

Functionalisation or Classification? Public Perceptions of Sodomites in The Old Bailey Proceedings

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Through a critical discourse analysis, this study explores how those engaging in male-male sex were viewed in the 18th century through the medium of the Old Bailey Proceedings online corpus. This study begins by providing the historical context of the relationship between homosexuality, religion and the law before analysing the character witness testimonies in trials for sodomy. This study largely looks at how the defendants are described by those who are selected to defend them, and as such mainly focusses on the inferences that can be made on their views of sodomites from their positive descriptions of defendants. The focus of this study is the 'predication strategies' (Reisigl and Wodak, 2001) used to describe sodomites as drunk, immoral, sex-crazed and misogynist. It was found that sodomites were at times viewed as people who partake in a behaviour, in a process of 'functionalisation', and at other times as being part of a wider community, in a process of 'classification' (van Leeuwen, 1996).

1. Introduction

This study is a critical discourse analysis using the Old Bailey Proceedings online corpus to explore public perceptions of sodomites in the 18th century. While previous linguistic studies have focussed on this historic corpus, it is still a largely under-utilised resource (Johnson, 2015). Although historical studies on homosexuality have used the resource, trials for sodomy have not been analysed in any form by discourse analysts. This study rectifies that by using the character witnesses called by the defence and the Crown in trials for sodomy, to explore whether homosexual men were viewed through a process of 'functionalisation' or 'classification' (van Leeuwen, 1996). This study outlines the 'predication strategies' (Reisigl and Wodak, 2001) employed to describe those who committed sodomy, in an attempt to test the historical consensus on what public perceptions of gay men were at this time.

The research question is as follows:

- Do the predication strategies used to describe sodomites in 18th century character witnesses in the Old Bailey Proceedings employ a process of functionalisation or classification?

2. Literature Review

2.1 Before 1700

The persecution of homosexuals in Europe can be traced to the conquering and subsequent persecution of the Cathars (Crompton, 2003: 189). Also known as the Bulgari, from whom the word

'buggery' came into English via French (Crompton, 2003: 189), their rejection of pro-creation as a sin led to accusations of non-procreative sexual practices, such as homosexuality (Crompton, 2003: 190). Denounced as a heretic cult, from then on all non-reproductive sexual acts were closely tied to charges of heresy (Warnicke, 1987; Crompton, 2003: 190). Religious and political leaders in Europe saw the practice of sodomy as a virus that had spread to their country from the Cathars (Sharrock, 1997; Elwood, 2005; Greene, 2003). Although they wanted to punish the practice, they were always wary of publicising and causing further spread of it (Greene, 2003; Elwood, 2005). This offers an explanation as to why no records of trials for sodomy have been found in the 14th and 15th centuries in England (Crompton, 2003: 362). This is despite the fact that common law criminalising buggery was present at the time (Etheron, 2014). The Buggery Act (1533) became the first statute in English civil law to make sodomy a capital offence (Etheron, 2014). This Act saw the grouping together of sodomy with other non-reproductive sexual acts such as bestiality and masturbation (Sharrock, 1997), demonstrating its continued heretical implications (Warnicke, 1987). The Act was influenced by Henry VIII's growing admiration for Protestant thinkers, as Luther and Calvin were at this time highlighting the sins of Sodom and Gomorrah to perpetuate rumours of sodomy in the Catholic church (Elwood, 2005). Europe, which had previously embraced sex between adult males and passive adolescents (Trumbach, 2012), now became unique across the world in its rejection of male-male sex (Trumbach, 1977).

2.2 Homosexual Stereotypes in London in the 18th Century

Despite there having been an established homosexual subculture in London for many years (Bartlett, 1997), prosecutions for sodomy became more widespread during the 18th century. More men were 'put to death for sodomy between 1700 and 1850 than in the previous 600 years' (Trumbach, 1989: 408). This huge rise in persecution led to 'an explosion of public knowledge about homosexuality' (Norton, 2005: 40). London was the centre of the press industry in England, and therefore public perceptions of homosexual men in the capital were heavily coloured by their depiction in the press and printed trials (Trumbach, 1977; Norton, 2005), as well as the public punishments doled out to them (Bartlett, 1997). These depictions often focussed on the rowdy 'molly houses' where gay men would meet (Norton, 2005). Because the gay subculture's 'promiscuous behaviour and location overlapped with the world of female prostitution' (Trumbach, 1999: 102), a change occurred in public perceptions of sodomy over the century. At the beginning of the 18th century, sodomy was forbidden due to being 'condemned in the Scriptures' and 'unnatural' (Trumbach, 1977: 11). However, by the end of the 18th century, the religious nature of the offence had diminished. The religious and heretic 'discourse of sodomy' had become a 'discourse of perversion' (Norton, 2005). In witness testimony, religious terms such as 'sinful' and 'abominable' that appeared in the original Buggery Act were replaced by words such as 'filthy' and 'vile' (Norton, 2005). Another popular public perception in England of sodomites was that they were all effeminate and were only interested in other men (Trumbach, 1977; 1989). This came from the growing classification of the aforementioned group of

heretic, non-reproductive, sexual acts as effeminate by religious and political leaders (Trumbach, 1977; Sharrock, 1997). This ignored the complexity and diversity of sexual preferences in London's gay community (Trumbach, 1999), and was in contrast to non-Western societies, who often viewed only taking the passive role in sodomy as effeminate (Trumbach, 1977). This effeminacy was often portrayed as being misogynist (Trumbach, 1977), with society constructing sodomites 'as an affront and an insult to women' (Bartlett, 1997: 562).

2.3 The Old Bailey Proceedings

This study uses the Old Bailey Proceedings (OBP) corpus (Hitchcock et al., 2012), an online corpus of the accounts made available to the public of trial proceedings at the Old Bailey between 1674 and 1913. Studies using the OBP have been overwhelmingly written by historians with few having used this resource to undertake linguistic analysis (Johnson, 2015). The linguistic studies that have used this corpus have predominately focussed on the pragmatics, procedure and discourse structure of the historical courtroom (Archer, 2005, 2010, 2014; Chaemsaitong, 2014; Traugott, 2015). While many of these studies overlap with the time-frame of this study, their linguistic focus varies substantially from that of this research. These studies have aimed to describe and understand the style of courtroom discourse in the Old Bailey (Chaemsaitong, 2014; Johnson, 2015; Traugott, 2015). This has been in attempt to see whether these practices have changed over time, or to offer a historical snapshot. However, my study employs linguistic theory to test historical theories surrounding homosexuality, which have slowly moved from a 'constructionist' viewpoint to an 'essentialist' one (Norton, 2005: 41).

3. Methodology

This paper will use the term 'sodomite(s)' throughout. It must be acknowledged that, in a modern context, this word is heavily loaded with homophobia. However, the purpose of this paper is to analyse the public's perceptions at the time of those on trial for the specific crime of sodomy. While this paper may at times use the terms 'gay' or 'homosexual' to refer to those in the community of the time, these terms were coined in the 20th century (Baker, 2004). What this paper analyses is public perceptions in the 18th century, were they would have been defined by the public as either sodomites or those committing the act of sodomy. Therefore, the term 'sodomite' is used as an umbrella term for all those who engaged in sodomy, as defined by the law of the time, not all of whom would have been homosexual (Trumbach, 1989).

The OBP contains 56 cases of sodomy tried in the 18th century, among which 19 were deemed suitable for analysis. Although witnesses of the event often passed judgement on the character of the defendant, only cases which included witnesses called specifically to give testimony related to the defendant's character were included. These statements were chosen due to the very direct nature in which they refer to the character of the accused. Furthermore, analysing the trials as a

whole would have required a more quantitative corpus-driven analysis and would have gathered a vast amount of superfluous data of no value in answering the research question. Twenty-eight of the omitted cases contained no explicit character witness statements as defined above. Seven other cases were omitted as they were relating to charges of bestiality and three were repeated cases. Ten of these defendants were found guilty, eight not guilty and one found guilty of the lesser offence of 'assault with sodomitical intent'. It is difficult to know exactly how many witnesses were called by defendants. Before the trial of Ashford (1732), the scribe tended to describe the character witnesses as being 'many', 'several', 'some' or 'two or three'. However, there are 67 named witnesses, three of whom testified for the Crown, in addition to all those grouped using the quantitative adjectives above.

It is important to draw attention to the structure of how the Old Bailey Proceedings were written and how this changed over the course of the century. Throughout the century, the proceedings generally began with the name and address of the accused and the charges against them. Following this, witnesses for the prosecution generally outlined their case, before a rebuttal from the defence, and finally character witnesses, if used, and the judge's verdict. As the century wore on, the public nature of the courthouses and growing public interest meant a switch from third-person reporting to more direct speech (Archer, 2014). This can be illustrated in the following two extracts of an earlier and later trial:

The Prisoner call'd several to his Character, but the most Material was Micah Wilkins

Extract 1: Hitchin – 12/04/1727

John Dyer . I have known the prisoner four or five years, I never heard any thing of this kind in my life.

Extract 2: Bailey – 21/10/1761

In Extract 1, the scribe actually selects the information deemed most important, showing the earlier, more powerful, role of the scribe in earlier versions of the proceedings (Hitchcock and Turkel, 2016). This power returned anew towards the end of the century (Trumbach, 1989), as 'evidence that was thought to present a moral danger to the reading public was excluded' (Hitchcock and Turkel, 2016: 933). This is the reason for the final trial featured in this study taking place as early as 1779. Extract 2 shows a later example of a character statement, whereby the name is written, before their evidence is detailed, often verbatim (Archer, 2014). As illustrated above, the bias of the scribe in the reporting of speech should always be taken into consideration when analysing the lexical choices contained within the character testimonies. However, the scribe could not veer far from the truth of what was said, given that the very public nature of the Old Bailey meant that the 'reputation of The Proceedings would have quickly suffered had the reports been largely invented or significantly distorted' (Archer, 2014: 262).

The character witnesses called were almost always with the intention of proving the defendant's innocence, with a few exceptions where the Crown calls witnesses. Also, the character witness

statements collected rarely make reference to any social actors except the defendant. Therefore, in this research the perceptions of sodomites have to be inferred from the predication strategies used to describe what a sodomite is not. This draws on the post-structuralist view that within gendered discourses 'the identity of a person or thing is implicated in its opposite' (Baker, 2008: 187), with a 'normal' heterosexual and an 'unnatural' (Baker, 2004) or 'deviant' (Motschenbacher and Stegu, 2013; Milani, 2017) homosexual.

My analysis takes a Critical Discourse Analysis (CDA) framework. CDA 'primarily studies the way social power abuse, dominance, and inequality are enacted, reproduced, and resisted by text and talk in the social and political context' (van Dijk, 2001: 353). The CDA approach used in this study will focus on whether homosexual men are referred to by 'functionalisation' or 'classification' (van Leeuwen, 1996). Functionalisation is when people 'are referred to in terms of what they do' (van Leeuwen, 1996: 54), whereas classification is when they are referred to in 'terms of what they, more or less permanently, or unavoidably, are' (van Leeuwen, 1996: 54). Some historians have claimed that homosexuals did not exist before the 19th century, with them instead being referred to, through functionalisation, as those who committed sodomy (Norton, 2005). These ideas have been accused of seeing homosexual history through a heterosexual lens, with a subculture with a specific identity in London very well-documented (Bartlett, 1997; Norton, 2005). However, my study aims to look at *public perceptions*, and therefore test whether the public, at this time, still saw sodomy as a behaviour rather than as part of a sexuality. It will observe the 'predication strategies' (Reisigl and Wodak, 2001) used to achieve this functionalisation or classification. Predication strategies involve the labelling of 'social actors more or less positively or negatively, deprecatorily or appreciatively' (Reisigl and Wodak, 2001: 45). This study explores four predication strategies, all of which are informed by the historical consensus around public perceptions of homosexuals, outlined in full during the literature review of this project. The predication strategies explored are the 'sodomite of poor character', the 'drunk sodomite', the 'sex-crazed sodomite' and the 'misogynist sodomite'.

4. Analysis

4.1 Referential strategies

This study is concerned with predication strategies, which are normally difficult to separate from referential strategies. Referential strategies define the 'ingroups and outgroups' (Reisigl and Wodak, 2001: 45) referred to in those predication strategies. Witnesses only refer to 'sodomy' once in the corpus, instead preferring to use a range of inferences detailed in Figure 1. While there are 32 references to the act of sodomy, there are no references to a specific social group in which the defendant does or does not belong. Those who practice sodomy are referred to through functionalisation, being defined by the act they commit, rather than the group they belong. This functionalisation of homosexuality into acts is a rhetorical tactic that is still used in the modern era by politicians opposed to equal rights for gay men (Baker, 2004). However, the role of the court

scribe here must be considered. Religious and political figures were keen to stop the 'spread' of sodomy at this time (Sharrock, 1997; Greene, 2003; Elwood, 2005). Therefore, the functionalisation of sodomites may have been used as a tactic to make these seem like isolated incidences rather than evidence of a thriving subculture.

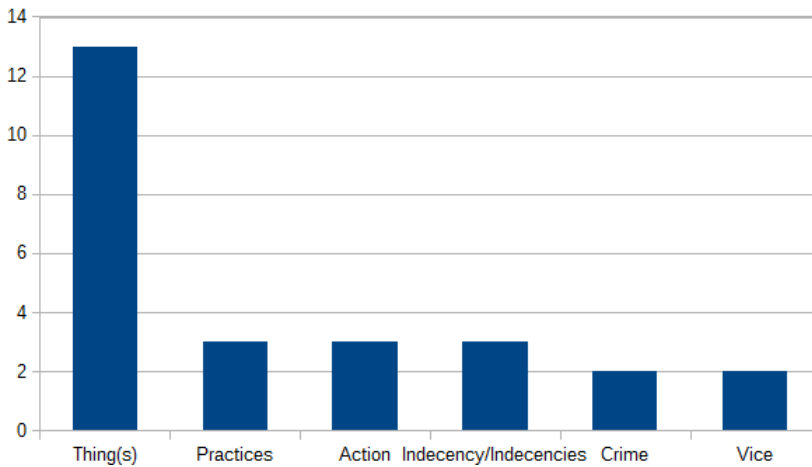


Figure 1: Inferences for 'sodomy'.

4.2 Sodomite of poor character

Several words in particular are used repeatedly throughout the century to describe the defendant's character, which are detailed in Figure 2. All words here are attributed to the defendant, his character or his behaviour.

Among the most common words are 'good', 'honest', and 'well', as in 'he behaved well'. If we assume a dichotomy whereby the opposite is true of men engaged in homosexual activity, this would place them as 'bad', 'dishonest' and 'poorly behaved'. These are all attributes one would associate with criminals, especially given that this is a criminal trial. While one could argue that this predication strategy signals a process of classification rather than functionalisation, it would be as part of the group 'criminal' rather than 'homosexual man'. Also, while criminals can be part of a larger group of criminals, they are largely defined by their criminal actions rather than as part of a larger group.

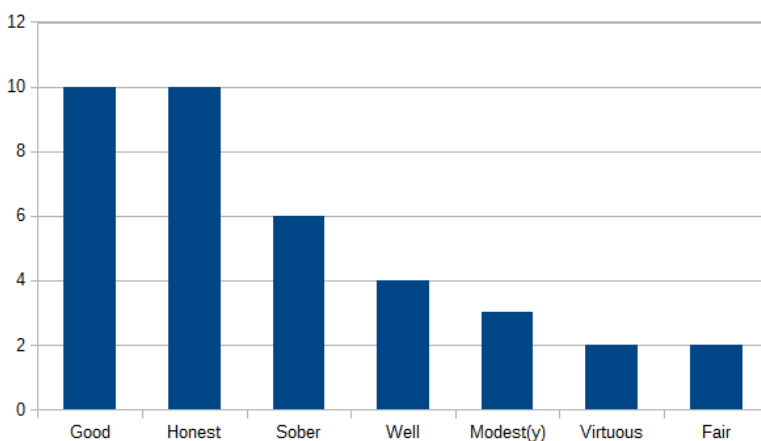


Figure 2: Adjectives used to describe the defendant, their character and their behaviour

However, antonyms of another common word 'sober' include 'flamboyant', 'emotional' and 'frivolous' (Oxford English Dictionary, 2018), which are not words typically associated with criminals. At this point, public perceptions of sodomites were that they were all effeminate (Trumbach, 1989; Sharrock, 1997). This, combined with the public's increased awareness of molly house culture (Norton, 2005), signify an established predication strategy of 'effeminate sodomite'. This predication strategy represents a process of classification, given that sodomites have their own specific traits outside of that of a criminal.

Defendants are twice referred to as 'virtuous'. This is the only example within the data where a dichotomy need not be assumed.

Samuel Jacobs . I am a tea-broker, and steward to a club to which the prisoner belongs. I never heard but that he behaved very well, or we would not have kept him in the club; he is esteem'd a virtuous, sober young fellow.

Extract 3: Levi – 23/05/1751

Thomas Corse . I never had any, ill opinion of him before this broke out, and now I look upon him to be far from a virtuous person.

Extract 4: Levi – 23/05/1751

The trial of Levi (1751) is the only trial at which the Crown also called character witnesses. Extract 3 shows the defence's character witness, and Extract 4 the witness called by the Crown. One describes the witness as 'virtuous' and the other as 'far from' virtuous. 'Virtuous' is defined as 'having or showing high moral standards' (Oxford English Dictionary, 2018). At this point in time, standards of morality were defined by religion. In the eyes of the church, sodomy was still closely linked to heresy (Crompton, 2003: 190; Warnicke, 1987). Therefore, the predication strategies of the character witnesses certainly describe practicers of male-male sex as being immoral and heretical.

The Prisoner Huggins call'd a great many of his Neighbours, who gave him the Character of an industrious Man in his Calling (which was that of a Waterman) of a loving Husband to his Wife, of a tender Father to his Children, of an honest Man in his Dealings , and of a religious Man that kept to his Church constantly on Sundays, and one of the last Men they should have suspected as to such Practices, and should more readily have credited his Familiarity with Women, he commonly associating himself with Women more than Men, but this Character did not avail him against positive and credible Evidence; and Hollywell not calling one single Evidence to his Character

Extract 5: Huggins – 04/12/1729

Mr. Libaman. I live in Bedford-row, pass often through Holborn, and coming by the stall I know the boy, he always resorted to the hours of prayer, minded his religion, and was timorous of God. My servant was acquainted with him, and told me he was one that observed the sabbath : I never heard any harm of him, and as my servants frequent thereabouts, they would have told me if any such thing was.

Extract 6: Levi – 23/05/1751

The trials of Levi (1751) and Huggins (1729) both saw them described as religious men. The description of Levi as 'one that observed the sabbath' shows that this view of sodomy as incomputable with religious adherence also extended into the Jewish community. Whether this

represents a process of classification or functionalisation is difficult to say. There is a clear referential strategy used to define an 'ingroup', religious men, which would suggest the further presence of an 'outgroup', immoral sodomites. However, whether these men are defined as a member of these 'ingroups' and 'outgroups' or by the crime they commit is unclear.

4.3 Drunk Sodomite

Throughout the character witness statements it becomes clear that there seems to have existed a predication strategy of sodomy as being linked to both drinking alcohol and sex, creating the 'drunk sodomite' and 'sex-crazed sodomite' predication strategies.

I have been with him at the Oxfordshire Feast, and there we have both got drink, and come Home together in a Coach, and yet he never offer'd any such thing to me.

Extract 7: Lawrence – 20/04/1726

Several others deposd, that he was a very sober Man, and that they had often been in his Company when he was drunk; but never found him inclinable to such Practices

Extract 8: Lawrence – 20/04/1726

At first, it seems that links between sodomy and consumption of alcohol are evidenced by the use of the word 'sober' six times throughout the corpus. However, it is twice apiece used alongside 'modest' and 'honest', and only once, as seen above, within a sentence relating to drinking or drunkenness. Therefore, it seems that here it signifies the other meaning of 'sober', that of being 'serious, sensible, and solemn' (Oxford English Dictionary, 2018).

However, the 'drunk sodomite' predication strategy seems to have existed in other ways. The trial of Lawrence came in 1726, and revolved around several that occurred on this day after a campaign from the Society for the Reformation of Manners (Bartlett, 1997). They had been actively chasing convictions for gay men, mostly through entrapment at the famous Mother Clap's molly house (Norton, 1992). They gave great public exposure to molly houses where men met, drank and 'married' (Norton, 2005). The witnesses in both excerpts above suggest that because they and the defendant had been drinking together, the defendant would have been unable to control himself were he a sodomite. This places sodomy as an uncontrollable urge or addiction, something indicative of a behaviour, rather than an identity, and therefore an example of functionalisation.

4.4 Sex-crazed sodomite

The portrayal of the sodomite as addicted to sex forms the 'sex-crazed sodomite' predication strategy. One defendant is referred to as engaging in 'debauchery', something which suggests a sexual depravity and perversion that was commonly attributed to sodomites (Trumbach, 1999; Norton, 2005). This sense of the sodomite as 'sex-crazed' is evidenced by the many men who claimed they had 'lain' with defendants but nothing untoward had happened. At this time in history, it was common for men to share beds (Crompton, 2003: 390). This was a very commonly pursued defence, with

seven character witnesses claiming they and the defendant had slept in the same bed. There is a predication strategy employed that sodomites, once drunk, could not resist propositioning other men. This suggestion of an addiction is one that is also reflected more directly. In the trial of Crook (1772), John Brittles, a former 'bedfellow' states that he never suspected the defendant to be 'addicted to any thing of the sort'. Also, in the trial of Atwell (1779), William Miller is asked if he had 'any reason to suspect him addicted to this crime'. Similarly to the 'drunk sodomite' predication strategy, this is an example of functionalisation, with addiction indicative of a behaviour rather than an identity.

However, in the trial of Jones (1772), Alexander Hope suggested Jones 'was addicted to women'. If evidence of an 'addiction to women' is presented as evidence for the defence, this suggests a dichotomy whereby if one is addicted to women, one cannot be addicted to men. This would suggest that they formed a part of his identity as a heterosexual man, as sexual identity is largely constructed through an 'either/or choice' (Motschenbacher and Stegu, 2013: 526). Whether from this one could claim there existed parallel to this a homosexual identity is not certain, but the portrayal of the defendants certainly constitute a process of classification as a heterosexual male, an identity rather than a behaviour. Despite this, one must bear in mind the role of the scribe in this. All of the trials with reference to addiction occurred in the 1770s, and therefore it appears that this may have been a term that was in vogue at the time.

4.5 Misogynist sodomite

He was a kind Husband to his Wife and a careful Father to his Children, and always pretende'd the Company of Women to that of the Men

Extract 9: Malcolme – 17/07/1726

one of the last Men they should have suspected as to such Practices, and should more readily have credited his Familiarity with Women, he commonly associating himself with Women more than Men

Extract 10: Huggins – 04/12/1729

he has an extraordinary character, he seemed to have the best regard for women that ever I saw; that decent behaviour to young women in the family, and others that he was acquainted with, I never saw he had any tendency towards his own sex; no, far from it.

Extract 11: Bailey – 21/10/1761

he behaved always extreamly well, in regards to women; he would be the last person I should have thought guilty of what he is charged with.

Extract 12: Bailey – 21/10/1761

I have known him frequently in women's company, when he might have been out of it

Extract 13: Bailey – 21/10/1761

I have known the Captain eight years; his character is that of a man, who is very fond of the women; he always appeared so to me in all the connexions he had with me.

Extract 14: Jones – 15/07/1772

Evidence based on the defendant's fondness for women was very common, with 13 of the witnesses called making reference to it. Of the three defendants whose defence made reference to being a

father and husband, a common defence at the time (Bartlett, 1997; Trumbach, 1977), two of those referred to his preference for the company of women. One could take this as implying a sexual preference, forming part of a heterosexual identity. This could certainly be argued in the aforementioned trial of Jones (1772), where Alexander Hope recounts how he heard the defendant was 'clapped or poxed'.

However, the character witnesses called in the trial of Bailey (1761) cast doubt on this view that all these references are pertaining to a defendant's sexual identity. During this trial, what we see instead is the employment of the 'misogynist sodomite' predication strategy. During the 18th century, those who practiced male-male sex were frequently portrayed as misogynist, with the 'marriages' of the molly houses seen by critics as 'an expression of the sodomite's hatred of women' (Trumbach, 1977: 18). Bartlett quotes a 1760 ballad which accuses gay men of 'leaving women fine and gay' for 'wicked men' (Bartlett, 1997: 561). Another ballad from 1726 describing the pillorying of a convicted sodomite was notable for excluding men and framing women as the sole aggressors in the act, describing how 'The Women down his Breeches took' (Bartlett, 1997: 561).

In Extracts 11 and 12, Bailey is described as showing 'decent behaviour' towards women and behaving 'extreamly well, in regards to women'. Additionally, in Extract 13, he is described as being 'in women's company, when he might have been out of it'. Such language does not suggest a sexual preference for women, but rather an ability to treat them with respect and be in their company. Further evidence for this is that, given the 'sex-crazed sodomite' predication strategy discussed above, drawing reference to someone's lust and sexual appetite, even for women, would be an obviously misguided defence.

The 'misogynist sodomite' predication strategy suggests a process of classification, with men who respect women and misogynist sodomites formed as the 'in' and 'out' groups. However, one could argue that this represents a process of functionalisation, with the act of male-male sex, rather than the sodomite himself, being seen as an affront to women.

5. Conclusion

This study aimed to test whether sodomites were viewed through a process of functionalisation or classification. At times, sodomites were defined by their behaviour, namely through their drunkenness and perversion. These were behaviours they were 'addicted' to, and so this represented a process of functionalisation. However, at other points it seems clear that referential strategies are being used to describe clear 'ingroups' to which they claim the defendant belongs, proving his innocence. This is no clearer than in the description of the effeminate and misogynist sodomite. This evidences the claim made that homosexuality was seen as distinctly effeminate at this point (Trumbach, 1977), and points to a clear attribute that marks a part of their identity, and

represents a process of classification. There are also references to defendants having a distinctly heterosexual identity, which suggests the presence of some form of sexual identity. Whether this in turn means there is a dichotomous identity is not explicitly mentioned, but sexuality at this time was still very much defined as a binary (Baker, 2008: 6), suggesting that there would be.

In conclusion, this research has shown that gay men were referred to through both classification and functionalisation. Therefore, it has concurred with the essentialist argument that they were seen as having specific and irrefutable character and identity traits, rather than just as people engaging in immoral behaviour (Trumbach, 1977; Norton, 2005). In terms of suggestions for further study, I would propose a comparison of the language used to describe trials of heresy, or other criminal trials, with those of sodomy. This would test whether the distinctive predication strategies outlined in this research to describe sodomites were unique to this specific heretical act or crime, or part of general depictions of heretics and criminals.

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