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“Precocious Girls”: Age of Consent, Class and Family in Late Nineteenth-Century England

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Introduction

In 1893, a judge presiding over an appeal of a man convicted of raping his young daughter wrote to the Secretary of State asking for guidance on whether the conviction should stand as the case relied heavily on victim’s testimony. In his letter, he spoke about “young girls of her class and condition” and said “it is very difficult in these cases to make a jury feel, as I do, the utter unreliability of the evidence of somewhat abandoned and precocious girls and the danger of acting upon it.”¹ A swift response from the Home Office confirmed that there should never be a conviction in such cases without corroborating evidence and so the appeal was allowed. A few years before, in 1885, the Criminal Law Amendment Act had raised the age of consent from thirteen to sixteen. The victim in the case of JPK, and in other cases discussed within this article, was under the age of consent. Therefore, even under the oppressive Victorian rules of evidence in rape cases, her consent, character, and evidence of resistance should have been irrelevant to the proceedings if intercourse had taken place. Yet, this article shows, these concepts were often at the core of the proceedings, influenced by constructions of gender, social class, and the family.

¹ Letter from Justice Wills to Secretary of State, 15 April 1893, The National Archives HO 144/248/A54795.

The late-Victorian period is marked by shifting narratives of childhood, framing children both as victims and as threats.² The concern was highly gendered; with boys, there was concern over thieving whereas for girls the concern focused on sexual immorality and promiscuity.³ Boys had no minimum age of consent outside eligibility for marriage as male sexuality was considered constant and natural whereas female sexuality “had to be grown into, protected and hedged around with constraints and regulations”.⁴ Obsession with girlhood and innocence is visible in the contemporary literature, arts, and newly invented photography yet simultaneously concern over juvenile delinquency entered public consciousness. The concerns associated with childhood were not only gendered but they were driven by constructions of social class. The working-class girls were seen as productive and more mature than middle-class girls, who had stayed at home in a protected environment. Unlike middle-class girls, working-class girls entered work life early on, but their options for employment were often limited and wages lower than for boys of the same age.⁵ The fact that working-class girls were in employment, often in domestic servitude of some kind, meant

² Harry Hendricks, Child Welfare, England 1872–1989 (Routledge 1994), 7.

³ Louise Jackson, Child Sexual Abuse in Victorian England (Routledge 1999), 6.

⁴ Philippa Levine, “Sovereignty and Sexuality: Transnational Perspectives on Colonial Age of Consent Legislation,” in Beyond Sovereignty—Britain, Empire and Transnationalism, c. 1880–1950, ed. Grant K and others (Palgrave Macmillan 2007), 17.

⁵ Sonya O Rose, Limited Livelihoods: Gender and Class in Nineteenth-century England (Routledge 1992), 27.

that the working-class childhood was framed differently from that of middle-class children, and they were seen as more precocious physically, and sexually.⁶

While there is a great deal of scholarship on age of consent in some parts of the Empire, on India in particular, the field has received less attention in England.⁷ The work of Matthew Waites and Caroline Derry highlight the shifting focuses and moral panics, in particular in relation to same sex sexual relationships, and also the persistent concern over promiscuity of young girls.⁸ As much as age of consent laws were historically “fundamentally patriarchal in their conception, embodying male power and control over women and children, embedded in patriarchal heterosexuality,”⁹ as argued by Waites, I argue that they also embodied class hierarchies.

⁶ Gorham, “The ‘Maiden Tribute of Modern Babylon’ Re-examined” and Carolyn Conley, The Unwritten Law—Criminal Justice in Victorian Kent (OUP 1991), 122.

⁷ See for example, Ishita Pande, “Coming of Age: Law, Sex and Childhood in Late Colonial India,” Gender & History, 24(1) (2012): 205–230; Tanika Sarkar, “A Prehistory of Rights: The Age of Consent Debate in Colonial Bengal,” Feminist Studies 26(3) (2000): 601–622. Padma Anagol, “The Age of Consent Act (1891) Reconsidered: Women’s Perspectives and Participation in the Child-Marriage Controversy in India,” South Asia Research 12(2) (1992): 100–118.

⁸ Caroline Derry, “Lesbianism and Feminist Legislation in 1921: the Age of Consent and ‘Gross Indecency between Women’,” History Workshop Journal, Volume 86, (Autumn 2018): 245–267; Matthew Waites, The Age of Consent: Young People, Sexuality and Citizenship (Palgrave Macmillan 2005).

⁹ Waites, The Age of Consent, 62.

The article shows that there was a class dynamic at the core of both the law reform and the application of these laws in courts that reveal erroneous assumptions about working class families, girlhood, and motherhood. It provides a rigorous look at both lower-level cases in the Central Criminal Court (Old Bailey) and appeals and in doing so provides an original contribution to the literature in the field by focusing on reasons behind those low conviction rates and lenient sentences highlighted by Bates and Jackson, for example.¹⁰ While narratives of capacity and protection in particular were key concepts behind reforms, the article argues that the courts showed limited understanding of these terms. Instead, the courts focused on notions resistance, consent, and untrustworthiness of the victim, even when these concepts were not relevant to the proceedings.

The first part of the paper focuses on rhetoric and campaigns to reform age of consent. Age of consent came under intense public discussions, and in 1885 it was raised from thirteen to sixteen with the Criminal Law Amendment Act. Much of the rhetoric and campaigns to raise the age of consent, focused on protecting young working-class girls from sexual advances by older men. The term “sexual danger “ was frequently used, and it discussed as the danger of seduction, often by a middle- or upper-class men, leading to loss of virginity, possible pregnancy, and economic and moral downfall.¹¹ Earlier scholarship by

¹⁰ Victoria Bates, Sexual Forensics in Victorian and Edwardian England: Age, Crime and Consent in the Courts (Palgrave Macmillan 2016); Louise Jackson, Child Sexual Abuse in Victorian England (Routledge 1999).

¹¹ Hogarth’s A Harlot’s Progress is an earlier example of such representation in arts; see also Lynda Nead, “Fallen Women and Foundlings: Rethinking Victorian Sexuality,” History Workshop Journal 82, Issue 1 (2016): 177–187 on artwork on fallen women in the Victorian period.

Deborah Gorham and Judith Walkowitz focuses on narratives of sexual danger in late-Victorian England and discusses age of consent reform in that context.¹² This paper builds on Gorham and Walkowitz's notions of sexual danger but takes the analysis beyond gender focus, to an analysis of gender, class, and the family. In particular, the article argues that the reform of age of consent laws must be considered within the narratives that demonize the working-class family; narratives that were full of erroneous, middle-class assumptions about working-class family life. Beyond the direct, sensationalist accusations of working-class parents selling their children in lurid accounts such as W.T Stead's influential "The Maiden Tribute of Modern Babylon," the family posed an indirect threat to the girls' wellbeing through its corruptive influence and the lack of moral guidance to the young.¹³

The following sections of the paper focus on proceedings in courts during the same time period, during the years of 1880 to 1900, to analyze whether those erroneous assumptions about the working class family were replicated in courts. The discussion on the reform and the themes emerging from the trials is interlinked on a conceptual level, demonstrating how the assumptions about social class and gender underlined both. In the vast majority of cases both the defendant and the victim were of a working class background, and disparaging remarks of the victims, highlighting both their gender and class, were common. This part of the article draws from court registers and reports from the Old Bailey (the central

¹² Judith Walkowitz, City of Dreadful Delight: Narratives of Sexual Danger in Late Victorian London (Virago Books 1992) Chapter 1, and Gorham, "The 'Maiden Tribute of Modern Babylon' Re-examined.

¹³ WT Stead, "The Maiden Tribute of Modern Babylon I," Pall Mall Gazette (London, July 6, 1885).

criminal court in London), appeal petitions heard on cases of “carnal knowledge” or rape of a girl under the age of consent held in the National Archives and newspaper reports (both local and national) on those cases, along with Home Office archives and the archives of relevant organizations.¹⁴ While details in the Old Bailey records are sparse, the National Archives hold full files for certain cases and appeals, often in the cases where there has been correspondence between the judiciary and the Home Office on a particular case.¹⁵ Pseudonyms are used here for ethical reasons as many cases discussed within the article deal with the most traumatic and intimate details of people’s lives. Furthermore, in many cases, the victim was a relative and shared the surname of the defendant.¹⁶

Historical records and court transcripts from the Late Victorian period are not well preserved, and only piecemeal case records remain. Court records are too sparse to collate an authoritative timeline of how frequently these cases were prosecuted as only about 2 per cent of depositions to the assizes have been preserved in the National Archives.¹⁷ The sparsity of

¹⁴ Home Office Archives are held at the National Archives (London); in addition, relevant archives at the Women’s Library (LSE, London) and Parliamentary Archives (London) have been looked at.

¹⁵ Collections focused on were Home Office (HO) and CRIM (Records of the Central Criminal Court) during the period of study.

¹⁶ For full discussion on ethics of naming, see Niamh Moore, “The politics and ethics of naming: questioning anonymisation in (archival) research,” International Journal of Social Research Methodology 15(4) (2012): 331–340.

¹⁷ Daniel JR Grey, “‘Monstrous and indefensible’? Newspaper accounts of sexual assaults on children in nineteenth-century England and Wales” in Women’s Criminality: Patterns and

the records means that it is necessary to rely on newspaper reports where actual details of the judgments are missing. Stevenson has previously argued that the newspapers invoked certain linguistic codes and euphemisms in order to not discuss sexually explicit material and for that reason newspapers are not only a difficult but a problematic source for historical research on such issues.¹⁸ However, despite their problematic nature, newspapers are a good way, if not at times the best, as Grey argues, to find information on criminal cases from the time because of the sparsity of actual court records that have survived.¹⁹

Through the analysis of the cases, narratives of consent, trustworthiness and blameworthiness emerge, often doused in gendered and class based prejudices. These narratives emerging from the court archives demonstrate that attitudes towards “precocious girls”, their untrustworthiness as witnesses did not shift a consequence of CLAA 1885. All the cases discussed within this article involve victims below the age of consent, pre and post enactment of CLAA, and by default did not have the capacity to consent to sex. The cases should have merely been about whether intercourse took place, yet, consent and resistance were frequently discussed.

The ‘class dynamic’ of the capacity to consent

Variations in Europe, 1600–1914, ed. by Manon van der Heijen, Marion Pluskota, and Sanne Muurling (Cambridge University Press 2020), 189–205.

¹⁸ Kim Stevenson, “Outrageous Violations: Enabling Students to Interpret Nineteenth Century Newspaper Reports of Sexual Assault and Rape,” Law, Crime and History, 4(1), (2014): 36–61.

¹⁹ Grey, “‘Monstrous and indefensible’?”

Against the background of social reformers, the rise of women's rights movements, and a focus on working-class girls' sexuality, it is no surprise that the age of consent for sexual activity outside marriage shifted during the late nineteenth century more than once. Yet the year 1885 was perhaps one of the most remarkable years in the field: an annus mirabilis of moral politics, as described by Jeffrey Weeks.²⁰ The Criminal Law Amendment Act 1885 (CLAA 1885) was passed that year, marking significant changes in regulation of morality and sexuality by criminalizing procurement for prostitution and brothel keeping, and by creating an offense of gross indecency that was used to target men suspected of homosexuality. Most importantly for the purposes of this article, section 5 of the CLAA 1885 raised the age of consent for girls from thirteen to sixteen for sex outside marriage.

A fixed legal age of consent was intrinsically tied to respectability, marriage and marriageability and English law had historically set different ages of consent for women from different socio-economic backgrounds. This section argues that in 1885, reform campaigners separated the age of consent from the age to marry and that a class dynamic lies behind this intellectual separation. Marriage was viewed as a protective institution and it was at the core of the notion of a middle class family. Sex outside marriage, on the other hand, was framed as dangerous and working class girls were particularly vulnerable to being seduced as they did not have equally strong protection and moral values instilled in them.

²⁰ Jeffrey Weeks, Sex, Politics and Society—the Regulation of Sexuality Since 1800 (3rd edn Pearson 2012), 107.

There were a wide range of offenses where age and consent were of the essence at the time, ranging from rape to abduction, and, later on, procurement for prostitution and trafficking in women. Sex outside marriage was always framed as undesirable but some sexual activities such as prostitution or eloping were considered particularly harmful, requiring a higher age of maturity. Age of consent was not set at sixteen for all sexual activity outside marriage but it rather it was set according to the harm associated with the sexual context in question, creating different thresholds for capacity. For example, the Offences against the Person Act 1861 included various sections to protect girls from seduction. Under section 49 of the OAPA 1861, it was unlawful to under “false pretences, false representations, or other fraudulent means, procure any woman or girl under the age of twenty-one years to have illicit carnal connexion with any man” and so it created protection for girls who would be groomed into prostitution by deception. Section 55 of the OAPA criminalized the taking away of an unmarried girl under the age of sixteen from the possession, and against the will, of the parents. This misdemeanor, while not phrased as a sexual offense, was used against men who enticed girls away from home with sexual motives with or without the girl’s consent.²¹ Section 53 of the OAPA creates a similar offense to section 55 but it only applied to girls who had wealth or who were heiresses. This section introduced a higher age of consent, that of twenty-one. Under this section anyone who tried to lure a girl or a woman under the age of twenty-one with property away for the purposes of marriage or carnal knowledge against the wishes of the parents could be held liable for a felony. Both these offenses under sections 53 and 55 were concerned with the rights of the parents rather than the girl in question, and they focused on preserving chastity. In the words of Josephine Butler, one of the leaders of the women’s rights movement, section 53 of OAPA

²¹ R v Prince (1875) LR 2 CCR 5.

showed “tenderness [...] by English law to property and the carelessness evinced when it is a case of a girl’s honour and happiness.”²² While less frequently relied upon in courts, section 53 was the stronger of the two sections as it was a felony rather than misdemeanor, and extended parents’ possession of daughters until the age of twenty-one, in contrast to the age limit of sixteen for those who had no property. Through these sections, the law clearly prioritized parents’ rights and control over their daughters over the consent of the daughter in question. It also gave parents control over the choice of husbands for girls with wealth by imposing criminal penalties on those who attempted to elope below the age of twenty-one.

Like the OAPA, the CLAA also set different thresholds for capacity to consent depending of the context. Section 2 of the CLAA 1885 as it made it an offence to procure ‘any girl or woman under twenty-one years of age, not being a common prostitute or of known immoral character [...]’ for sex and prostitution.²³ The exclusion of women with bad character from the scope of the law is of great symbolical value but it was explicitly enacted as a safeguard to protect men from false accusations. In the words of Gregory MP, the law “had to guard as much against conspiracies being brought against innocent men as against the offence sought to put be (sic) a stop to”.²⁴ The age limit of twenty-one made it clear that a girl under that age, who did not work in prostitution, did not have the capacity to consent to be procured. Despite the focus on section 5 in public rhetoric and later on in prosecutions, it

²² Josephine Butler, “Laws for the Protection of Youth” (Letter to the Editor of Sentinel March, 1882).

²³ Under section 3 of CLAA a woman of any age and character could be procured if she was drugged or overpowered.

²⁴ HC Deb 07 August 1885.

is important to highlight that sexual maturity was not set at sixteen in all circumstances; prostitution or leaving parents' home without their consent was considered particularly harmful and so a higher age of consent was required.

Through the CLAA, age of marriage and age of consent for sex outside marriage diverged. England has an unusually long history in regulating age of consent through statutes. Intercourse with a female child under the age of twelve had already been made a capital offense in England in 1285.²⁵ This early statutory provision setting a minimum age is unusual and most European countries did not have age of consent legislation until more recent centuries, and used biological sexual maturity as determining factor.²⁶ Twelve remained the common law limit for both marriage and sex outside marriage until 1875, with some exceptions in relation to marriage.²⁷ While the reform efforts focused on sex outside marriage, the age of marriage was rarely discussed. The age of marriage was defined by common law and tied to physical maturity, set at twelve for girls and fourteen for boys, reflecting the beginning of puberty and the ability to conceive a child.²⁸ On rare occasions, marriages were allowed in cases where the girl had not reached twelve. Those marriages were

²⁵ Statutes of Westminster I and II, as quoted in Matthew Waites, The Age of Consent: Young People, Sexuality and Citizenship (Palgrave Macmillan 2005) 63.

²⁶ Helmut Graupner, "Sexual Consent: The Criminal Law in Europe and Overseas," *Archives of Sexual Behaviour* 29(5) (2000): 415–461.

²⁷ Jackson, Child Sexual Abuse in Victorian England 15.

²⁸ 1868 Chelmsford Royal Commission on the Laws of Marriage (H.M. Stationery Office, 1868).

voidable in common law but they could be ratified upon the girl reaching the age of twelve.²⁹ By reforming the age of consent outside marriage, first in 1875 and then in 1885, the law on sexual consent within and outside marriage diverged in England. Through these reforms, a higher threshold is set for the capacity to consent to sex outside marriage, demonstrative of how sex outside marriage was framed as harmful and socially unacceptable.

As ages of consent to marriage and consent were disconnected, the campaigners ignored the reality of people's lives. Emmeline Pankhurst, famed suffragist and women's rights campaigner, for example, supported a campaign to raise the age of consent outside marriage as high as twenty-one for girls.³⁰ Pankhurst was not alone in the call for a higher age of consent, although her call for twenty-one was at the higher end of campaigners' demands. In agitation meetings and demonstrations around the country, people supported a higher age of consent but there was no consensus among the reformers whether eighteen, twenty, or Pankhurst's twenty-one would be the appropriate threshold.³¹ These calls ignored³² the fact that many women, and men, entered relationships younger than the age of twenty-

²⁹ Stephen Cretney, Family Law in the Twentieth Century (OUP 2005) 40.

³⁰ Fiona Montgomery and others (eds) The European Women's History Reader (Routledge 2001), 184.

³¹ Various notes and pamphlets on the issue in the records of AMSH, at WL 3AMS/B/01/01-03.

³² These calls continued well into the early 1920s, and culminated in the Criminal Law Amendment Act 1922, which simply confirmed sixteen as the appropriate age of consent. For discussion on the 1922 and reform efforts, see Stevenson, "Not Just the Ideas of a Few Enthusiasts."

one. Were age of consent raised to the levels demanded by reformers, it would have effectively criminalized all relationships outside marriage, including those she had entered by choice under the age of twenty-one.

By ignoring the low age of marriage, those campaigning to reform the age of consent laws constructed a split image of a working class woman. On the one hand, she was a mature woman when it came to her decision to marry but on the other a child when it came to giving sexual consent outside the confines of marriage. This is particularly notable as consent to consummation and marital relations was implied within consent to marriage, as marital rape was only criminalized by common law in the late twentieth century.³³ Most of the reformers, a few notable women's rights activists aside, viewed marriage as the core of middle-class family life, and the assumption was that marriage was a protective, Christian institution.³⁴ Furthermore, case law from the same time period implies that a low level of intellect was required to consent to marriage, driven by the desire to keep marriage accessible for everyone, including those of lower intellect.³⁵ This is where age of consent debates diverge from the practice of family law on marriage. For sex outside marriage, a higher threshold of moral and intellectual capacity was needed, thereby reinforcing the idea of sex outside marriage as inherently harmful.

³³ Marital rape was criminalized in 1991 by R v. R [1991] UKHL 12.

³⁴ For opposition, see work of Elizabeth Wolstenholme Elmy, Maureen Wright, Elizabeth Wolstenholme Elmy and the Victorian Feminist Movement: The biography of an insurgent woman (Manchester University Press 2013).

³⁵ Cretney, Family Law in the Twentieth Century, 75.

From the middle-class reformers' perspective, women were expected to remain virgins until marriage, and early sexual relationships would ruin a girl's chance of entering into a family life and also prevent them from obtaining a position in service. In the vigilance rhetoric and campaign materials, the fall of a girl was often described in terms of a downward spiral: beginning with seduction and leading to a short and bleak life in prostitution.³⁶ A girl, therefore, if seduced could not fulfil her potential as a productive citizen. She could not better her position, and if she were to have children, these children would be born out of wedlock and, therefore, become a threat and a burden to the state.³⁷ In the words of Professor Alliers in the 1913 Abolitionist Federation Conference, "there has always been a brutal and popular belief in the irresponsibility of man, and there has been a brutal and popular belief in the impossibility of raising the fallen."³⁸ Throughout the many public interventions, it was implied that working-class girls were unable to recognize sexual danger, nor did they realize the importance of chastity and preserving their virginity. To demonstrate the lack of ability of a young girl to understand her actions or their consequences, in "The Maiden Tribute", the most widely read and circulated piece of tabloid journalism in the nineteenth century, Stead recounted an encounter with a sixteen-year-old girl to whom he had offered £2 for her virginity, or £1 not to be seduced. Appalled by the foolishness of the girl who chose "to part with her virtue" for a mere pound extra, Stead wrote that this is proof that a girl of sixteen

³⁶ See for example, Dyer, The European Slave Trade in English girls or the National Vigilance Association, In the Grip of the White Slave Trader (NVA, 1911) as an example of such downward spiral.

³⁷ For discussion of juvenile paupers, see Pimm-Smith, "Juvenile de-pauperisation."

³⁸ Professor Alliers (Conference of the International Abolitionist organisation for the abolition of the slave trade, Paris, 1913), The Women's Library Archives (TWLA) 3AMS/E/02.

cannot understand the value of what he considered to be the only commodity a working-class girl could have.

The threat to chastity was perceived to come from many sides but in the public debates, sexual danger was particularly associated with gentlemen seducers out to take advantage of naïve working-class girls who were unable to resist the advantages due to moral failings and gullibility. The age of consent legislation was explicitly framed in many ways with a view to stopping and discouraging gentlemen seducers. In the parliamentary debates, there was little, if any, discussion of actual meaning of consent but there was plenty of condemnation of men who took advantage of young working-class girls, and support for a law to protect such girls. The narrative of fall and ruin was of particular importance, as for social reformists, once the prized possessions of virginity and youth were taken away, there was no possibility of returning to respectable society. In 1885, The Archbishop of York called for people to come to together and rally for the protection of innocent girls and to raise the age of consent, and said: “Look at your bright girl, with her innocent mind gleaming of her eyes, and think that some poor man’s child, years younger than she, and quite as innocent, has been stolen but yesterday by some prince of the devil, and made to pass through the fire to Moloch, so that when she woke at eighteen or at sixteen to the realities of life she found that her soul and body had been polluted and ruined...”³⁹ Working class girls, therefore, were portrayed as inherently vulnerable, in need of protection they did not receive from their families and immediate surroundings.

³⁹ Archbishop of York, “New Slave Trade” pamphlet (c. August 1885) WL 3AMS/B/01/01-04.

For women's rights campaigners and for example, the members of the Socialist League, sexual danger was not solely a question of male moral failings but it was also a structural issue relating back to the commodification of sex. In The Education and Employment of Women, Butler argued that brothel doors "stand ever wide open, yawning like the gates of hell" for women and girls excluded from public employment and education.⁴⁰ Butler was not alone in linking child prostitution and sexual danger to poverty and structural inequalities. In a demonstration on child prostitution and age of consent in Leeds, attended by trade societies, politicians, and members of the clergy, many attendees spoke about the link between poverty and vulnerability of children. The Socialist League tabled a motion in the meeting, that in relation to the "evils complained," it is the society that would need to change and that "all classes must be abolished."⁴¹ Henry Broadhurst, an MP attending the meeting, argued that this is not a question of vice or age of consent, and the only way to truly address the concern is to tackle low wages.⁴²

Beyond structural inequalities, much of the concern over protection of girls is related to the very nature of sexual consent. Sexual consent still remains something women are expected to confer upon men. If male sexuality and sexual desire was framed as constant and natural, women were framed as the gatekeepers of sexual access. As such, women had to have the moral fortitude to reject advances outside the confines of marriage. Laws on age of consent, for example, set boundaries on when it was safe enough for girls to make those decisions. If the girls did not have the appropriate moral guidance as children, they were

⁴⁰ Josephine Butler, The Education and Employment of Women (T. Brakell, 1868) 16.

⁴¹ Notes from a meeting in Leeds, dated August 31, 1885, WL 3AMS/B/01/01-03.

⁴² Ibid.

unable to make those distinctions and recognize sexual danger. For instance, Lord Mount-Temple argued in parliamentary debate on raising the age of consent that ordinarily a girl of fifteen is more a child, and as such obedient and vulnerable, and not able to “resist the terrible results of traps and nets set for her [any] more than goldfinches could avoid the nets concealed from their sights.”⁴³ This moral fortitude to resist advances and traps ought to have come from family protection but from the campaigners’ perspective the working class girls had more exposure to society and less in the way of a moral upbringing. Ordinarily, there was a reluctance to intervene in family matters, and sanctity of the home was generally of great importance. In the House of Commons debate on the 1885 Criminal Law Amendment Bill, the Secretary of State, arguing for the Bill, said “there is nothing more sacred to the English people, and there is nothing which they are so determined to maintain, as the purity of their own households.”⁴⁴ Purity and a desire to protect their household were not values that working-class families were considered to share.

In addition to their inability to protect the girl child’s chastity, prominent campaigners such as W.T. Stead accused the working class parents as posing direct threat to their daughters by selling them to prostitution. In the melodramatic and near pornographic “Maiden Tribute,” Stead wrote that “drunken parents often sell their children to brothel keepers. In the East-end, you can always pick up as many fresh girls as you want. In one street in Dalston you might buy a dozen.”⁴⁵ Demonstrating low or no family values, the “low class” was portrayed as uncaring and as living in conditions of destitution and moral

⁴³ HC Deb 24 June 1885.

⁴⁴ HC Deb 30 July 1885.

⁴⁵ W.T. Stead, “The Maiden Tribute I”; W.T. Stead, “The Maiden Tribute II.”

depravation unimaginable to the readership of the Pall Mall Gazette, the paper where the “Maiden Tribute” was published. As part of his investigation for “Maiden Tribute”, Stead had “bought” a girl called Eliza Armstrong to show how easy it would be to make a girl from East End to disappear. Following the publication of the “Maiden Tribute,” Stead was charged and convicted for the abduction of Eliza Armstrong as her mother maintained she thought Eliza was being recruited for domestic service. When on trial he argued in his testimony to the court that “I am not here to advocate liberties being taken with the children of anyone, least of all the children of the poor; but you must sometimes take risks in order to save poor girls from ruin. I believed that in doing as I did with Eliza Armstrong, I was standing between her and ruin.”⁴⁶ In his mind, there was no question about the inevitable ruin Eliza Armstrong was facing or about the corrupting effect that her family continued to have on her. He later argued that the “period of the alleged abduction was probably the happiest period in the existence of the child” and that she “will look back with regret in the midst of the surroundings into which she has been plunged.”⁴⁷ The “Maiden Tribute” was crude and sensationalist, yet, Stead’s narratives of danger and ruin were hugely influential. The Maiden Tribute” was the most successful piece of tabloid journalism in Victorian period and ultimately it was the catalyst that led to the passing of CLAA.

Beyond the targeted, explicit attacks on lack of family values, the working-class family was absent from much of the discourse. The family unit is simply not recognized as one that exists, nor is it referred to by those campaigning for reforms, demonstrated by a lack of references to working-class families in much of the rhetoric of the reformers’ written and

⁴⁶ Testimony of W.T. Stead, Old Bailey, (October 28, 1885).

⁴⁷ Ibid.

archived work. Commenting on the construction of working-class family life at the time, Murdoch argues in relation to child welfare policies that to avoid challenging the notion of family as an institution, “reformers cast poor children as waifs and strays.”⁴⁸ The role of the law was seen as crucial in protecting and raising the children where the parents clearly are unable to or did not exist. Emily J Straton, a prominent reform campaigner, wrote about the home for young girls she was volunteering at, whose role was to “safeguard those who from the early training, unhappy homes, the thoughtlessness and folly of youth or other cases, expose themselves to dangers of the nature of which they are little aware.” She wrote how disappointing it is that the girls are often ungrateful but that it “is a very consoling thought that, if only to a very small extent, some real and permanent good is being done and that some are being rescued and raised.”⁴⁹ The role of the home for girls, in Straton’s eyes, was not just to rescue girls but also to raise them. Similarly, Sharp wrote in support of legislation in favor of a higher age of consent as way of dealing with poor girls. She argued that “medical authorities and social workers agree in maintaining that the years from sixteen to eighteen are the most dangerous of a girl’s life, and the time when she ought least to be left responsible for her own conduct.”⁵⁰ The underlying assumption was that poor girls would be left responsible for their own conduct, and have no moral or other guidance from home, and, therefore, statutory protection was essential to protect the girls. In relation to age of consent

⁴⁸ Lydia Murdoch, Imagined Orphans: Poor Families, Child Welfare, and Contested Citizenship in London, (Rutgers University Press 2006), 16.

⁴⁹ Wakefield Express, August, 1885, “To the Editors of Express,” WL Archive, no date.

⁵⁰ Amy Sharp, The Legal Protection of Young Girls, London (Hatchards 1884) (reprinted in the Tracts, 1776–1884), 13.

debates, the working-class family is noted by its absence or inadequacy, requiring the reformers and criminal law to step in almost as a surrogate parent.

“Young girls of her class” – class, gender and trustworthiness on trial

The first section of this paper has argued that the campaigners designed laws based on erroneous middle class assumptions of working class life. This section turns the focus to courts, and shows that on a conceptual level the courts shared those erroneous assumptions, and this impacted the way victims, their trustworthiness, and capacity was understood. While the rhetoric behind the law reform had focused on the limited capacity of adolescent girls to understand the consequences of sex and the need for protection, the courts did demonstrate equal focus or understanding of capacity. Instead, this section argues that the courts failed to give meaningful protection to working class girls because the rules of evidence allowed them to realize their ingrained gendered biases about the Victorian working class family, girlhood, and motherhood.

This and the following two sections analyzes cases dealing with carnal knowledge of a girl below the age of consent between 1880 and 1900, to evaluate the themes that emerge from court archives and the narratives from judges, officials, and victims themselves. Ultimately, the analysis shows that the CLAA did not have a profound effect on increasing prosecutions where the victim was adolescent. The vast majority of cases of carnal knowledge of a child after CLAA came into force, involved girls under the age of twelve. The cases of teenage girls aged between thirteen and sixteen being seduced did not materialize in courts. The public rhetoric of sexual danger in terms of the gentleman

seducers, as discussed in the earlier section, also did not translate into court proceedings. In the vast majority of the cases, both the victim and the defendant was working class. This and the following section argue that the deeply entrenched biases about working class family life, discussed in the first section, impacted the courts' reluctance to believe girls.

Earlier scholarship on child sex offences in Victorian and Edwardian England have come to somewhat inconsistent conclusions on how courts dealt with defendants on abduction cases and cases involving sexual activity with a girl under the age of consent. Jackson, Bibbings, and more recently Daniel Grey have written about the public condemnation faced by men who sexually abused young girls during the Victorian era, noting incidences of vigilante justice.⁵¹ Jackson argues that there is a contradiction in the “absolute condemnation” of men in a trial and the low number of prosecutions against men for child sexual abuse.⁵² In contrast, in a study on mid-Victorian child abuse cases predating the CLAA 1885, Conley argues that during trials the focus was on the victims rather than the defendants, and on the girls' accounts of what had happened, with their reliability often questioned. She argues that “unless the victim had been severely beaten, judges and juries assumed that these girls had consented to seduction.”⁵³ This section builds on work of Conway, and argues that following the enactment of CLAA 1885, the attitudes of judges and those involved in trial proceedings did not shift as the courts did not demonstrate a more nuanced understanding of capacity nor consent. Instead, the rules of evidence, discussed next,

⁵¹ Jackson, Child Sexual Abuse in Victorian England and Bibbings, Binding Men, 19; Grey, “Monstrous and indefensible”?.

⁵² Jackson, Child Sexual Abuse in Victorian England, 35.

⁵³ Conley, The Unwritten Law, 120.

allowed the judges in particular to confirm their notions of absence of family values amongst the working classes. Much like Conley's analysis of cases dealing with prosecutions under OAPA 1861 and 1875, both the trial cases and the appeals under CLAA 1885 show that victims were treated with suspicion, in particular if they were considered to be of "bad character". The cases following CLAA demonstrate that if girls continued to be treated with suspicious, some leeway was given to men on trial, particularly if they argued having been intoxicated when the rape took place.

This section focuses on the testimonies and depositions the girls gave during trials of rape and appeal proceedings, and on how these were perceived by the courts. The section shows that girls, regardless of their age, were treated with suspicion and undue emphasis was placed on suspicions of them being of "bad character". Much of this section focuses on notions of consent, something that has been largely overlooked by previous studies. The reform campaigners focused on capacity over consent, and so in the public rhetoric and parliamentary debates the questions of who could consent, and in which circumstances, and how consent should have been articulated were not considered. This stands in marked contrast to narratives in courtroom about consent and its absence, often articulated by all parties as demonstrated in the following section. The language of resistance or absence of resistance was more commonly discussed than consent but they were often intertwined, and at times the victims used the language of consent explicitly, stating that they had not consented to what the defendant did. This focus on consent over capacity is of particular importance as it demonstrates that

Rape was defined in common law as a "carnal knowledge of a woman forcibly and against her will", and later changing against her will "into without her consent". This broad

definition left a great deal of leeway for the judges and juries when interpreting facts of a case. Following the CLAA, a carnal knowledge was considered a felony if the girl was under thirteen and a misdemeanor if aged between thirteen and sixteen. As the cases within this article focus on victims below the age of consent, their victims' resistance ought to have been irrelevant as by definition she was below the age required to capacity to consent. Merely establishing that intercourse had taken place ought to have been sufficient to prove that offense had taken place, yet, clearly this was not the case.

Following a long common-law tradition any conviction that rested on a single person's testimony with no supporting evidence could create doubts. Sexual abuses were particularly problematic from evidentiary perspective, the case law analysis shows that evidence was treated with suspicion. Victorian rules of evidence made it difficult to prove an offense had taken place because the evidence of women and children had to be corroborated. Hale's now infamous statement that rape "is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent"⁵⁴ was frequently relied upon in courts. While children's testimonies had to be corroborated, they could be heard in court regardless of their age. William Blackstone wrote, following Hale, that in rape cases "it seems now to be settled, that in these cases infants of any age are to be heard, and if they have any idea of an oath, to be also sworn: it being found by experience that infants of very tender years often give the clearest and truest testimony".⁵⁵ While the

⁵⁴ Matthew Hale, *Historia Placitorum Coronae: The History of the Pleas of the Crown*, Volume 1 (reprinted R.H. Small, 1847) 634.

⁵⁵ William Blackstone, *Commentaries on the Laws of England Vol 4* (1765-1769) 214.

girls could and did testify in courts their testimonies came under scrutiny, as demonstrated in the following sections, and they were often framed as untrustworthy or even malicious.

Overall, the testimonies of women and girls in these cases were generally given less credence than those of the defendants. In the appeal in the case of JPK, a Home Office official confirmed the rules of evidence should be followed in these cases, and said that corroborating evidence was needed to secure a safe conviction as “there should never be a conviction for rape on the uncorroborated evidence of one witness. Usually at least the corroboration (1) of evidence of immediate complaint (2) of evidence of condition of clothes (3) of medical evidence.”⁵⁶ In the same appeal case, the judge wrote to the Secretary of State asking for guidance due to lack of evidence. He said he felt that without corroborating evidence, conviction should not stand. He further said, highlighting the unreliability of working-class girls, that “It is almost absolutely impossible to tell from manner and conduct in the witness box, whether young girls of her class and condition are telling the truth or not. Young women—especially the premature young women of whom one sees so much in these cases—when they lie do it far better than people of the other sex.”⁵⁷ Similarly, in the 1887 petition of JA to have his life sentence reduced after he was convicted for the rape of his own ten-year-old daughter at Durham Assizes, Lord Chief Justice notes that “I never feel quite satisfied with the unsupported testimony of mother and child in this class of case.”⁵⁸ He further noted that the penalty felt too severe for him but as it was not his first offence and

⁵⁶ JPK, general Appeal documents, The National Archives HO 144/248/A54795.

⁵⁷ Letter from Justice Wills to Secretary of State, 15 April 1893, The National Archives HO 144/248/A54795.

⁵⁸ Petition of JA, Petty Sessions depositions 8/10/1887, HO 144/209/A48093.

there were similar cases waiting to be heard in Durham, the petition should not be successful as the Lord Chief Justice felt they needed an “exemplary sentence”. These cases highlight the discomfort and distrust judges felt and expressed against working class women and girls. The rules of evidence required them to produce corroboration to the accounts, and further the judiciary explicitly highlighted how victims and their mothers were untrustworthy due to their class and gender.

While some judges had sympathetic words for the victims,⁵⁹ in both the cases and appeals there is clearly a deep distrust in the girls’ word, regardless of her age, often based on her class, parents’ drinking, and her own suspected sexual history. Baron Huddleston, presiding judge over the Yorkshire Assizes, said at the start of the assizes that while section 5 of the CLAA 1885 was a step in the right direction, whether it would be beneficial for society would need to be proven still.⁶⁰ He then continued to explain to a grand jury -- before a single case was heard -- how charges of this kind by “women and children against men were charges which required vigilance by all those connected with the administration of justice” before moving on to outline how, based on long professional experience, false charges were far more common in cases of sexual offenses than in any other field, implying that women and girls should not be believed.⁶¹

⁵⁹ Unreported, summary in Londonderry Sentinel (June 5, 1888).

⁶⁰ The courts of assize—commonly known as the assizes—were courts held in the main county towns and presided over by visiting judges from the higher courts based in London. The assizes had juries of 12, drawn from local men, and they were held periodically.

⁶¹ His comments were reported in full in the Yorkshire Post and Leeds Intelligencer, Tuesday July 27, 1886.

The lack of belief in women's and girls' testimonies was particularly notable as medical experts were often unable or unwilling to provide clear evidence in support of the victims. While some judges placed importance on the hymen, it was widely agreed by the end of nineteenth century that carnal knowledge could have taken place "without necessarily rupturing the hymen".⁶² Yet in many cases, the medical experts commented on the hymen and noted whether or not the hymen was broken, and whether there were other signs of intercourse. If time had passed, they were unable, or unwilling, to report whether force had been used and to comment on any other injuries. In the words of the medical examiner in the case of RC for the rape of his fifteen-year-old daughter, "by my examination I could not ascertain whether the prosecutrix was a virgin or not. I cannot give any opinion upon the matter, from my medical experience, I do not think it possible that an opinion could be given in cases exceeding over forty-eight hours after the alleged offence."⁶³ While this case predates the CLAA, similar views were expressed by medical experts throughout the 1880s and 1890s.

Despite their reluctance to corroborate the girls' testimonies, medical experts did frequently comment on whether they assumed the victim had had sexual intercourse previously, adding to the suspicion that the victim was of "bad character" and "untrustworthy". Girls who were suspected to have had sexual encounters with men were considered unreliable witnesses and their past sexual history -- real or suspected -- was

⁶² Taylor, Medical jurisprudence as quoted in Jackson, Child Sexual Abuse in Victorian England 75.

⁶³ Trial of RC, Deposition of John Ruddle Milsome, Doctor of Medicine, 14/5/1880, the National Archives CRIM 1.8.8.

discussed openly in trials, even when the victim was below the age of thirteen. Loss of virginity was associated with bad character; in the minutes of the appeal of JPK for the rape of his fifteen-year-old daughter, the daughter's presumed sexual history was introduced. The medical evidence that was introduced to the trial and appeal noted that her hymen had been broken some time ago, and then proceeded to describe vulva as flaccid and entrance of vagina as dilated -- as if the external appearance of the genitalia demonstrated frequent sexual intercourse or sexual encounters with multiple partners while freeing the father from liability.⁶⁴ In the same appeal, the Assistant Head Constable in Liverpool wrote in support of the father's appeal that "there is a good deal of evidence that the girl is of bad character and untruthful."⁶⁵ Other than what judiciary considered "bad language" and possibly having sexual history, there was no evidence presented to court that she was, in fact, of bad character despite frequent references to it in the testimonies.

Consent and resistance

Discussion on the girl's character and potential sexual experience was undoubtedly used to discredit her as a witness but it was also used to imply consent to the events. Consent should not have been an issue in these trials as in all the cases the victim was under the age of consent. To determine liability, the cases should simply have been about whether the act happened as the victim by default had no capacity to consent. However, consent was often discussed as evidence of the victim's unreliability or wickedness or to argue that the man's

⁶⁴ Report from Liverpool Constabulary's Detective Department, 14 April 1893, the National Archives HO 144/248/A54795.

⁶⁵ Appeal documents JPK, HO 144/248/A54795.

actions were understandable. The focus on consent and resistance, over capacity, was closely related to the assumptions that working class girls were precocious, sexually promiscuous, and untrustworthy as discussed in the earlier sections. Requiring the victims, some under the age of ten, to reiterate their lack of consent or resistance, the courts demonstrate a remarkable lack of understanding of capacity, and the pronounced aims of CLAA 1885.

As there was no statutory definition of consent at the time, the concept of “consent”, or lack of it, was given a new interpretation at every trial.⁶⁶ While the trials often focused on resistance and force, consent became an increasingly important concept throughout the period. The later influential case of Camplin, for example, took a more nuanced perspective on consent and argued that the victim’s ability and freedom to make a choice should have been taken into account when determining whether she had consent.⁶⁷ In lower level trials, however, this nuance was often missing and more emphasis was placed on resistance, even when the victim legally lacked capacity to consent due to her youth.

Understanding of consent and capacity overall varied trial by trial, and at times even politicians intervened in the proceedings when they felt the defendant had been dealt with too harshly in the circumstances. In the 1889 appeal by EA for the rape of a child aged twelve, the Prisoner’s Petition was entirely based on the argument that the victim gave consent and that she was to blame.⁶⁸ The petitioner, who was eighteen at the time of the trial, produced

⁶⁶ Consent was first defined in Sexual Offences Act 2003 (sections 74-76).

⁶⁷ Camplin (1845) 1 Cox CC 220 607.

⁶⁸ Appeal documents for EA, Prisoner’s Petition dated 2 February 1889, The National Archives, HO 144/224/A50010.

letters between himself and the victim as part of his petition. When read in contemporary light, the letters show EA grooming the girl for some months. The victim and EA had intercourse six or seven times over a period of months but the victim said this was “done out of fright” and she was too scared to tell her mother what had happened.⁶⁹ A number of influential men including the local MP Rear Admiral Mayne wrote in support of EA’s appeal, reinforcing that the victim had in fact consented, and that there was a strong local feeling that EA should be released -- due to the petitioner’s young age and the victim’s apparent consent to the relations.⁷⁰ Viscount Curzon, another MP, also wrote in support, expressing that he has doubts over the girl’s character. He also stated that the girl appeared to have been “precocious” and to have encouraged EA.⁷¹ As the victim was twelve and below the age of consent, consent should not have been introduced, yet, it was discussed at length during the petition, and by even MPs who had official part in the proceedings. No questions over the victim’s capacity to consent due to her young age was raised in the proceedings. EA had been sentenced for five years but this was reduced, and he was released after three years. The case of EA, heard some years after the CLAA came into force, is particularly demonstrative how the spirit of protection in the CLAA did not translate into every-day court proceedings. The victim, aged twelve, was a child who did not have legal capacity to consent and ought to have been treated as such. Yet, the interventions from high profile men and the emphasis on “local feeling” that EA had been the victim of injustice are telling of limited understanding of

⁶⁹ Deposition of victim, C.E.R, The National Archives, HO 144/224/A50010.

⁷⁰ Letter from Rear Admiral Mayne, MP, to SofS, 10 August 1889, The National Archives, HO 144/224/A50010.

⁷¹ Letter from Viscount Curzon, MP to SofS, 2 August 1889, The National Archives, HO 144/224/A50010.

consent and capacity, and the circumstances that could render consider invalid such as persistent ‘grooming’.

At times, victims themselves explained their lack of consent explicitly as lack of choice or lack of willingness yet the courts were reluctant to accept those terms, instead requiring physical evidence of resistance and physical violence. During 1880 the trial of CG, charged with rape of SS under the OAPA 1875, the victim stated clearly and strongly, when questioned again about her response to the act, that “I repeat that I did not consent, but resisted the prisoner as best I could.”⁷² Absence of consent was rarely discussed in such explicit terms, prior or after the CLAA, but more frequently through resistance of some kind. It was often the physical signs of rape that the trial dwelled on rather than symptoms such as pain.⁷³ The medical expert testimonies were expected, and did usually include, descriptions of genitalia, in particular identifying signs of harm and resistance. In the early twentieth century judges began to recognize that consent is a complex issue, but jurors still focused on the physical aspects of resistance.⁷⁴ Yet, often evidence focused on the physicality of the act, on the amount of blood, teared clothing, or physical injuries. The narrative of consent as physical resistance was replicated in these cases too, although at times the victims themselves articulated consent distinct from resistance, as lack of choice or willingness. During the trial of RSC for the rape of and assault on daughter, the victim said, “I was afraid to scream as he threatened to kill me. I did not consent to what the prisoner did.”⁷⁵

⁷² Trial of CG, Police court hearing: 24/11/1880, the National Archives, CRIM 1.11.3.

⁷³ Bates, Sexual Forensics in Victorian and Edwardian England, 42.

⁷⁴ Bates, Sexual Forensics in Victorian and Edwardian England, 106.

⁷⁵ Trial of RC, 10 May 1881, the National Archives CRIM 1.8.8.

The cases where victims use the language of consent are exceptions, and in the majority of cases, the victims instead emphasized the pain they had experienced and that they had communicated “no” to the defendant, often by screaming emphasizing the physicality of the “no”. Despite the victims in the majority of these cases being very young, the files include depositions from victims as young as seven, they articulated clearly that they did not like what the defendant did or that they had asked them to stop -- indicating both that they had the capacity to understand the wrongfulness of the defendant’s actions, and also the importance of communicating this to the court.⁷⁶ Overall, in these cases, the nature of consent should have been irrelevant in the proceedings as due to their age the victims were deemed not to have to the capacity to consent, yet it was frequently discussed to both strengthen and undermine the case against the defendant. It is clear that lack of consent was associated with physical resistance and medical experts were seeking signs not only of intercourse but also of abrasions and other injuries, reinforcing the stereotypes of violent resistance as a sign of lack of consent. Yet through the victims’ testimonies, a more nuanced and complex articulation of consent emerges -- one that related the offense not to physical resistance but to genuine lack of choice and agreement.

The family and the community: threat and protection

The perceptions about general lack of moral fiber in the family life, as highlighted in the first part of this paper, were echoed in courts. Court room narratives often reveal excessive focus on alcoholism, overcrowding, and perceived sexual impropriety of both the mother and the victim. This section focuses on those narratives, in light of the role fathers

⁷⁶ R v GH (Old Bailey, 11 September 1900) The National Archives, Crim 1/63/5.

and mothers in particular, to demonstrate that the stereotypes of the working class family played out in courts too. This final section argues while particularly mothers were often vilified in courts as absent or neglectful, a remarkable leeway was also given when dealing with child sexual abuse within the family.

If intoxication and young age of the defendant induced sympathy in juries, familial relations did not seem to have an impact on the way cases were dealt with, or on the level of sentencing. There was no explicit legislation criminalizing incest until the Punishment of Incest Act 1908 and sexual abuse within the family was dealt with under CLAA until that. Stevenson has argued that incest remained a taboo subject, rarely discussed due to its abhorrent nature⁷⁷ yet, the cases heard under CLAA does not reveal a particular condemnation of abusive fathers. There were even cases where lack of physical resistance was used to dismiss a case against the father, completely ignoring the impact of familial power relations and dynamics on the girl's capacity to consent.⁷⁸

The moral and physical dangers associated with overcrowding were discussed openly in the courts. If the daughter had shared a bed with her parents, this was often mentioned in cases where the father was on trial for rape or assault on the daughter both to highlight their squalid living conditions and at times used as a mitigating factor. This notion of proximity and immorality was discussed in parliament debates that preceded the CLAA too. In the House of Commons debates on the Bill in 1885, Broadhurst MP had proposed that boys

⁷⁷ Kim Stevenson, ““These are Cases Which it is Inadvisable to Drag into the Light of Day”: Disinterring the Crime of Incest in Early Twentieth-Century England”, Crime, History and Societies 20, Issue 2 (2016): 1–26.

⁷⁸ Appeal of WE, the National Archives HO 144/214/A48912.

below the age of sixteen who live in overcrowded spaces would be exempt from liability as boys who had lived in overcrowding and shared spaces with girls of that age could not be expected to have “as high a code of morality as children brought up in the well-to-do houses.”⁷⁹ He withdrew his amendment following resistance from other MPs, who felt liability could not be based on class status, even if “many of them [young men] were brought up without any conception of purity”.⁸⁰ This sense that lack of moral purity and squalid living conditions could be used as a mitigating factor was brought in appeals too, highlighting the inherent lack of morality within these families. During the 1894 appeal in the case of TS, a forty-four-year-old tradesman, who had been convicted of raping his sixteen-year-old daughter, the fact that they were sharing a bed was introduced as part of the appeal against conviction. Concern was raised that the victim had shared her parents’ bed when only her father was present, and it was noted that, “the fact that she was lying in bed with her father at ten o’clock in the morning, that she stated she did not know that her mother had gone out, and that the doctor found no trace of violence, made it difficult to believe that her resistance was very serious.”⁸¹ The statement, full of judgement, implies that the girl was squarely responsible for what had happened and the petitioner’s sentence had been too severe and should be reduced after ten year term. Whether intercourse took place was not disputed yet he was not deemed fully liable for it due to what the court perceived to be moral and other failures of the family, and the daughter.

⁷⁹ HC Deb 07 August 1885.

⁸⁰ HC Deb 07 August 1885.

⁸¹ The National Archives, Appeal files for TS, HO 144/143/A37239.

The general lack of moral fiber in the family life was highlighted through not only overcrowding but also through alcoholism and implied sexual impropriety of the mother as well as the victim. If for women alcoholism and squalid living conditions were a sign of untrustworthiness, for men it was used as a mitigating factor. This overall lack of morality within the family was discussed almost as an excuse, particularly when in cases where the defendant or petitioner was the father of the victim. In the case of TS, discussed above, the petitioner argued that not only the daughter was partially to blame but also that he was very drunk at the time of the rape.⁸² It was noted that “under these circumstances, the sentence of life T.S. seems too severe,” and he was set to be released after ten years. Intoxication was raised in a number of similar appeals as a mitigating factor, even in the case of a rape of a fourteen-month old baby.⁸³ It was also commonly used in cases dealing with a father raping their daughter. In the 1893 appeal petition by WB, the court accepted that the father had been drunk, “yielding to overwhelming temptation.”⁸⁴ While a defendant’s good character and family circumstances were at times mentioned as mitigating factors, their young age and intoxication were by far the most commonly raised both in trials and in appeals as a mitigating factor.

In many cases, the defendant’s youth was used as a mitigating factor, and at times a combination of being intoxicated and young led to disproportionately lenient sentences, as in

⁸² Prisoner’s Petition 18 July 1890, HO 144/143/A37239.

⁸³ Appeal documents for SH, convicted 30 April 1881 under s.5 of CLAA 1885, HO 144/88/A9885.

⁸⁴ Appeal of WB, Prisoner’s Petition, 16 March 1893, the National Archives, HO 144/214/A48912.

the 1888 case of twenty-eight-year old JW, who was sentenced to only four months' imprisonment for raping a nine-year-old girl. In this case, the jury explicitly recommended leniency due to him being drunk at the time of the offense.⁸⁵ The role that alcohol, and the judgment over misuse of alcohol, played in how working-class families were viewed in these cases cannot be overstated. Alcohol and alcoholism were used as an excuse for fathers for assaulting their daughters, and to apportion blame to mothers who had not raised their daughters well enough due to drunkenness.

Earlier in the article, I argued that reform campaigns framed criminal law as a surrogate parent, to protect children in working-class families, due to perceptions of the moral and material neglect of such children. Mothers in particular were framed as drunks, promiscuous, or simply absent where they were discussed; for example, leniency was sought for a father who had raped his daughter and the mother's tendency to "go with men for drink" was noted in the appeal documents.⁸⁶ The negative stereotypes of working-class mothers were replicated in courts where their trustworthiness was doubted or their alcoholism was discussed despite having little bearing on the crime in question. The mothers were also frequently either blamed for the abuse of their daughters, either indirectly highlighting their moral failings or directly due to their absence. This discussion concerning alcoholism often foregrounded discussion of the daughter's bad character or unreliability, or reasons why the

⁸⁵ R v JW (Old Bailey 28 May 1888).

⁸⁶ Letter from William Chadwick (Chief Constable) to Secretary of State, 7 June 1892, HO 144/143/A37239.

father might have “yielded to temptation.”⁸⁷ Furthermore, comments such as this from the case of WE, “In the absence of his wife, prisoner had connection with his eldest daughter a girl of 13 ¼ yrs one Sunday afternoon” were frequently repeated in the appeal notes⁸⁸—as if lack of regular sexual access to their wives provided an explanation for the defendants’ actions.

Despite the vilification of mothers in courts, the cases discussed throughout this article, however, challenge that presumption of neglect and through the trial details, another narrative emerges: that of working-class mothers, siblings, and family friends as a protective force. In the vast majority of cases where sufficient details in the cases were reported, it was the close female relatives, mothers and siblings, who reported the crimes and pursued prosecutions, often against men in their own communities, families, and at times employers. In a high-profile case of FJB, who was accused of raping a fourteen-year-old servant girl in his house, the victim’s mother stated in her deposition that as soon as she heard of the assault, she “went straight to the Police Station and lodged a Complaint and I then went and fetched my child away from the [Bs].”⁸⁹ In the case of FJB, the victim told her mother only some weeks later what had happened. In many of the cases where the victims’ depositions have survived, a similar pattern occurs. Victims often did not disclose the assault to anyone, and when they did some days or weeks later this was to their sisters or aunts, often highlighting how they had not told their mothers, or were too scared to tell their mothers.⁹⁰ In only one

⁸⁷ Phrase used in the appeal of WB, Prisoner’s Petition, 16 March 1893, the National Archives, HO 144/214/A48912.

⁸⁸ Appeal of WE, the National Archives HO 144/214/A48912.

⁸⁹ FJB charged with assaulting HSj (1881), the National Archives, CRIM 1.12.7.

⁹⁰ Appeal of AJ, The National Archives HO 144/280/A61921.

case in the sample, it appears the mother had reacted extremely badly and beaten the victim up, not believing her account of the events.⁹¹ In other cases, not telling the mother seems to be driven most commonly by fear, as in the words of a fifteen-year-old victim: “Why I did not mention it to my mother before was I was afraid of being killed.”⁹² The fact that the victims had confided in sisters, aunts or mothers, challenged the reformers’ perceptions of absence of familial and community support networks.

Similarly, Jackson has argued that often family members, neighbors and family friends provided vital support and a collective response to abusive men within their communities.⁹³ These cases not only challenge the narrative of the absence of wider familial support networks, they also challenge the notion that sexual abuse was seen as a purely private family affair. In many appeal files, there were depositions from the neighbors, who were willing to contribute to proceedings after a report by someone else, or even taking it upon themselves to report the crime.⁹⁴ In the case of BE, charged with raping his nine-year-old daughter repeatedly following the death of his wife, the neighbors, who said they thought the father had been beating the child, had heard the girl’s screams and shouted at the defendant repeatedly to leave her alone, every Friday when the abuse happened. According to the victim, on the final occasion she heard the neighbor scream that “If you don’t leave the

⁹¹ Trial of CG for “felonious assault on SS, and for violently and against her will ravish and carnally know her.” Date of police court hearing: 24/11/1880, the National Archives, CRIM 1.11.3.

⁹² R v RC, The National Archives CRIM 1.8.8

⁹³ Jackson, Child Sexual Abuse in Victorian England, 47.

⁹⁴ Appeal of WE, the National Archives HO 144/214/A48912.

little girl alone I shall get a policeman and lock you up.”⁹⁵ Following this, she confided in an aunt and aunt’s landlady, who took her to the police station to report a crime. In the same appeal, a number of women within the community, from neighbors to the aunt’s colleagues and friends of the family, gave depositions against the defendant.⁹⁶ While there are many cases that never made it to court and many more that were never reported nor even discovered, the cases that did make it to court demonstrate that the way families and communities dealt with sexual abuse was more complex and often supportive than reformers could have imagined.

Conclusion

This article has shown that age of consent cannot be viewed solely in relation to gender but that both the law and its application were driven by constructions of gender in conjunction with those of social class and working class family. The late Victorian age of consent reforms show the deeply held class prejudices of all those in positions of power: the social reformers, the parliamentarians, and the judiciary. On one hand, the working-class girls, who were the focus of the reform attempts, were seen to be in need of state protection as their families could not be trusted to provide that. On the other hand, the girls themselves were seen as untrustworthy and promiscuous in courts due that very background. These assumptions had a profound impact on the way key concepts such as capacity and consent were understood.

⁹⁵ Deposition of EE daughter of prisoner, BE, The National Archives, Crim 1.15.6.

⁹⁶ The National Archives, Crim 1/15/6.

By definition age of consent is about setting a minimum age under which a person does not have the capacity to consent to sexual activity. The rhetoric that saw the age of consent reforms and age being raised from thirteen to sixteen was focused on capacity and the naivety of working class girls – centering around stories of adolescent girls who had not and could not realize the value and importance of maintaining their virginity. Narratives from the court archives show that while CLAA was enacted in the spirit of protection, that focus on protection and capacity did not translate into court proceedings. The courts showed limited understanding of freedom and capacity to consent, often not acknowledging familial power relations and pressure a father could put on their daughter, for example. Despite consent not being a legal issue for the rape of girls below the age of consent, it nevertheless was. Girls, even below the age of ten, described how they had resisted, talked about their unwillingness, and at times used the words “I did not consent”.