

YOU CAN STEAL HER VIRGINITY BUT NOT HER DOLL: THE NINETEENTH CENTURY CAMPAIGN TO RAISE THE LEGAL AGE OF SEXUAL CONSENT

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INTRODUCTION

In 1858, William Sanger, a prominent New York physician, sounded the alarm about the spread of venereal disease, linking the disease directly to prostitution.¹ Certain that men's natural desires made it an "absurdity to assert that prostitution can ever be eradicated," he urged American cities to adopt the Parisian system of inspection and licensure of prostitutes in order to direct the trade "into channels where its most injurious results can be encountered, and its dangerous tendencies either entirely arrested or materially weakened."² Although many medical men apparently shared Dr. Sanger's views, most were not yet ready to breach the formidable wall of silence surrounding the "social evil."³

This wall of silence, however, began to crumble in the years after the Civil War, as prominent physicians grew increasingly alarmed about the spread of venereal disease. Grounded in the view that "[p]rostitutes were not merely agents of transmission but somehow inherently diseased, if not the disease itself[.]"⁴ physicians now took the position that social redemption from the ravages of venereal disease demanded that the government take control of the transgressive body of the prostitute who "trafficked in dangerous poisons."⁵ As generally envisioned, the essential elements of this redemptive regulatory scheme would require the registration and regular inspection of prostitutes.⁶ If disease-free, they

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¹ WILLIAM SANGER, *HISTORY OF PROSTITUTION: ITS EXTENT, CAUSES, AND EFFECTS THROUGHOUT THE WORLD* (Harper & Brothers 1869) (1858).

² *Id.* at 19-20.

³ *Id.*

⁴ MARY SPONBERG, *FEMINIZING VENEREAL DISEASE: THE BODY OF THE PROSTITUTE IN NINETEENTH CENTURY MEDICAL DISCOURSE* 45 (1997).

⁵ See John C. Burnham, *Medical Inspection of Prostitutes in America in the Nineteenth Century: The St. Louis Experiment and its Sequel*, 45 *BULL. OF THE HIST. OF MED.* 203, 211 (1971). It should be noted that not all doctors supported regulation; notably, after considerable heated debate on the issue, the American Medical Association did not take a formal stand on regulation. *Id.*

⁶ *Id.*

would be issued certificates of clean health; if diseased, they would be quarantined in a designated hospital until cured.⁷

Horried by the moral and gendered implications of the proposed scheme to regulate prostitution, a loosely connected network of clergy and activists with long-standing ties to a range of reform causes—including women's rights, abolitionism, and moral education—joined together under the leadership of the newly created New York Committee for the Prevention of State Regulation of Vice, hereinafter the New York Committee, to protest what they viewed as the incorporation of evil into law.⁸ Advancing a searing critique of the idea that men are so “dominated by overwhelming physical instincts that they can neither resist nor control the *animal* nature,” these activists shifted the location of social danger from the contaminated body of the prostitute to the lustful body of her customer.⁹ Rather than arguing for the public regulation of prostitution, they insisted that men should instead learn to control their passions; otherwise, all the “the criminality, the odium and shame and all their vicious consequences [would be placed] upon the shoulders of the poor woman [while] regarding man substantially as her victim.”¹⁰

As the reformers gradually gained the upper hand in this battle, a position that was aided by the fact that by about 1880 many doctors who had previously favored the regulation of prostitution, had begun to doubt the effectiveness of this approach to controlling the spread of disease,¹¹ the New York Committee's narrowly focused anti-regulation campaign blossomed into a far more comprehensive program for “social purity.”¹² As the reformers' transformative vision took hold, two other influential organizations, the White Cross Army and the Women's Christian Temperance Union (“WCTU”), joined forces with the New York Committee¹³ in order to advance a collective vision of a morally pure society.

To these reformers, purity was far more than a simple commitment to “premarital chastity and marital fidelity.”¹⁴ Rather, as scholar Alan Hunt writes, the concept “encompassed a more generalized sense of sexual restraint and self-control and stigmatized all forms of non-marital sexuality, in particular

⁷ *Id.*

⁸ See DAVID J. PIVAR, *PURITY CRUSADE: SEXUAL MORALITY AND SOCIAL CONTROL 1868-1900* (1973). The author provides a detailed description of the purity movement. As Pivar explains, moral education societies, which espoused a highly engaged and dynamic approach to raising children, came into being in the years after the Civil War as “the lineal heirs to both early feminist and popular health reformers' interest in child-rearing.” *Id.* at 79.

⁹ Elizabeth Blackwell, *Rescue Work in Relation to Prostitution and Disease*, 75 *THE PHRENOLOGICAL J. AND SCIENCE OF HEALTH* 38 (1882) (emphasis added).

¹⁰ Noah Davis, Former Judge, Address Upon Legal Restraint for Vicious Men and Women, in 10 *THE PHILANTHROPIST* 5, 6 (1895).

¹¹ Pivar, *supra* note 8, at 88-92.

¹² See *id.*

¹³ See, e.g. MARY ODEM, *DELINQUENT DAUGHTERS: PROTECTING AND POLICING ADOLESCENT FEMALE SEXUALITY IN THE UNITED STATES, 1885-1920* 10-11 (1995).

¹⁴ ALAN HUNT, *GOVERNING MORALS: A SOCIAL HISTORY OF MORAL REGULATION* 77 (1999).

prostitution.”¹⁵ Grounded in this shared vision, the purity reformers committed themselves to liberating society from “a degrading bondage to abnormal passions and sensualism.”¹⁶ Most importantly, this commitment would require men to learn to control their lust. No longer, they declared, were innocent women to be regarded as the legitimate “game of protected libertines.”¹⁷

Grounded in a curious mix of Christian piety and fierce support for women’s equality, purity reformers insisted that men be bound by the female standard of sexual purity.¹⁸ Chastity was to become the centerpiece of a new moral manhood. As a direct corollary of this masculine uplift project, the man who fell from grace would henceforth be visited with the same social condemnation and scorn, which had until then been reserved for the errant woman.¹⁹

In 1885, a shocking revelation by British journalist William Stead regarding London’s flourishing prostitution trade, which involved working-class girls, served to shift the sexually vulnerable young woman to the forefront of the purity reformers’ agenda.²⁰ In the wake of Stead’s exposé, reformers on this side of the Atlantic were appalled to learn that girls in most states could “consent to their own ruin” at the tender age of ten.²¹ To condemn the privileging of viciousness over virtue, they launched a vigorous national campaign to raise the age of sexual consent to at least eighteen, if not twenty-one.²²

Although reformers had expressed concerns about the particular vulnerability of youth during the anti-regulation campaign, their concerns were generally enfolded into their broader critique of the harms of regulation.²³ In effect, the innocence of youth served to magnify the injustice of an approach that treated prostitutes as the locus of social contamination. Following Stead’s exposé, however, the well-being of adolescent girls became a matter of focused concern. No longer viewed simply as the most fragile members of a sexually vulnerable class, their unique needs received increasing attention as reformers fought to extend the protections available to young girls to those on the brink of womanhood.²⁴ Whether the reformers were motivated by a desire to protect young women from sexual exploitation, by a desire to control their burgeoning sexuality, or, as argued here, by a combination of the two, the age of consent campaign was the first

¹⁵ *Id.*

¹⁶ *The Social Purity Movement in Europe*, 1 *THE PHILANTHROPIST* 4 (1886).

¹⁷ Rev. J. B. Welty, *The Need of the White Cross Work in NAT’L PURITY CONG., ITS PAPERS, ADDRESSES, PORTRAITS* 240, 242 (1896).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ W.T. Stead, *The Maiden Tribute of Modern Babylon*, 42 *THE PALL MALL GAZETTE* 2, July 6, 1885.

²¹ *Id.*

²² Jane E. Larson, *Even a Worm Will Turn at Last: Rape Reform in Late Nineteenth-Century America*, 9 *YALE J.L. & HUMAN.* 1, 25 (1997).

²³ See, e.g., Davis, *supra* note 10.

²⁴ Deborah Gorham, *The Maiden Tribute of Modern Babylon: Re-Examined: Child Prostitution and the Idea of Childhood in Late-Victorian England*, 10 *VICTORIAN STUD.* 353, 361 (1978).

sustained effort in this country to engage the law on behalf of the distinct sexual needs of young women. Starting with Stead's exposé, Part I of this article traces the origins and trajectory of the reformers' campaign. Grounded in a set of interrelated assumptions about gender, age, and class, Part II explores the overarching themes of the age of consent campaign, namely that young women were entitled to protection from predatory males and that the loss of virginity was the greatest tragedy that could befall any female.

I. PRIVILEGING MATURE LUST OVER YOUTHFUL INNOCENCE:
THE INCORPORATION OF EVIL INTO LAW

Although certainly not abandoning the broader purity agenda, following Stead's exposé, safeguarding America's girlhood from sexual exploitation became an urgent and central reform project. Starting with Stead's shocking revelation, this section explores the origins and development of the age of consent campaign.

A. A Shocking Revelation

In July of 1885, William Stead issued a stern caution to the readers of London's *Pall Mall Gazette* that over the course of the next few days, the paper would be running a series of articles graphically depicting the results of his investigation into the "strange inverted world . . . of the streets and of the brothel[s]" of London.²⁵ With the provocative title, "The Maiden Tribute of Modern Babylon," Stead proceeded to reveal the existence of an organized trade in young working-class girls for the benefit of the debauched patrons of the city's finest brothels, for whom "the shriek of torture [was] the essence of their delight."²⁶ Supporting these shocking revelations, Stead riveted his readers with a first hand account of how he was able to secure the purchase of a young girl from her drunk and uncaring mother for immoral purposes—a scheme which ultimately landed him in prison.²⁷ The series triggered a massive public outcry for laws to protect the honor of young women and girls, resulting in the passage of the previously stalled Criminal Law Act, which raised the age of sexual consent in England from thirteen to sixteen years of age.²⁸

Appalled by these revelations, American purity reformers sought to learn more about their own laws. Based upon the careful research of attorney Georgia Mark, who was committed to advancing women's rights under the law, reformers soon learned that the English laws that they had "scarcely done condemning," were,

²⁵ Stead, *supra* note 20.

²⁶ *Id.*

²⁷ JUDITH R. WALKOWITZ, CITY OF DREADFUL DELIGHT: NARRATIVES OF SEXUAL DANGER IN LATE-VICTORIAN LONDON, 99 (1992) (providing a richly detailed analysis of both the "Maiden Tribute" series and of Stead's involvement in the "purchase" of this young girl, including the subsequent abduction trial).

²⁸ Gorham, *supra* note 24, at 354. For further details on the British experience, see WALKOWITZ, *supra* note 27.

in fact, “far in advance of [their] own legislation on the subject.”²⁹ *The Philanthropist*—the leading journal of the social purity movement—regretfully informed its readership:

An inquiry concerning our own land reveals the shocking fact that the legal “age of consent” on the part of young girls to their own corruption, raised last year in Great Britain . . . is now in the State of New York, and in most of the States of the Union and in the national capital but TEN YEARS.”³⁰

To their horror, reformers realized that under the current statutory regime, a mature man who coerced a ten-year-old girl into having sexual intercourse with him could successfully avoid a rape conviction by asserting that the encounter was consensual, unless evidence established that she had fought him off to “the uttermost limit of exhaustion.”³¹

The reformers’ sense of outrage was intensified by their realization that while they had been fighting to prevent states from incorporating evil into law through the legalization of prostitution, wholly unbeknownst to them, this fateful divide had already been crossed by laws allowing grown men to have sex with young girls. Reformers denounced the existence of such laws, which according to them, aligned the state with the licentious desires of grown men against innocent girls. By endorsing this evil, states had abrogated, what the reformers asserted was their primary duty, namely to protect “the weak from the outrages of the strong and secur[e] as far as possible equal justice for her citizens.”³²

B. Challenging Male Sexual Privilege

Asserting that the shockingly low age of consent laws bore the stamp of degradation of the “fathers, husbands, and brothers who make laws for women and children,” leaders of the social purity movement called upon their female membership to rise up against this blatant abuse of male authority.³³ Invoking the bonds of womanhood, attorney Georgia Mark proclaimed: “[n]o truly womanly heart can resist the call to work for the preservation of the purity of our young girls. There could be no work more distinctively womanly than this.”³⁴ Similarly, an editorial in the WCTU’s quarterly journal, the *Union Signal* declared that “God is turning the hearts of women to this subject in a wonderful way. Without

²⁹ Georgia Mark, *The Age of Consent*, THE UNION SIGNAL, Dec. 3, 1885, at 4.

³⁰ *First Decade Meeting and Subscription Anniversary*, 1 THE PHILANTHROPIST 4 (1886). According to Georgia Mark, this age was based on English common law, although she notes that during the reign of Queen Elizabeth I, England raised the age from ten to twelve, and “during the present reign” the age was raised to thirteen. See Mark, *supra* note 29, at 4.

³¹ Aaron M. Powell, *Legal Protection for Young Girls*, 1 THE PHILANTHROPIST 4 (1886).

³² *Editorial Notes to Age of Consent*, 15 THE ARENA 381 (1891).

³³ *Id.* at 382.

³⁴ Mark, *supra* note 29, at 5.

consultation with one another, the great societies of women are arousing to their responsibility in this direction.”³⁵

Agreeing with WCTU president Francis Willard that it was time to “clean house in a governmental sense, until this record of defilement be washed away,” sympathetic women across the country responded to this call for action.³⁶ Reflecting the continuing reality of female political disenfranchisement, these activists, like the female abolitionists and moral reformers before them, turned to the petition as the most effective tool for influencing public opinion and pressuring elected officials into changing the law. Accordingly, Francis Willard drafted a petition, which was ultimately signed by thousands of supporters and presented to state legislatures across the country, directing the attention of lawmakers to the fact that “protection of the person is not placed by our laws upon so high a place as protection of the purse,” and calling upon them to rectify this inequity by raising the age of consent “to at least eighteen years.”³⁷

In addition to launching these state campaigns, reformers also set their sights on the nation’s capital. Declaring it a “reproach and scandal” that “within sight of the dome of the capitol,” a mature man could assault and despoil a ten year old girl and “. . . if able to plead ‘consent’ . . . go scott free,” they urged Congress to pass a federal law raising the age of consent to eighteen in the District of Columbia, thus setting a new national standard of purity.³⁸ The reformers hoped that this beacon of light emanating from the nation’s capital would “stimulate and encourage by right example” the states to pass similar laws.³⁹

Perhaps hoping to shame Congress into taking immediate action, an editorial in *The Philanthropist* recounted how only a few years earlier, when President Grant’s stables burnt to the ground, leaving his horses without shelter, “a bill was

³⁵ *Id.* Not all women who were committed to the cause of social purity supported this effort. According to Mary Odem, the mostly middle class African-American “clubwomen and suffragists” who were “actively engaged in moral protection work for the young women of their own race,” did not join the campaign based on the concern that the revised law would be used against African-American men, particularly if they were involved in a sexual relationship with a white woman. These fears were reinforced by the fact that white purity reformers did little to support the anti-lynching campaign that black clubwomen launched in the early 1890’s. See ODEM, *supra* note 13, at 26-30. For further detail on the anti-lynching movement, including the response of white purity reformers, see ALAN L. STOSKOPF & MARGOT STERN STROM, CHOOSING TO PARTICIPATE: A CRITICAL EXAMINATION OF CITIZENSHIP IN AMERICAN HISTORY (1990).

It is worth noting that Helen Gardener’s “A Battle for Sound Morality,” a reporter on the status of the campaign in Nebraska, makes reference to the fact that Dr. Rickets, “the only colored man honored with a seat in [the] Nebraska legislature” was the “second man to actively take up the fight, as he procured a petition for the bill, signed by over 500 colored women of Omaha.” Helen Gardener, *A Battle for Sound Morality, Or The History of Recent Age-of-Consent Legislation in the United States*, 14 THE ARENA 1, 26 (1895) [hereinafter *A Battle for Sound Morality*]. This suggests that further research may be needed in order to more accurately pinpoint the role played by African-American clubwomen in the age of consent campaign.

³⁶ Francis E. Willard, *Arousing the Public Consciousness*, 2 THE ARENA 192, 198 (1895).

³⁷ *Id.* at 200.

³⁸ *Congress and Girlhood*, 2 THE PHILANTHROPIST 4 (1877). For further detail on the legislative campaign in the District of Columbia, see generally Larson, *supra* note 26.

³⁹ *Id.*

passed by both houses of Congress . . . inside of an hour, providing for the rebuilding of the stables.”⁴⁰ Citing this remarkable occurrence as proof that “where there is a will there is a way,” *The Philanthropist* asked, with a rhetorical flourish, whether “the President’s horses [are] of more account than the young and legally unprotected daughters of the nation’s capital?”⁴¹ Certainly, it was not too much to ask that Congress “do at least as much and as promptly, for the legally exposed young girls of the nation’s capital” as it had done to shelter President Grant’s horses.⁴²

C. The Course of the Campaign to Raise the Age of Sexual Consent

Within a decade or so of having been galvanized into action by Stead’s exposé, purity reformers had successfully persuaded both Congress and lawmakers in a majority of the states to raise the age of sexual consent.⁴³ However, these gains were modest. Falling far short of the reformers’ expectations, most states only raised the age to somewhere between thirteen and sixteen, rather than to the desired minimum age of eighteen.⁴⁴ Moreover, highlighting the partial and fragile nature of these victories, lawmakers frequently approved amendments that limited the scope of these laws by, for example, denying protection to “girls of previous unchaste” character, effectively declaring that once robbed of her virtue, a girl was fair game.⁴⁵ In 1895, American purity activist and author Helen Gardener, sought to reinvigorate the campaign by publishing a symposium on the existing status of the law in *The Arena*, a popular social reform journal.⁴⁶ Under the heading, “The Shame of America,” luminaries of the social purity movement declared it a scandal that, despite their best efforts, in most states, girls under the age of eighteen were still the legal prey of “the merciless, wily sensualist and debauchee.”⁴⁷ It was time, declared *The Philanthropist’s* editor, Aaron Powell, for this type of “legislative barbarism . . . to be once and for all abolished.”⁴⁸ This effort helped give the movement a needed boost. By the turn of the century, over half of the states, including formerly recalcitrant Southern states, had raised the age of consent to at least sixteen years of age.⁴⁹

⁴⁰ *The Responsibilities of Men*, 1 THE PHILANTHROPIST 5 (1886).

⁴¹ *Id.*

⁴² *Congress and Girlhood*, *supra* note 38.

⁴³ Aaron M. Powell, *History of Recent Years, and Present Status of Age of Consent Laws*, 2 THE ARENA 194 (1895).

⁴⁴ *Id.* at 193.

⁴⁵ *Id.* at 193-94.

⁴⁶ Symposium, *The Shame of America—The Age of Consent Laws in the United States*, 2 THE ARENA 192 (1895).

⁴⁷ Powell, *supra* note 43, at 194.

⁴⁸ *Id.*

⁴⁹ ODEM, *supra* note 13, at 36-37 (explaining that the fervor of the age of consent campaign peaked by the turn of the century, although “reformers continued their efforts in many states well into the twentieth century.” As a result, by 1920, the clear majority of states had raised the age of sexual consent to sixteen or eighteen years.).

II. PREDATORY MEN AND MORAL DEATH:
THE CORE THEMES OF THE AGE OF CONSENT CAMPAIGN

Drawing upon the interrelated motifs of the destructive power of unconstrained male lust and the devastating consequences of female ruin, purity reformers advanced two primary arguments to support their demand that states raise the age of sexual consent to eighteen or twenty-one. First, emphasizing the vulnerability of young women in the years following the onset of puberty, they argued that the state had a duty to protect them from predatory men who sought to take advantage of their youthful innocence. Second, reflecting their view that the loss of virginity outside of marriage was the greatest disaster that could befall any woman, they also argued that the state should strengthen existing moral constraints on illicit conduct by making it legally impossible for young women to consent to sexual activity. As developed below, in turning to the state, the purity reformers both challenged male sexual privilege, with its implied right of access to the adolescent female body, and sought to write the sacred value of female virginity into law.

A. Providing a Safe Passage to Adulthood

According to the purity reformers, the sole purpose of the existing age of consent laws was “to shield men of mature and vicious lives from the results of their most heinous vices.”⁵⁰ By casting virtually all sexual encounters as consensual, these unjust laws, rather than protecting innocent “young girls of ten or twelve years,”⁵¹ instead made them “easy prey to depraved and brutalized men.”⁵² Capturing the indignity of this unfettered male bias, Francis Willard proclaimed them a “barbaric reminiscence of those dark ages when all women were the property of all men.”⁵³

Highlighting the vicious nature of the existing statutory approach, reformers pointed to the irrationality of an age-based classification system that withdrew protection where it was most needed. Underscoring this point, Emily Blackwell commented that the law protected girls only during the years in which “the physical abuse of children is so brutal [an] offense as to excite indignation even among the majority of persons of vicious life,” but then failed to protect them “during the first few years of early womanhood, when it is most needed.”⁵⁴ As a result, the law established the border between childhood and womanhood “just where those who are interested in vice would have it.”⁵⁵ By treating maturing girls as adult women with respect to their ability to consent to sexual relations, the law invested men

⁵⁰ Gardener, *supra* note 35, at 197.

⁵¹ Powell, *supra* note 31, at 5.

⁵² B.O. Flower, *Wellsprings and Feeders of Immorality*, 11 THE ARENA 167, 169 (1895).

⁵³ Willard, *supra* note 36, at 197.

⁵⁴ Emily Blackwell, *Another Physician Speaks*, 2 THE ARENA 210, 213 (1895).

⁵⁵ *Id.*

with an implied right of access to any female body above the threshold of childhood.⁵⁶

Even more revealing of immoral purpose, however, was the uneven approach that the law took with respect to setting the age at which minors were considered to possess decisional capacity.⁵⁷ As expressed in the following passage, reformers repeatedly decried the fact that while the law's general approach was to shield young people from the consequences of their own immaturity until they reached the age of eighteen or twenty-one, it permitted girls as young as eleven to consent, in their parlance, to their own ruin:

However great the variety of opinion and custom as to what law may or can do toward regulating personal relations among adults; there . . . is a unanimous consent in fixing an age of majority, a period before which the child has neither the powers nor responsibility of an adult, is recognized as incapable of deciding and acting for himself, and is entitled, on account of such disability to legal protection. Thus . . . before eighteen a girl is incapable of controlling property, making a contract, [or] by her own consent alone, make a legal marriage. Yet while thus incapable in the most insignificant things of independent judgment and action, for the purpose of vice she is held adult and legally responsible at the age of ten!⁵⁸

By declaring that a young woman lacked the capacity to "legally give away her pocket handkerchief or sell her doll," while allowing her to relinquish a far greater treasure, it was thus clear that the law had purposefully skewed the border between childhood and adulthood in order to serve male interests.⁵⁹

Seeking to divest the law of this tilt towards evil, purity reformers insisted that "the age of legal protection for the person be made at least equal to that of property."⁶⁰ In demanding legal consistency, they carefully distinguished between the processes of physical and mental maturation.⁶¹ Rejecting the argument advanced by some of their opponents that the law need not intervene because nature established the true age of consent at puberty, the reformers made clear that the acquisition of a womanly body did not necessarily presage the acquisition of adult reasoning abilities and judgment.⁶²

As physician O. Edward Janney explained in his article, "A Physician's View of These Laws," the attainment of adult-like decisional abilities was a complex process that unfolded separate and apart from physiological maturation:

⁵⁶ *Id.*

⁵⁷ Emily Blackwell, *Address on the Occasion of the Tenth Anniversary of the New York Committee for the Prevention of the State Regulation of Vice*, 1 THE PHILANTHROPIST 7 (1886).

⁵⁸ *Id.*

⁵⁹ Willard, *supra* note 36, at 198.

⁶⁰ *Id.* at 195.

⁶¹ See e.g., O. Edward Janney, *A Physician's View of These Laws*, in *The Shame of America*, *supra* note 46, at 208.

⁶² *Id.*

It should be remembered . . . that the judgment is developed by observation, study, experience and the habit of weighing evidence. A child of fourteen years is only beginning to observe and to study; has had no experience of the world, and knows nothing of how to weigh evidence. It follows, then, that such a child's judgment cannot be trusted."⁶³

Echoing these views, Emily Blackwell, M.D., in a companion article entitled "Another Physician Speaks," drew a clear distinction between these developmental realities and the law's approach to adolescent decisional rights in other contexts, such as consenting to marriage or entering into contracts:

By fixing the age of legal majority the state declares . . . young people have not the experience nor the maturity of judgment which would qualify them for independent action in matters of importance affecting their own interests. They are in consequence made incapable of such action. . . . Thus their power of action is, in their own interest, so limited that their consent is not sufficient to make valid even perfectly legitimate transactions.⁶⁴

In short, legal protection was the necessary counterweight to developmental immaturity, which otherwise left young girls—who were "accustomed to look up to [their] elders and obey their requests"—at the mercy of older men.⁶⁵

Reformers did not appear to distinguish between the developmental trajectories of young women based upon their class status. However, when it came to the practical implications of their inability to make informed sexual decisions, class considerations became paramount. Reflecting emerging middle-class views that children belonged in the domestic realm rather than in the wage economy, reformers were confident that daughters of the middle- and upper-classes would be "shielded from all necessity of self-protection" under the watchful gaze of ever-loving and attentive mothers.⁶⁶ Obviating the need for "legislative interposition," maternal vigilance would thus ensure their safe passage into womanhood.⁶⁷

The reformers were thus primarily concerned about the vulnerability of less privileged girls whose "poverty oblige[d] them to go to work as soon as they [were] capable of earning."⁶⁸ Their concern may be understood either as a radical demand that the law protect the most vulnerable class of young women or as an effort to control the sexual behavior of the working class. Sent out into the world by parents who either could not or would not shelter them at home, these unfortunate daughters were "surrounded by a network of snares and pitfalls" and "coveted as a

⁶³ *Id.*

⁶⁴ Blackwell, *supra* note 54, at 212.

⁶⁵ Janney, *supra* note 61, at 207.

⁶⁶ Blackwell, *supra* note 57, at 8. For a discussion regarding this emerging understanding of childhood, see VIVIAN A. ZELIZER, PRICING THE PRICELESS CHILD: THE CHANGING SOCIAL VALUE OF CHILDREN (1994); for a discussion within the context of the age of consent campaign, see Gorham, *supra* note 24.

⁶⁷ *Protection of Girlhood*, 1 THE PHILANTHROPIST 4 (1886).

⁶⁸ Blackwell, *supra* note 54, at 214.

prey by the licentious and by those who live by pandering to licentiousness.”⁶⁹ Lacking the wherewithal to safely navigate these shark-infested waters, it was their plight that made the need of added legal safeguards so pressing.⁷⁰

It was clear to reformers that meaningful consent to one’s own ruin was a factual, although not a legal, impossibility.⁷¹ This was a bold challenge to the existing legal paradigm, which effectively declared that so long as a man obtained “consent,” he had an untrammelled right of access to the adolescent female body. In addition, reformers presaged the claims of modern feminists, who argue that rape laws do not capture all acts of forced sex.⁷² Thus, the campaign can also be understood as an effort to expand the definitional borders of unlawful sexual activity to include situations in which a young woman’s will is overcome by coercive or deceptive tactics that fall short of actual physical violence.

Viewed from this perspective, the call for a higher age of consent was also a demand for the state to provide the mature girl with safe passage to adulthood by formally declaring that her body was off-limits to the scheming older male. As Janney stated, by raising the age of consent, “men will be deterred from thus offending, and the maiden will be allowed to develop into the woman before she can consent to this form of degradation. These three or four added years of comparative safety will be an incalculable blessing. . . .”⁷³ By redrawing the legal border between girlhood and womanhood, the law would finally provide the same degree of protection to a girl’s bodily integrity that it had always extended to her property interests. In short, both would be declared off-limits to the overreaching adult who dared to take advantage of youthful innocence.

Although some have argued that this turn to the state may have reinforced prevailing beliefs about female helplessness, it also reflected the reformers’ demand that young women be made visible. Boldly repudiating the right of male access that had been woven into the law, the reformers demanded that young women be viewed as full human beings with legally cognizable interests. Vesting this previously invisible population with a public persona and refusing to pander to the licentious male, the reformers hoped the state would provide the objects of men’s desire with safe passage to adulthood by declaring their bodies off-limits.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Reverend A.H. Lewis, “Age of Consent” Legislation, 2 THE PHILANTHROPIST 2 (1887) (stating that one cannot place a “dove in the clutch of an eagle, and, when it lies bleeding and dead, declare that the eagle is free from blame because the helpless bird ‘consented’ to its death”).

⁷² As discussed in the following texts, reform of the rape laws was a major second-wave feminist project: SUSAN BROWNMILLER, AGAINST OUR WILL: MEN, WOMEN, AND RAPE (1975); Martha Chamallas, *Consent, Equality, and the Legal Control of Sexual Conduct*, 61 S. CAL. L. REV. 777, 781 (1988); Patricia J. Falk, *Rape by Fraud and Rape by Coercion*, 62 BROOKLYN L. REV. 39 (1988); Susan Estrich, *Rape*, 95 YALE L.J. 1087, 1120 (1986).

⁷³ Janney, *supra* note 61, at 207.

B. Protecting the Largest Diamond in the Crown of Youthful Virtue

Purity reformers believed that young women under the age of eighteen, or possibly twenty-one, lacked the decisional capacity to consent to having sex.⁷⁴ Accordingly, if an underage female did succumb to a man's sexual advances, it was only because her will had been overcome by a predatory older man who was intent on having his way with her. Flipping the contemporary adage that "no means no," according to purity reformers, "yes" rarely, if ever, meant "yes." Thus, reformers effectively classified all sexual activity below a certain age as nonconsensual. Their focus on consent, however, was not limited to considerations of incapacity and coercion. Closely intertwined with the belief that young women *could not* give true consent was an equally powerful belief that they *should not* be allowed to consent because of the all-important role that virginity played in shaping their life course. Accordingly, in campaigning for a higher age of consent, purity reformers sought to both protect young women from sexual coercion and to encode their moral values into law by making consent a legal impossibility.

Front and center in the reformers' moral universe was an unquestioned belief in the sanctity of female sexual purity.⁷⁵ Virginity was a young woman's most prized possession—it was the "most precious jewel in the crown of her womanhood."⁷⁶ Mapping her destiny, a girl simply could not afford to give away this "priceless treasure," which was "the capital of [her] whole future life."⁷⁷ Hence, the oft-repeated mantra that by consenting to sex, a young woman had "consented to her own ruin."⁷⁸ So dreadful was this vision of the inevitable fall into a life of vice, that the reformers believed a "moral death was a greater misfortune than physical death."⁷⁹

Given its importance, one would think that the reformers would have attempted to explain why a young woman's place in the universe was determined by her sexual status. However, they simply spoke reverentially about virginity as a moral absolute that required no explanation.⁸⁰ In their system of morality, it appears to have been the unyielding truth of female existence. If one attempts to unpack the meaning that virginity had in the reformers' moral universe, traditional explanations fall short. For instance, they did not seem particularly concerned about the possibility of pregnancy and the birth of "illegitimate children."⁸¹ Nor, given their firm repudiation of male sexual privilege, does it make sense to see their

⁷⁴ *Id.* at 208.

⁷⁵ *Id.*

⁷⁶ Carrie Clyde Holly, "Age of Consent" in Colorado, in *A Battle for Sound Morality*, *supra* note 35, at 6.

⁷⁷ Blackwell, *supra* note 57, at 7.

⁷⁸ ODEM, *supra* note 13, at 15.

⁷⁹ Blackwell, *supra* note 54, at 214.

⁸⁰ See e.g., Holly, *supra* note 76 and Blackwell, *supra* note 57.

⁸¹ An extensive review of the literature did not reveal any discussions regarding concerns about illegitimate children.

impassioned defense of virginity as an attempt to protect the historic property interest that men had in women's bodies, as this runs directly counter to their early feminist rejection of male sexual privilege.⁸²

A different explanation is that the portrayal of women as naturally virtuous helped to secure the social position of reform-minded women.⁸³

As historian Nancy Cott suggests, by embracing the concept of "passionlessness,"⁸⁴ nineteenth century reformers reversed the traditional Protestant narrative in which "earthly women were [considered] the inheritors of Eve's legacy of moral danger."⁸⁵ Offering "a resounding alternative to the idea that women were made for men's pleasure," the concept of "passionlessness" was "the cornerstone of the argument for women's moral superiority."⁸⁶ This, in turn, was used to justify a greater sphere of female influence than had traditionally been considered proper.⁸⁷ In relation to the age of consent campaign, it certainly makes sense that, as the ultimate symbol of the lack of desire, the reformers' sanctification of virginity signaled their repudiation of male sexual privilege and the assertion of female moral superiority.

In a related vein, the focus on virginity may have served as a hedge against disorder. In a rapidly changing world, the reformers may well have been seeking to secure their social position through the codification of the middle class "ideal of respectability."⁸⁸ By making virginity the gold-standard of female virtue, they could thus distinguish themselves from the less orderly lower classes with their potentially disruptive understandings of female sexuality, which challenged the sanctity of the marital bond—the celebrated centerpiece of a well-ordered life.⁸⁹ So viewed, pre-marital chastity may well have served as the bulwark of protection from impending moral chaos.

Although a cogent explanation of why virginity was so important to the purity reformers is lacking, there is no doubt that they regarded it as *the* essential attribute of respectable womanhood. Accordingly, wholly distinct from considerations of whether they had the capacity to consent, reformers sought to

⁸² See Keith Thomas, *The Double Standard*, 20 J. HIST. OF IDEAS 195 (1959); SHARON BLOCK, RAPE & SEXUAL POWER IN EARLY AMERICA (2006); PETER W. BARDAGLIO, RECONSTRUCTING THE HOUSEHOLD: FAMILIES, SEX & THE LAW IN THE NINETEENTH-CENTURY SOUTH, (1995) (both Block and Bardaglio also discuss how these prevailing understandings of sexuality were employed to support patterns of racial dominance).

⁸³ Nancy F. Cott, *Passionlessness: An Interpretation of Victorian Sexual Ideology, 1790-1850*, 4 SIGNS 219, 220 (1978). Cott "use[s] the term [passionlessness] to convey the view that women lacked sexual aggressive-ness, that their sexual appetites contributed a very minor part (if any at all) to their motivations, that lustfulness was simply uncharacteristic." *Id.*

⁸⁴ *Id.* at 228.

⁸⁵ *Id.* at 227.

⁸⁶ *Id.* at 227.

⁸⁷ Cott, *supra* note 83, at 223.

⁸⁸ HUNT, *supra* note 14, at 82.

⁸⁹ See Barbara Welter, *The Cult of Domesticity: 1820-1860*, 30 AM. Q. 624 (1975) (discussing the important role of marriage and purity in a woman's life).

divest young women of the legal ability to consent to sex until they came of age.⁹⁰ In short, until that age was reached, any consent to engage in sexual relations with a man of any age, including a peer, would be without legal effect. Sexual intercourse with a female under the age of eighteen was to be classified by law as rape—hence the term “statutory rape”—without any consideration of whether she might have been a willing or eager participant. This would henceforth be a legal impossibility.

So viewed, the age of consent campaign, in addition to challenging the right of male access to the adolescent female body, also served to write female “passionlessness” into the law. Young women were cast as the perpetual victims of male desire, thus obscuring the possibility that some sexual encounters may have been consensual. As now confirmed by the law, sex was something that was done to young women, rather than something they might have chosen to engage in. Likewise, virginity was something that men stole from women, rather than something that a woman might choose to part with.

The codification of this sexual dynamic is thrown into even sharper relief if one considers the place that young men occupied in the reformers’ discussions about the need for an increased age of consent. The dominant assumption was that only females required the protection of the law, as revealed by the following response to an opponent’s argument that boys also needed protection:

Protect them from whom and from what? According to the very definition of crime can it be committed against them? This is an act merely to protect the girls, against whom alone it can be committed. If boys can be assaulted in the same way, bring in a bill to protect them against us . . . but really, is it necessary to protect the wolf against the allurements of the lamb?⁹¹

The discourse of blame made it clear that, despite the reformers’ belief in a single standard of sexual morality, chastity was simply not a young man’s greatest treasure. Accordingly, when it came to young men, the focus was not on whether they should be divested of the ability to “consent to their ruin,”⁹² but rather, because of their youth, whether they should be shielded from the full punitive impact of the criminal rape law. Reinforcing the view that sex was something men did to or took from women, their highly gendered focus was thus on the degree of male culpability rather than the effectiveness of their consent. Capturing this concern when commenting on a proposed law to raise the age of sexual consent in Montana, Helen Gardener expressed regret that this otherwise excellent “bill did not protect boys under the age of eighteen from the law from the full penalty in case both are children and in case violence is not used.”⁹³ However, she found solace in the fact that “it may be in Montana as in New York boys under eighteen are, under another law, sent to reform school instead of to the penitentiary when

⁹⁰ Blackwell, *supra* note 57, at 7.

⁹¹ Holly, *supra* note 76, at 6-7.

⁹² See ODEM, *supra* note 13, at 15.

⁹³ Gardener, *supra* note 35, at 208.

found guilty of crime, in which case also the judge would have discretionary power.”⁹⁴

In light of the fact that the purity reformers paid considerable attention to issues of class when discussing the protective function of consent laws, a logical question is whether considerations of class also found their way into discussions regarding their role in safeguarding female chastity. Interestingly, the answer appears to be no. In contrast to their above-discussed focus on the particular vulnerability of working-class girls to sexual exploitation, the reformers do not appear to have been concerned that they may also have had a more relaxed code of sexual conduct, and thus have been in greater need of strict legal controls in order to preserve their purity. However, given that this would have required them to acknowledge the possibility of female sexual agency, the absence of direct references to such illicit tendencies does not necessarily mean that the age of consent campaign was influenced by the reformers’ aversion to a non-conforming sexual culture.

Examining such anterior motivating concerns, historians Mary E. Odem and Christine Stansell argue that the classic “seduction narrative” employed by the reformers to highlight the dangers faced by working-class daughters, concealed the disturbing reality that these girls were not always the passive victims of predatory men. As Odem writes, “[w]here middle-class reformers saw only danger in the public world of work . . . working-class daughters also perceived new opportunities . . . for romantic relationships and heterosexual pleasures outside of marriage”—opportunities in direct conflict with the prevailing “bourgeois conception of girlhood sexual purity and innocence” that anchored their world.⁹⁵ Challenging the reformers’ insistence that virginity was an absolute moral imperative, Odem and Stansell both argue that when viewed from the perspective of a young working-class woman, the loss of virginity did not always signify victimhood and ruin.⁹⁶ Although the desire for pleasure may have played some role in the decision to become sexually active, instrumental goals, rather than sensual gratification, thus appear to have been the main motivating factor.

Focusing on the potential gains to be had from the exchange of sex for money, Stansell writes that although “by no means a happy choice” a the decision to become a prostitute might in fact yield certain “advantages that could override those of other, more respectable employments.”⁹⁷ With the money she earned, not only might a young woman be able to escape the drudgery of domestic or factory labor, she might also buy herself a measure of autonomy from her family. For some, autonomy might simply consist of the ability to purchase “fancy” dresses or

⁹⁴ *Id.*

⁹⁵ ODEM, *supra* note 13, at 24.

⁹⁶ *Id.* at 24-25; CHRISTINE STANSELL, CITY OF WOMEN: SEX AND CLASS IN NEW YORK, 1789-1860 180-90 (1987).

⁹⁷ STANSELL, *supra* note 96, at 181.

other luxuries, which “virtuous girls, who gave their money over to their families” could not afford.⁹⁸ It might also provide the ability to participate in the emerging urban youth culture.⁹⁹ For others, it might buy escape from an abusive home, which as Stansell notes, was a common self-identified reason as to why young women become prostitutes.¹⁰⁰ Short of prostitution, working-class daughters might also engage in other forms of “sexual bartering,” in which they “traded their sexual favors for food, lodging and drink.”¹⁰¹

Prostitution was clearly reflective of an economic and social reality that did not provide working-class girls with an array of options from which to choose. However, it is possible that rather than signaling the inevitable fall to ruin, the sexual exchange may well have opened up a range of possibilities for working-class girls that would otherwise have been beyond their reach. Stansell takes this a step further and suggests that for some women, the bartering of sex for gain might even have been “an act of shrewdness, prompted by [her] comprehension of the power relations in which she found herself.”¹⁰² Cognizant of the fact that sexual privilege implied a right of access to the female body, a young woman might turn this to her own advantage and sell that which men might otherwise take by force.

If working-class daughters did not necessarily regard their virginity as the “most precious jewel in the crown of their womanhood,” their behavior may well have unsettled the clear boundary between respectability and ruin that was so important to the reformers.¹⁰³ In denying the possibility of female sexual agency and desire, purity reformers may have been particularly concerned with containing the disorderly behavior of young working-class women. So viewed, their goal of recasting all sexual encounters involving females under the age of eighteen can be interpreted, at least in part, as an effort to impose a middle-class vision of propriety on a community with a divergent understanding of the weight and meaning of sexual activity.

CONCLUSION

Most scholarly accounts of the age of consent campaign tend to view it as either protective or repressive in nature. The reformers are either praised for their attempt to expand the range of legal protections available to young women to include instances of sexual coercion that fell short of rape, or criticized for seeking to control the sexual behavior of young women who did not see their virginity as a priceless treasure.¹⁰⁴ However, rather than treating these as mutually exclusive

⁹⁸ *Id.* at 187.

⁹⁹ *Id.* at 180.

¹⁰⁰ *Id.* at 186-87.

¹⁰¹ *Id.* at 179.

¹⁰² STANSELL, *supra* note 96, at 189.

¹⁰³ See Holly, *supra* note 76.

¹⁰⁴ Works that emphasize the protective nature of the campaign include: Larson, *supra* note 22 and Stephen Robertson, *Age of Consent Law and the Making of Modern Childhood in New York City, 1886-*

goals, leading to a narrow assessment of the campaign, it is possible to view them as mutually reinforcing. One can both appreciate the fact that the reformers had a genuine interest in protecting young women from sexual predation, while at the same time acknowledging that this emphasis on bodily integrity was also a function of their belief that the loss of virginity was a fate worse than death. Presaging contemporary debates over the appropriate role of the state with respect to adolescent sexual activity and expression,¹⁰⁵ purity reformers believed that the law's proper function was both to protect young women from sexual coercion and to prevent them from engaging in "illicit" sexual activity.

1921, 35 J. SOC. HIST. 781 (2002). Works that emphasize the repressive nature of the age of consent campaign include ODEM, *supra* note 13, and WALKOWITZ, *supra* note 27. Gorham, *supra* note 24, also discusses the repressive nature of the campaign. However, her primary critique is that the focus on sexual exploitation allowed middle-class reformers to ignore that fact that "causes of juvenile prostitution were to be found in an exploitative economic structure," of which they were an integral component. *Id.* at 355.

¹⁰⁵ See, e.g., Michelle Fine & Sara I. McClelland, *The Politics of Teen Women's Sexuality: Public Policy and the Adolescent Female Body*, 56 EMORY L.J. 993 (2007); Michelle Oberman, *Turning Girls into Women: Reevaluating Modern Statutory Rape Law*, 8 DEPAUL J. HEALTH CARE L. 109 (2004); J. Shoshanna Ehrlich, *Shifting Boundaries: Abortion, Criminal Culpability and the Indeterminate Legal Status of Adolescents*, 18 WIS. WOMEN'S L.J. 77 (2003); Kate Sutherland, *From Jailbird to Jailbait: Age of Consent Laws and the Construction of Teenage Sexualities*, 9 WM. & MARY J. WOMEN & L. 313 (2003); Roger J.R. Levesque, *The Peculiar Place of Adolescents in the HIV-AIDS Epidemic: Unusual Progress & Usual Inadequacies in "Adolescent Jurisprudence,"* 27 LOY. U. CHI. L.J. 237 (1996); Frances Olsen, *Statutory Rape: A Feminist Critique of Rights Analysis*, 63 TEX. L. REV. 387 (1984).