicitor John Pollock in Belfast, determined the make-up of the schedules. They were heavily influenced by political considerations. Even though most political offenders were tried under martial law, several hundred were tried in the civil courts in this period, clogging up the system and possibly ensuring that the more problematic rape cases were dealt with summarily before reaching the grand jury. Deferring the cases until 1799 was another possibility, but the fact that only eight alleged rapists were on remand in January 1799, while there were seventeen a year later, suggests that deferral was more a solution in the aftermath, rather than during, the rebellion.

If the court schedules did give priority to political cases, this does not necessarily mean that Kelly is wrong to claim that the legal authorities in Ireland took 'a stern attitude towards rape'. But it does suggest some ambiguity in legal and political minds, which is reinforced by the fact that only two of the nine sentenced to death by the civil power for rape in the three years were hanged, a commutation rate (77.7 per cent) much higher than for other felonies (see Table 5). (Courts-martial tended to produce more severe sentences, but mainly because the accused were also found guilty of other offences.) Even someone like John Reilly, who had been amongst a group of eleven men who gang-raped Mrs. Mary Maguire as she was returning from the fair at Dunn, Co. Monaghan in the summer of 1801, could avoid the scaffold. Official policy appeared to be that

47 Kelly, 'Rape', p.83.
48 In practice, these penalties were rarely enforced. Only five prisoners were tried under martial law for breaking curfew and most were guilty of other offences too. None was sent to Australia. Three were sent under the Insurrection Act, but they were also guilty of other offences.
49 Commons Jn. (1799), pp. ccxxvii-ccxxix.
50 Kelly, 'Rape', p.104.
51 Freeman's Journal, 20 August 1801.
rape was not so deserving of the ultimate sanction of execution as other felonies. Unfortunately, it is not known why the only two sentenced to hang by the civil power for rape in these years, John Donovan at the 1798 spring assizes in Co. Limerick and Cornelius O’Donnell at the 1799 summer assizes in Co. Cork, were not shown mercy (Donovan’s verdict was reported in the press but without comment). But it may be surmised that there were aggravating circumstances attending their crimes. Perhaps, like Michael Byrne, hanged in Wicklow in 1801 (the jury did not even leave the box to convict him), and the elderly Laurence Kirley, executed in Waterford in 1802, they had committed rape on a child? Or possibly, like John Minto, they had committed so brutal an assault, leading to death, that the newspapers thought ‘The facts cannot be detailed’?54

Table 5: Commutation Rates, All Felonies, 1797-1799

<table>
<thead>
<tr>
<th>YEAR</th>
<th>No. Sentenced to Execution</th>
<th>No. Reprieved</th>
<th>% Reprieved</th>
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</thead>
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<tr>
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<td>86</td>
<td>58.9</td>
</tr>
<tr>
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<td>211</td>
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</tr>
<tr>
<td>TOTALS</td>
<td>722</td>
<td>363</td>
<td>50.2</td>
</tr>
</tbody>
</table>

Insurgent Rape

Extract from the transcript of a General Court-Martial held at Newtownbarry, 27 March 1799.55

Anne Oliver sworn

Q. Do you know the prisoners Owen Doyle and Michael Breen?
A. Yes.

Q. Did you see the prisoners on the night of 22 Sept. [1798] and where?
A. I did in the house of Richard King of Askennillars.
Tell the Court what they did to you that night.
They came to the house, rapped at the door, my master opened it. They put him into a room and pointed a musket at him and they came into the room where she slept.
That John Forrestal who is not in custody first went into the bed to her, and used her ill. That Michael Breen next came into the bed to her and

52 Ibid., 2 April 1798; The Times, 9 April 1798.
53 Freeman’s Journal, 24 March 1801; Belfast News-Letter, 9 April 1802.
54 Dublin Evening Post, 28 August 1800.
done what he pleased to her, and that when Owen Doyle came into her bed to her and also done what he pleased to her that she screamed out and they swore they would shoot her if she spoke.

Q. By the court. What do you mean by doing as they pleased with you?
A. They ravished me in spite of all the resistance I could make.

Q. Were you out of bed before they came into the room?
A. I was not.

Richard King sworn who corroborates the evidence of Anne Oliver in every particular.

Rape and other forms of sexual violence against women have been associated with wars, civil strife and social breakdown since the days of classical Greece and Rome. As with opportunistic rape, sexual assaults that occurred as a result of the breakdown of social order and the presence of large bands of roaming armed men—representing both the forces of order and insurgent forces—may have been plentiful in Ireland in the last years of the century. If they were, most have gone unrecorded and unreported. More surprisingly, modern commentators on the rebellion who have concerned themselves with sexual assault have argued that all the violence against women came from the army and that the rebel forces did not seriously maltreat women. Kevin Whelan, for instance, writes in one place that ‘On the issue of rape, the United Irish army occupied the high moral ground’ and in another, that it ‘prided itself on leaving non-combatants unmolested and that obviously included women and children’. Daniel Gahan, in his comprehensive study of the rebellion in Co. Wexford, mentions episodes of rape on five occasions: all, supposedly, were carried out by government troops. The reality, however, was not so one-sided, as the horrible vignette of a rebel gang-rape above testifies.

As with looting, the possibility of rape committed by men under arms in 1798 was contingent on the degree of control exercised by their officers. It was common for relatively small groups of soldiers—on both sides—to be stationed away from the main army command during the rebellion. On the rebel side, insurgents frequently hived off from the main body to make short visits to their homes and relatives, often staying overnight. In the more disrupted regions, wandering loyalists were constantly bumping into rebel bands. It is notorious, moreover, that many rebel commanders of the army in Co. Wexford claimed that they had little control of their men. One rebel leader, Thomas Cloney, later acknowledged lack of discipline and rebel outrages, although he claimed that ‘towns generally furnish more desperate characters than are to be found among

the countrymen’. Then, following the defeat at Vinegar Hill and the recapture of Co. Wexford by government forces, gangs of the defeated escaped into the fastnesses of Counties Wicklow, Wexford, Carlow and Kildare, where, while still acting as rebels, they increasingly resorted to brigandage. On the government side, small units were often detached from the main forces either to pursue rebel bands or to give confidence to isolated loyalist communities. For several years after 1798 military guards criss-crossed Ireland, conducting convicted prisoners to military holding depots or transportation ports. In these circumstances, on both sides discipline could easily become lax. One example, unnoticed by Gahan, occurred in Co. Wexford in June 1798, where Patrick Sutton, commanding the rebel forces on Vinegar Hill, was compelled to issue a proclamation calling for the arrest of those rebels who had committed ‘through the country . . . many outrages . . . on the wives and daughters of several people’. Whether this order was acted upon remains unknown, but at the spring assizes in Co. Wexford in 1800 Denis Hogan was convicted of raping and seriously injuring fifty-year old Mary Hawkins at the height of the rebellion.

Trial evidence suggests that rape associated with insurgency occurred most frequently—or at least, most visibly—in the aftermath of the main rebellion, when outlawed gangs, motivated by what the Freeman’s Journal described as ‘a mixed principle of Rebellion and robbery’ terrorised more inaccessible parts of the country. In these circumstances, rape became a by-product of robbery, conforming to opportunistic principles. In Co. Wicklow, for example, United Irishman William Quinn was on remand for robbery and rape in January 1800. A year earlier, in Co. Mayo, rebel captain Michael McCale had been arrested with two others, again on charges of rape and robbery. At a Carlow court-martial in September 1799, both John Madden and John Wise were convicted of the same offences. Rebels Lawrence and John Farren were hanged for the multiple rape of Mrs Anne Moody at Coolabeg, Co. Wicklow, in September 1798. Her seven children were in the house at the time. The rapists were purported to have said: ‘We will sow croppies in you, you heretick bitch’.

58 Thomas Cloney, A Personal Narrative of those Transactions in the County of Wexford in which the author was engaged at the awful period of 1798 (Dublin, 1832), p.51.
61 Sir Richard Musgrave, Memoirs of the Different Rebellions in Ireland 3rd ed. (Dublin, 1802), i, pp. 454-55. The Times, 28 November 1798, also reported the sexual assault by rebels on a servant maid with a red-hot poker in Enniscorthy. She died ‘in the most dreadful agonies’.
62 Freeman’s Journal, 17 April 1800. Hogan was transported to New South Wales on Atlas II.
63 Freeman’s Journal, 7 August 1798.
64 Commons Jn. (1800), p.dccxlvi. For Quing’s rebel status, see O’Donnell, Aftermath, p.245.
65 Commons Jn. (1799), p.cccxvii.
horseback at the battle of New Ross. He was still at large when Doyle and Breen were executed, but was subsequently hanged for three murders he had committed in June 1798 on Vinegar Hill.

The opportunistic character of most of these assaults on females is less apparent in Co. Antrim, where a gang led by the renegade militiaman Thomas Archer terrorised loyalists for a year. Archer, who had deserted and fought for the rebels at Ballymena, had a pathological hatred of loyalists. His gang, of eight to ten men, was notorious for its cruelty, being responsible for vicious floggings, murders and rapes. Archer himself raped a woman and her daughter in a house his gang attacked in February 1800, the same month that one of his lieutenants, John 'Major' Dunne, was executed for a variety of crimes, including rape. James Patterson, who has made the strongest case for the view that post-rebellion unrest in Co. Antrim possessed a significant political as well as socio-economic purpose, acknowledges that 'multiple rapes' featured prominently. In the Ballymena region, at least, the raping of innocent and vulnerable women should be seen as deliberate political acts of terror, comparable with, although on a much smaller scale, the use of rape for ethnic cleansing in the Balkans in the last decade of the twentieth century.

There is thus more than enough evidence to demonstrate that rape as a criminal act was not confined to one side in the years of rebellion. This is not to say that such atrocities were condoned by the rebel leadership, any more than that rapes committed by soldiers were overlooked by the generals. Widespread lawlessness and social disruption created opportunities, which lack of discipline among some of the military forces enhanced. It is noticeable, for instance, that all of the soldiers tried for rape in this period, by both civil and military courts, belonged to Irish militia regiments, the very units which were known for indiscipline both before and during the rebellion. Soldiers tried for rape in 1798-9 came from the Limerick, Meath and Down regiments of militia. Two, Henry Grady and William Fitzgerald, were subsequently transported to Botany Bay.

The military authorities were as prepared as their civil counterparts to try rape

68 Charles Tottenham to Alderman James, 9 June 1799, NAI, SPP No.592.
69 Freeman's Journal, 27 July, 22 August, 5 September 1799; Dublin Evening Post, 30 July 1799.
70 Close to another 'Vinegar Hill', at the convict farm of Castle Hill in New South Wales, another gang of former rebels were involved in a singularly unpleasant rape a few years later. In February 1803 sixteen Irishmen, who had been transported on Atlas I, Atlas II and Hercules, broke out of their compound and went on a robbing spree of local farms. At least eleven had been rebels in Ireland, including leaders John Gannon, John Lynch and the notorious James Hughes. At one of the farmhouses they broke into, 'they gave a loose to sensuality, equally brutal and unmanly', by raping the seventeen-year old daughter of the house. All the prisoners were subsequently recaptured and although two were executed, it was for robbery, not rape, owing to the victim being too traumatised to give evidence; see Sydney Gazette, 5, 26 March 1803. The victim, Rosetta Bean, the daughter of a free settler, subsequently married Thomas Dunne, an Irish Catholic who had been transported on the Hillsborough; see Grace Karssen, The Rocks: Life in Early Sydney (Melbourne, 1998), p.63.
72 The Times, 19 October 1798; NAI, RP 620/5/58/20; NAI, SPP No.146; NAI, RP 620/5/60/4.
cases (if they involved either military personnel or rebels), but they faced the same reluctance of victims to give evidence as the civil courts. When Gregory Healy, a baker, and Patrick Flyn, a private in the Limerick Regiment, were tried at a Carlow court-martial, the former for robbery and assisting rape, the latter for robbery and raping Honora Moran, the wife of the householder, the court could not give judgement on the sexual offence, as ‘no evidence appeared before them’. Instead, as well as being convicted of robbery, Healy and Flyn were found guilty of ill-treating Mrs. Moran. In Cork, one court-martial tried, unsuccessfully, to force a reluctant woman to give evidence. In October 1799 a complete gaol guard detail of six, including the two non-commissioned officers, were charged with ‘committing a violent outrage, rape and robbery, on the body of Honora Doolan’ while on duty. Five of the soldiers were from the Meath Regiment, the other from the Limerick Regiment. When Honora was called to give evidence, she refused to be sworn or to give her testimony. Her reasons for doing so were not given, but as she was the only person in the court not wearing regimentals—and also the only woman—her hesitation is understandable. With no other witnesses, it would have been her word against theirs and her reputation would probably have been compromised. The court was compelled to acquit the six defendants, but Honora was ordered into confinement in their place.

Amidst the carnage, dislocation, misery and murder that befell much of Ireland in the last years of the century, it would not be surprising if many rapes went unrecorded. But of those for which evidence remains, it is clear that offenders came from both sides of the political divide. The conflict had a brutalising effect on Irish society. Old wounds were opened and old scores settled. Atrocity piled upon atrocity. In a conflict which had many of the characteristics of a civil war, neither the government nor the rebels could claim the moral high ground.

Conclusion

Between the scenarios of one young Ulster woman becoming the victim of a consensual abduction and another facing the rage and hatred of Thomas Archer lies an enormous gulf, but each occupies different ends of a spectrum along which flowed the crime of rape. The evidence presented here from each part of that spectrum suggests that rape was increasing in late eighteenth-century Ireland, even if conviction rates remained tiny. This analysis, admittedly, relies on an unsettling amount of speculation, yet to stand on firmer ground would require more evidence than is currently available. There remains also the issue of the very different conditions existing at the end of the century. In any comparison with earlier decades, the shadow of the 1798 Rebellion looms large. From the effects of the curfew to the lurking presence of desperate outlaws; from the changing nature of the court schedules to the displacement of civil by martial
law; from the increase in women's vulnerability to the widespread deployment of men in arms, the Rebellion disrupted the channels along which normal life flowed. Even a seemingly straightforward case of child rape, committed by Michael Byrne on twelve-year-old Elinor Philips while she gathered flowers in a field, was touched by the Rebellion's finger. Byrne was the brother of Hugh 'Vesty' Byrne, a well-known Co. Wicklow United Irishman and lieutenant to the elusive rebel chieftain Michael Dwyer. The authorities offered Byrne a conditional pardon should he persuade his brother to accompany him to Botany Bay. Hugh refused the suggestion and Michael was hanged. No account of violence against Irish women in the late eighteenth century can ignore the influence of the Rebellion.

Michael Durey