

**Title of chapter:** *Historical constructions of childhood innocence: removing sexuality.*

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## **1. Introduction**

### **1.1. The 20th century child**

‘[T]he concept of childhood in 1800 was not that of 1900. In 1800 its meaning was ambiguous; nor was there a popular demand for an unproblematic conception. By 1900 the uncertainty had been more or less resolved and the identity of childhood determined ...

In other words, by the end of the century reformers of all hues had a fairly clear perception of what they felt was the nature of childhood ... Consequently, reformers also knew what they expected of children in terms of behaviour, performance and development. These expectations ... would be broadened and deepened well into the twentieth century, but many of the fundamental stereotypes were in place around the early 1900s ... .’<sup>1</sup>

Hendrick’s contention is that the image of childhood that we draw on today is basically the one that had emerged by the beginning of this century and that it is an image that developed largely within the 19th century. Such claims have been contested. Cunningham, for example, argues that, whilst ‘there is a long lead in’, the

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<sup>1</sup> Harry Hendrick, *Child Welfare, England 1872-1989* 37 (1994).



most rapid historical change in the conceptualisation of childhood - a weakening of the adult/child separateness - has been in the second half of the 20th century.<sup>2</sup> Cox asserts, 'The story of the bourgeois child is now also the story of the fall of the bourgeois child'<sup>3</sup> and the title of Postman's work on American childhoods, *The Disappearance of Childhood*,<sup>4</sup> gives the same message. However, Cunningham's thesis includes no detailed discussion of sexuality in relation to constructions of childhood<sup>5</sup> and Cox refers to the way the 19th century notion of childhood innocence 'has come to haunt us and often to mock us in the late twentieth century'.<sup>6</sup> This paper will therefore think through Hendrick's contention specifically in relation to the way that conceptions of childhood 'treat' innocence and, above all, sexual innocence.

It may seem odd that I clearly intend to argue that the image of the child and its sexuality which now underpins the policies and professional practices of Blair's Britain was in place by the time Lloyd George was Prime Minister. Surely the Freudian revolution in thinking about children and sexuality in the 1920s - that they have an innate sexuality - might be seen as the main influence on our thinking about this aspect of childhood, if no other? As Rex and Wendy Stainton-Rogers argue, 'it was Freudian theory which gave childhood

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<sup>2</sup> Hugh Cunningham, *Children and Childhood in Western Society since 1500* 187 (1995).

<sup>3</sup> Roger Cox, *Shaping Childhood* Chap VI (1996).

<sup>4</sup> Neil Postman, *The Disappearance of Childhood* (1982).

<sup>5</sup> The index gives five page references under 'children, sexuality and' (and none in regard to 'childhood') and these are all references to brief mentions and assumptions.

<sup>6</sup> Cox, *supra* note 3, at 203.



sexuality its particular place in modernist thinking'.<sup>7</sup> However, without entering into the debate about the validity and influence of Freud's theories,<sup>8</sup> it is possible to argue, as does Cunningham, that the 19th century construction of childhood 'has withstood numerous challenges, not least that posed by Freud'.<sup>9</sup> Despite the different meanings constructed for childhood sexual activity and the resulting swings of child rearing theories, '[t]he adult gaze on the sexuality of the child still renders them "subjects of study" and/or "objects of concern"'.<sup>10</sup> Whatever the reasons and the specialist knowledge used to categorise, supervise and regulate manifestations of sexuality in children, the public image of the child - the image which both encourages and also justifies social policy in relation to children - is of one who has not become sexualised in any adult sense of the word but rather is vulnerable, weak and innocent.

As a result, in the authoritative images of deserving children available in 1900, children and 'real' sexuality simply did not 'go' together and that is still the case. I will give two examples. First, a current NCH Action for Children leaflet, entitled 'Sexual Abuse and the Whole Child', refers to Amy, who had been abused by her father, and states, 'One of our specially trained counsellors is helping Amy to trust again and is trying to give back a little of the childhood her father stole from her'. This statement makes sense only if the message is that Amy has lost her trust in adults because her father no longer comes to see her (he is not

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<sup>7</sup> Rex and Wendy Stainton-Rogers, *Stories of Childhood* 165 (1992).

<sup>8</sup> See, e.g., Richard Webster, *Why Freud was Wrong: Sin, Science and Psychoanalysis* (1995).

<sup>9</sup> Cunningham, *supra* note 2, at 190; see also 170. Archard also argues that 'the idea that before Freud children were viewed as sexless is contestable' (David Archard, *Children, Rights and Childhood* 40 (1993)).

<sup>10</sup> Stainton Rogers, *supra* note 7, at 166.



allowed to) and that she has ‘lost’ her childhood because of her engagement in sexual activity. Because that engagement was not her responsibility she is still treated as a child but is treated as a victim because of the loss of ‘real’ childhood.

A second example of the operation of a non-sexualised image of childhood and, therefore, of the deserving child, is the fact that children and young people who solicit as prostitutes for customers are currently often processed as criminals under the Sexual Offences Act 1956 and the Street Offences Act 1959 rather than treated as children who are victims. The child prostitute is usually denied the status of victim of crime, despite that fact that her client has committed an offence, given that a woman under 16 by law cannot give consent to sexual intercourse. For example, between 1989 and 1995 around 4,000 young people under the age of 18 were convicted or cautioned for offences relating to soliciting.<sup>11</sup> The fact that the criminal act involves sex offered by a minor appears to negate ideas of child protection and welfare:<sup>12</sup> we seem to find it difficult to sustain an image of a child who is both sexualised AND deserving of rights to protection.<sup>13</sup> Being sexualised undermines ‘merit’ and, therefore, as did the Poor Law, leads to a distinction between the deserving and

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<sup>11</sup> The Children’s Society, *Child Prostitutes - Victims or Criminals?* in 1414 Childright 15, 15 (1997).

<sup>12</sup> See Archard, *supra* note 9, at 74-81 for a discussion of the child’s ‘right to sexual choice’ and the relationship of that right to issues of consent and child protection.

<sup>13</sup> Currently we are also apparently unable to sustain - as evidenced by the treatment of the 10 year old boys who killed James Bulger - images of the child who offends and is also deserving of protection. This non-fusion however is not a product of a consistent strand of thinking over the last two centuries as is the non-fusion of the sexualised and deserving child. (See Christine Piper, *Moral Campaigns for Children’s Welfare in the 19th Century* in *Moral Agendas for Children’s Welfare* (M. King ed., 1999).



the undeserving.<sup>14</sup> These difficulties are implicitly addressed by the Department of Health in its Consultation Paper on *Working Together to Safeguard Children* when it states:

The Government believes that children who become involved in prostitution should be seen primarily as children in need [of] welfare services and in many instances protection under the Children Act. ... Views are invited on other ways in which guidance might raise the profile of the issue of children involved in prostitution'.<sup>15</sup>

## 1.2 Frameworks for analysis

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<sup>14</sup> I am grateful to my class on the LLM in Child Law and Policy for raising this link.

<sup>15</sup> *Working Together to Safeguard Children: New Government Proposals for Inter-Agency Cooperation* para. 5.40 (1998). In line with this government initiative is the campaign launched by Barnardos, the childrens' charity, in 1998, specifically aimed at changing public perceptions of child prostitution so that the children and young people involved are accorded victim status.



Two important caveats are first needed. This discussion is about constructions and images of childhood: it is not about 'real' children. A socially prevalent image may not determine private action but it is important because it does influence and encourage public action and justifies particular state policies. As, for example, Cunningham notes in relation to the influence of Romanticism on images of children, 'Much of what we have been describing operated as a fantasy appealing especially to adult males' who often had little to do with child-rearing<sup>16</sup> but, of course, adult males - and particularly those middle class males who were aware of the new ideas about childhood - had much to do, in the 19th century, with the financing of charitable projects and the organisation of campaigns for legislative reform.

The second caveat is my acknowledgement that it would be possible to analyse child prostitution, for example, as a site where the autonomy and welfare rights of the child conflict but the focus of this paper is not whether children *should* be protected from particular actions perceived as harmful by adults. My concern is why in some situations the child is accorded victim status, the child deserving of public intervention, and, therefore, the possibility of protection whilst others do not. It would appear that where the child chooses to engage in sexual activity the status of victim is precluded. It is the corollary of the notion established by 1900 that a child is incapable of consenting to sex with adults (or indeed with other children) so that those 'children' who by their actions apparently proclaim that they are capable of giving consent lose their status as children. In 1900 and now, the only alternatives are that 'Child + Sex = Abuse'<sup>17</sup> or that the equation itself becomes invalid and a new one is substituted: 'Child + Sex = Adult'. For the 20th century the image of the child developed by

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<sup>16</sup> Cunningham, *supra* note 2, at 76.

<sup>17</sup> Rex and Wendy Stainton Rogers, *What is Good and Bad Sex for Children?* in King, *supra* note 13.



1900 has precluded the possibility of the equation that ‘Child + Sex = OK’.

The last forty years have seen the publication of a succession of immensely influential texts, based on a variety of research methods and sources, in areas relevant to the focus of this paper.<sup>18</sup> There is now no shortage of material analysing the development of concepts of childhood, the genesis and development of legislation relating to the welfare and protection of children and the development of attitudes towards, and the regulation of, sexuality. The renewed preoccupation with child abuse, particularly sexual abuse, and with juvenile delinquency has increased interest in historical accounts of the origins of, and motivations for, such concern. For the purposes of this analysis there are three particular strands of historical and sociological research which are of importance: those delineating change or continuity in relation to the concept of childhood, those analysing the genesis of child protection and delinquency systems in terms of moral and symbolic ‘crusades’ and those which have analysed from a feminist perspective the pressures for, and results of, law reform concerning women. These different bodies of material shed light on adult expectations and fears for children, on the moral frameworks within which reform was conceptualised and on the ways in which laws operate to regulate women, particularly the sexuality and gender roles of women. Feminist perspectives therefore stress ‘how the category of Woman is constructed in relation to the category of the Child’;<sup>19</sup> historians of childhood point towards continuities and inconsistencies in attitudes to nature and innocence in relation to children; analysis of campaigns for state intervention to prevent parental abuse of children reveals the importance of the reformers’ concern for the sexual ‘corruption’ of children.

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<sup>18</sup> Cunningham, *supra* note 2, gives an excellent review of the literature of the 1960s, 1970s and 1980s, in relation to conceptions of childhood, with their differences of approach in chapter 1.

<sup>19</sup> Carol Smart, *Introduction in Regulating Womanhood* 1 (C. Smart ed., 1992).



This chapter therefore aims to bring together these different insights to see how sexuality came to be removed from authoritative images of the deserving child and how the protection of children became so bound up with the regulation of women. Again, however, there must be a caveat. I will take for granted the existence of adult, and particularly parental, fears about the sexual activity of children. There is material on this issue. Gittins, for example has a chapter in her recent book entitled ‘Children’s Sexuality: Why Do Adults Panic?’, giving among her answers the potential destabilising of conceptions of the family by sexual relations within the family unit (particularly in reconstituted families), the inherent potential of the ‘pure and innocent’ child to create sexual feelings in adults and the conflation by parents of sexual activity by their child and parental loss of control.<sup>20</sup> As Rex and Wendy Stainton Rogers point out, there is now ‘a cultural equation’ of which the terms are: ‘children + sexuality = visceral clutch’<sup>21</sup> - a gut reaction of horror and dismay. At another level there are explanations of parents controlling their offspring’s sexuality in order to control the age of, and partner for, marriage and pregnancy and, therefore, control the inheritance of property and the availability of the child’s labour. I intend therefore to take for granted that there have been, and continue to be, often unarticulated adult fears about childhood sexuality which clearly lay the groundwork for historical constructions of children but cannot by themselves account for the particularity of constructions at any particular time.

One significant element in the Victorian construction of childhood is the process by which a specific construction of innocence became a crucial component of the construction

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<sup>20</sup> Diana Gittins, *The Child in Question* (1998).

<sup>21</sup> Stainton Rogers, *supra* note 7, at 162.





of childhood and, conversely, how the role and nature of the ‘corruption’ of innocence was constructed.

## 2. Innocence.

The conflation of innocence with lack of knowledge and, specifically, with lack of knowledge about sex has a long history. In the Judaeo-Christian tradition the myth of the Garden of Eden shows a man and woman eating from the forbidden Tree of Knowledge. Before that event they were naked and unashamed: from that point onwards they ‘knew’ that they were naked,<sup>22</sup> that there were particular parts of their bodies used for particular activities which were innately ‘wrong’. The connection - subsequently philosophised into many different forms - between sin and sex (either the sexual activity of the individual concerned or that of his parents at his conception) and, by analysis, between innocence and sexlessness, became an important strand of Christian theology. It reflected preexisting ideas, notably those of Aristotle, and, subsequently, fed into medieval Western European thought: preaching manuals from the 13th century onwards exhorted those with the care of children to keep them innocent of any sexual knowledge or activity.<sup>23</sup> Later incarnations of this idea can be found in the theology of the Puritans of the 16-17th centuries and the evangelicals of the 18th and 19th centuries.

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<sup>22</sup> *The Bible*, Authorised King James Version, Genesis chapter 3, verse 7.

<sup>23</sup> Cunningham, *supra* note 2, at 34.



Linguistic evidence of this double conflation, of general and sexual knowledge or ignorance and with sin and sexual intercourse, is in the usage of the verb ‘know’ to refer to ‘carnal’ knowledge.<sup>24</sup> Three centuries later, Foucault, in his work on the *History of Sexuality*, refers (tongue in cheek, given that he later refutes the repressive hypothesis which he is illustrating) to the ‘knowing children’ who ‘hung about’ adults in the early 17th century, when ‘sexual practices had little need of secrecy’.<sup>25</sup> Explanations for this long relationship between sin and sex are not, however, necessary for the purpose of this paper.<sup>26</sup> For at least two millennia theologians and philosophers have been concerned with the nature of evil and of sexuality. Incest early became a taboo because of religious prohibitions on non-procreative sex and because of the social disruption it could precipitate. I will take for granted that knowledge of and engagement in sexual activity has always been socially and morally problematic and bound up with questions of innocence and evil in relation to children.

Historically, the western Judaeo-Christian tradition has agonised over the nature of childhood innocence because of its theological implications for adults and its practical implications for parents. St Augustine’s modification of the doctrine of ‘original sin’ meant that children, though born evil, could be - and routinely were - ‘made’ innocent by the (infant) baptism which was the responsibility of parents and the church. The Reformation, however, bought ideas of salvation by faith and by good works, rather than by infant baptism and sacraments, so that, theologically, childhood became a stage in which the child needed

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<sup>24</sup> For example, ‘and he knew her not’ (Joseph referring to Mary in Matthew chapter 1, verse 25, *The Bible*, Authorised King James Version).

<sup>25</sup> Michel Foucault, *History of Sexuality* Volume 1, 3 (1990).

<sup>26</sup> As Foucault suggested in relation to his thesis when he noted, ‘It is certainly legitimate to ask why sex was associated with sin for such a long time ... but’ (*id.* at 9).



to be trained to withstand the temptations which his evil nature would inevitably place before him.<sup>27</sup> However, to see theology as a dominant and consistent influence on the development of concepts of sexuality, and particularly childhood sexuality would be misguided.<sup>28</sup> As is now well documented, the writers of the Enlightenment from the second half of the 17th century - notably Locke, Kant and Rousseau - have added particular glosses on childhood innocence. Whilst they by no means all came to the same conclusions, they have had a lasting influence on our conceptions of childhood.

A non-religious strain of anti-sensualism - where the senses are deemed to be culturally and environmentally, not biologically, shaped - has been evident in writings since the 17th century. For Locke the child was a *tabula rasa* so that ‘innocence in the sense of not-knowing, is therefore innate’;<sup>29</sup> Rousseau’s *Emile* lived in ‘original innocence’<sup>30</sup> and

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<sup>27</sup> See Gittins, *supra* note 20, at 146-52 and 186-191.

<sup>28</sup> As Cox notes, ‘On the one hand, evangelicalism could on occasion ally itself with progressive thought and give weight to anti-sensualism, but on the other hand religious fervour was never far away from eroticism’ (*supra* note 3, at 131).

<sup>29</sup> Gittins, *supra* note 20, at 150.

<sup>30</sup> ‘Everything is good as it leaves the hands of the Author of things; everything degenerates in the hands of man’ (Jean Jacques Rousseau, *Emile* 37 (1991; originally published 1762), quoted in Cox, *supra* note 3, at 64 and in Archard, *supra* note 9, at



was encouraged to learn from nature; Itard's Victor - *The Wild Boy of Avreyon*,<sup>31</sup> found living in a purely physical environment in central France at the end of the 18th century - became the focus of intense discussion on the nature of man. The emergence of Romanticism at the end of the 18th century added further ideas about the child.

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<sup>31</sup> According to Rose, 'the first psychological subject' (Nikolas Rose, *The Psychological Complex* 12 (1985)).



The 18th century had therefore seen a ‘chicken and egg’ type of discussion about the relationships between signs, senses and ideas but leaving for the 19th century an unresolved debate on the nature of sexual knowledge and innocence. The images of innocent and natural childhood resulting from the romanticization of childhood were powerful but not without challenge from the continuing Puritan Christian emphasis on original sin (reinforced by the Evangelical revival at the end of the 18th century), by the proliferation of educational and moralising literature and toys aimed at ‘training’ children and by a growing consumerism which promoted such goods and which allowed children to be seen as objects of status.<sup>32</sup> Cox therefore talks of ‘the tortuous journey the doctrine of innocence travelled, the blind alleys it went up, and the often disturbing lines of thought and expression it traversed’.<sup>33</sup> That Victorian constructions of children included ‘contradictions and ambiguities’ is important.<sup>34</sup> It points us to the fact that there is no unilinear development of philosophical ideas about childhood and that the primacy of one particular construction of childhood by 1900 is therefore unlikely to be explained by the ‘progress’ of philosophy or science. It suggests instead that power issues cannot be ignored.

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<sup>32</sup> Cunningham, *supra* note 2, at 70-72. See also Archard, *supra* note 9, at 37-40.

<sup>33</sup> Cox, *supra* note 3, at 76.

<sup>34</sup> *Id.* at 134.

### 3. Corruption

‘Childish innocence is very beautiful but the bloom is soon destroyed’ (Booth, 1890: 64).<sup>35</sup>

The idea that the essence of childhood is innocence and dependence and that innocence not only needs protecting but is inherently fragile was one of great utility to reformers seeking to ameliorate the lives of children. Its very fragility was a spur to demand immediate action by parliament and charitable effort yet the success of the campaigns for child related reform depended on keeping the image ‘pure’. Those societal ideas of justice and deserving cases that are reflected in legal concepts of contributory negligence and of the need to appear before a judge with ‘clean hands’ are relevant here. The one deserving of full help and protection must be ‘blameless’ - there must be no hint of wrong-doing in the one seeking justice. So, the child had to be presented as quite separate and different from the adult: the possibility of independent action, particularly of actions that are not child-like, undermines images of vulnerability and dependency. The more clearly the child is constructed as innocent, weak and dependent, the more powerful the image as a force to legitimate protective action.

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<sup>35</sup> This is taken from General William Booth’s book about ‘Darkest England’ in a chapter entitled ‘The Children of the Lost’ (William Booth, *In Darkest England and the Way Out* (1st ed. 1890) published by the International Headquarters of the Salvation Army).



But, as we have seen, innocence has historically been conflated with innocence (ignorance) of sexual matters and an increasingly important part of the special 'otherness' of children was perceived as their lack of knowledge of adult sexuality.<sup>36</sup> Because of this conflation, childhood innocence is a state which can be corrupted, above all, by sexual knowledge. Yet this very fact may result in childhood being eroticised: innocence and beauty can 'create a subversive echo'.<sup>37</sup> Childhood innocence is a 'blank image waiting to be formed ... Purity it turns out, provided just the opening a sexualising tendency requires: it is the necessary condition for the erotic operations our cultures have made central'.<sup>38</sup> The natural successors of the Victorian pictorial and literary portrayals of the idealised child are in 20th century advertising: 'Markers of childhood gymslips, a wide-eyed innocent gaze, thumb-sucking, a gangly pubescent stance have become recognisable markers of latent and inviting, yet forbidden ... sexual allure'.<sup>39</sup> Paradoxically, the stronger the image of the innocent, asexual child the more likely it is to encourage fear and guilt in the adult who acknowledges sexual feelings aroused by such an image of a child. Notions of 'sexual latency' and 'asexuality' therefore put children in danger from adults but they also become a danger to adults, so feeding into a stronger imperative to protect the child from adult

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<sup>36</sup> Gittins, *supra* note 20, at 174. As she notes at 145: 'Experience of adult sexuality seems now to be taken as the boundary that distinguishes childhood from adulthood, regardless of the age at which it is experienced by children'.

<sup>37</sup> James Kincaid, *Child-Loving: The Erotic Child and Victorian Culture* 5 (1992), quoted by Cox, *supra* note 3, at 135.

<sup>38</sup> Kincaid, (*id.*) at 13, quoted by Cox, (*id.*) at 136. See also Archard, *supra* note 9, at 40-41.

<sup>39</sup> Stainton Rogers, *supra* note 17. As they elsewhere comment of 20th century images, 'Certainly the attributed quality of "innocence" to the state of childhood makes children thereby targets for those for whom the *corrupting* potential of sex is a key to gaining sexual relief' (*supra* note 7, at 28).



sexuality.

Another set of prevalent ideas about the source of corruption of childhood innocence ultimately merged with the above set of ideas: those constructing the city street as evil. The 18th century philosophers and the Romantic poets had forged an enduring link between childhood and nature - a link evident in what Cox refers to as a 'line of beautiful children'.<sup>40</sup> The development of these images of beautiful children in the 19th century, showing a transition from the 'natural' life of the innocent child of Wordsworth's poetry - echoing Blake and stressing 'emotion and purity' - to the more domesticated and urban but also morbid and sentimentally innocent child, victimised by an uncaring society, in the novels of Dickens,<sup>41</sup> is illuminating. It reveals how the rural setting - the child-rearing site closest to nature - became viewed as a 'better' place for children and the urban scene a corrupting source of evil. To quote Lord Ashley, writing in 1846,

'Every one who walks the streets of the metropolis [London] must daily observe members of the tribe ... the foul and dismal passages are thronged with children of both sexes ... Their appearance is wild ... and the barbarian freedom from all superintendence and restraint will fill the mind of a novice in these things with perplexity and dismay'.<sup>42</sup>

The image reflected and solidified by Dickens was therefore one that responded to

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<sup>40</sup> Cox, *supra* note 3, at 136.

<sup>41</sup> Gittins, *supra* note 20, at 164-6. Rex and Wendy Stainton Rogers take this line of beautiful children into the 20th century 'in such works as Barrie's *Peter Pan* and Ransom's *Swallows and Amazons*, and finds its natural home today in Disney Studios' (*supra* note 7, at 27).

<sup>42</sup> Quoted in George Behlmer, *Child Abuse and Moral Reform in England 1870-1908* 47 (1982).





growing concern about the dangers for children caused by the city street,<sup>43</sup> a concern also evident in North America. As Gordon's research found, 'The Victorian conviction that children should be domestic and unseen, and the fear of [sexual] "precocity" in children, were part of the characteristic anti-urban bias of so many reformers of the time'.<sup>44</sup>

Concern about the depraving effects of adult public space led to a variety of reforming efforts: for example, to criminalise the use of child performers in theatres or on the streets,<sup>45</sup> to reduce the incidence of street trading by children<sup>46</sup> and to close public fairs.<sup>47</sup> Such a concern is still with us as Bar-On's critique of recent research on street children in African countries reveals. The public visibility of children on the streets 'challenges bourgeois society which governs in the expectation that children will intrude as little as possible on the adult world ... so generating calls that street children will disappear'.<sup>48</sup> The child's independence is a threat - to images of childhood and to expectations of dependent and asexual behaviour - and, paradoxically, led to the use by reformers of an image of an ever more dependent, vulnerable and invisible child, placed firmly in the home and, later, the

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<sup>43</sup> Rose, *supra* note 31, at 47.

<sup>44</sup> Linda Gordon, *Heroes of Their Own Lives* 40 (1988). Note the evidence given to the 1882 Select Committee about girl street sellers in Liverpool: '... though she may carry a basket, there is very little difference between her and a prostitute' (quoted in Behlmer, *supra* note 42, at 89).

<sup>45</sup> Gordon, *id.* at 40-42.

<sup>46</sup> For example, the 'Cruelty Act' passed in 1889 for England and Wales included sections prohibiting street trading by children between the hours of 8 pm (10 pm in summer) and 5 am.

<sup>47</sup> Judith Walkowitz, *Prostitution and Victorian Society* (1980). Walkowitz's research, concerned with the Contagious Diseases Acts, centred on Southampton and Plymouth in the UK.

<sup>48</sup> Arnon Bar-On, *Criminalising Survival: Images and Reality of Street Children*, 26(1) *Journal of Social Policy*, 63, 68 (1997).



school. The child should be visible only in those non-adult sites reserved for children and their mentors but not on the streets and not in the factories and mines.

These images lay behind successful campaigns for legislation promoted as a way of protecting children from the loss of their innocence and therefore their childhood. The factory system was presented as ‘unnatural’ and so not a place for children; those who worked in factories were, therefore, ‘children without a childhood’,<sup>49</sup> and children of all ages were conceptualised as frail and dependent: ‘These little ones’ as Sadler referred to them in the debate leading up to passage of the Ten Hours Act 1832.<sup>50</sup>

#### **4. The supervision of sexuality**

One of the most influential works on 19th century sexuality is that of Foucault. His concern is to document the emergence of new discourses of sexuality<sup>51</sup> - located in science and medicine and reaching fruition in the course of the 19th century - which had an effect on the way sex is talked about<sup>52</sup> and children’s sexuality is supervised.<sup>53</sup> In that sense sex was not repressed by the Victorians but ‘was driven out of hiding and constrained to lead a discursive existence’.<sup>54</sup> As examples of the prevalence of a discourse of childhood sexuality

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<sup>49</sup> Douglas Jerrold, the Editor of *Punch*, quoted in Cunningham, *supra* note 2, at 144.

<sup>50</sup> Quoted in John Ward, *The Factory System* Vol 2, 102 (1970).

<sup>51</sup> Foucault, *supra* note 25, at 27.

<sup>52</sup> Children were deprived of ‘a certain way of speaking about sex ... as being too ... crude’ (Foucault, *id.* at 30).

<sup>53</sup> *Id.* at 13-4.

<sup>54</sup> *Id.* at 33.



he gives examples ranging from the architectural layout of schools<sup>55</sup> to the increasing production from the 18th century of published advice by doctors and educators about schoolboy sex.

There occurred, therefore, what Foucault has referred to as ‘a pedagogization of children’s sex’: ‘Children were defined as “preliminary” sexual beings, on this side of sex, yet within it, astride a dangerous dividing line’.<sup>56</sup> The ‘truth’ constructed, stemming from two bio-medical innovations of the time - the ‘medicine of perversions and the programmes of eugenics’ - was that practically all children engage in sexual activity but that this poses a threat: the child was constituted as being in danger of compromising the moral fibre and line of descent (Foucault, 1990: 121 and also 153).<sup>57</sup>

By the closing decades of the 19th century, therefore, the aim of rearing children was that they would be ‘clean, adequately clothed, fed according to medical norms and taught to eschew habits - excessive consumption of alcohol, sexual excess and promiscuity and so forth - which were now regarded as being not only morally undesirable but also damaging to health and constitution’.<sup>58</sup> The neo-hygienist movement had added yet another gloss to existing sources of concern about the sexuality of children. The conflation of sin and sexuality has developed into a conflation of sexuality and a more general moral and physical deterioration. Such knowledge added fuel to parental and professional fears about sexual precocity, and masturbation - perceived as an early sign of corruption - became the focus of parents’ fears. By the end of the century child care manuals had pictorial advertisements for

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<sup>55</sup> *Id.* at 27.

<sup>56</sup> *Id.* at 104.

<sup>57</sup> *Id.* at 118, 121 and 153.

<sup>58</sup> Rose, *supra* note 31, at 85.



devices which controlled such aberrant behaviour<sup>59</sup> - evidence of the height of those fears which had been made explicit over a century earlier in two texts, *Onania or the Heinous Sin of Self-Pollution* (1710) and *a Treatise on the Disorders Produced by Masturbation* (1760).<sup>60</sup>

Yet, fascinating though Foucault's analysis is in its description of the minutiae of the diffusion and operation of power in society - how the discourse of sexuality operated as a technology of power and what were 'the effects of power generated by what was said'<sup>61</sup> - what is important for this analysis is why certain medical opinions, not always held by the generality of the profession,<sup>62</sup> fed into those notions of the sexuality of men, women and children which had most social and political influence. As Rose points out, 'a scientific discourse is not a mere register of effects from elsewhere. It consists of a set of complex ways of conceptualising the objects of attention' and 'Scientific discourses do not only *seek* truth they also *claim* truth'.<sup>63</sup> Not only is truth constructed in these conceptualisations but particular objects of attention are selected to generate truths. We are then left with a crucial question: why, in the second half of the 19th century and especially in the closing decades, was sexuality constructed and controlled in those particular ways which Foucault describes and what effects did that have on images of children?

What become useful at this points are those texts which have analysed the passage of contentious legislation as moral or symbolic campaigns. The question then changes to asking

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<sup>59</sup> Rex and Wendy Stainton-Rogers, *The social construction of childhood in Child Abuse and Neglect: Facing the Challenge* (W. Stainton Rogers, D. Hevey and E. Ash, eds., 1989).

<sup>60</sup> See Gittins, *supra* note 20, at 191-2.

<sup>61</sup> Foucault, *supra* note 25, at 11.

<sup>62</sup> See Michael Mason, *The Making of Victorian Sexuality* (1994).

<sup>63</sup> Rose, *supra* note 31, at 7-8.



whose moral and social beliefs, aspirations and power were under threat and what particular ideas of sexuality fed into those campaigns. To answer this question it is helpful to return to issues of class and gender.

## 5. Class issues

Foucault was concerned to move the debate from juridical and negative notions of power to a focus on the relationships between power and knowledge and the diffusion of power through techniques of surveillance and regulation. In relation to sexuality he therefore analysed how the ‘technology of sex’ was ‘deployed’ in society<sup>64</sup> through his ‘four great strategic unities’ which, from the 18th century, ‘formed specific mechanisms of knowledge and power’.<sup>65</sup> He makes the point that ‘The working class managed for a long time to escape the deployment of “sexuality”’<sup>66</sup> and outlines how the deployment of sexuality will eventually replace the previous regulatory techniques referred to as the ‘deployment of alliance’.<sup>67</sup> His functional analysis of such deployments argues that the deployment of the technology of sex occurs first within the middle and upper class families which feared the erosion of particular ideas of family and gender roles.

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<sup>64</sup> Foucault, *supra* note 25, at 77-96.

<sup>65</sup> *Id.* at 103.

<sup>66</sup> *Id.* at 121.

<sup>67</sup> *Id.* at 106.



Victorian middle class perceptions of the vulnerability of its status and norms led to ‘symbolic crusades’ to ‘rescue’ the victims of men not upholding the sanctity of the home and sex within it. As Cox notes, ‘The bourgeoisie as a class was one that always sensed a threat from within, in terms of a failure of its own cultural reproduction, and from without, through the external threat of mass society’.<sup>68</sup> Gittins would argue that the proliferation of material for parents on masturbation, for example, is a signifier of the widespread anxiety caused by changing definitions of roles and boundaries and fears that dominant moral and religious frameworks were under threat.<sup>69</sup> Specifically, there were fears that Victorian ideas of family and women were not shared by sections of the working classes - the ‘unrespectable poor’ - and so needed to be imposed on them. Those fears found a focus in the issue of prostitution - ‘The Great Social Evil’<sup>70</sup> and the ‘fear that starts at shadows’<sup>71</sup> - which united diverse groups within the ‘Social Purity’ movement<sup>72</sup> and which, in its focus on the age of consent, had such an enduring influence on the concept of childhood. The ‘Maiden Tribute of Modern Babylon’ - the four part series about child prostitution in the *Pall Mall Gazette*,

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<sup>68</sup> Cox, *supra* note 3, at 201.

<sup>69</sup> ‘Masturbation defied clear heterosexual codes, while at the same time undermining rhetoric of the family and notions of childhood innocence’ (Gittins, *supra* note 20, at 193).

<sup>70</sup> See, e.g., the book entitled *The Great Social Evil: Its Causes, Extent, Results and Remedies*, written by William Logan and published in 1871. For Logan, destitution constituted one third of his 4th ‘principal cause’ of prostitution. For a critique of Victorian views on causation see Fraser Harrison, *The Dark Angel* Chapters 12-14 (1977).

<sup>71</sup> William Acton, *Prostitution Considered in its Moral, Social and Sanitary Aspects* (2nd ed., 1870, reprinted 1972) in the preface to the Second Edition at p viii.

<sup>72</sup> The social purity organisations arose out of public debate about the repeal or extension of the Contagious Diseases Act (the first being passed in 1864) by which there could be enforced medical examinations of prostitutes near military depots. In the middle of the century child prostitution as such was not an issue (Cox, *supra* note



arising from W.T. Stead's 'purchase' of a virgin for £5 - 'exaggerated the role of children in the social economy of prostitution and misrepresented the way young girls were recruited for the streets'<sup>73</sup> but this representation influenced constructions of the sexuality of men, women and children.<sup>74</sup>

These campaigns used the image of the innocent, vulnerable child that had become so strong in relation to other successful campaigns for children's welfare. Yet, when these 'innocent victims' of 'the white slave trade' were 'saved' from a life of 'depravity' they were, in effect, punished by the harsh regimes of the 'rescue homes' and by the pressure to 'confess' the evil of their former lives. These contradictory messages were both necessary; one to ensure success of campaigning, the other to ensure the solidification of a particular set of norms about sexuality and the dependence of children. In that sense, as Cox points out,

'the symbol of the child was being used, not simply to legislate in the child's own defence, but also to assert the right of a moral majority to regulate the behaviour of all children in the interests of a particular ideology. It was .... an episode driven less by moral reformers with a radical edge and more by groups who saw in child prostitution

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3, at 149). The Act was repealed in 1886.

<sup>73</sup> Judith Walkowitz, *City of Dreadful Delight* 83 (1992).

<sup>74</sup> See, Walkowitz, *id.* chapters 3 and 4 for an excellent account of how this ordering of subjectivities occurred through the use of narrative.



a sign of general moral decline'.<sup>75</sup>

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<sup>75</sup> Cox, *supra* note 3, at 152.





The theoretical framework analysing reform movements as symbolic, so that the focus becomes the potentially declining power of the successful campaigning group<sup>76</sup> and the class-based nature of the norms imposed,<sup>77</sup> has, therefore, links with moral panic theory. Both require a focus on the social and economic conditions which led to a very generalised state of anxiety. Elsewhere I have argued that the existence of a national moral crisis in the 1880s was a major factor in the shift in the moral framework which allowed what had previously not been morally and politically possible - state intervention in the family to protect the parentally-abused child.<sup>78</sup> It is clearly also a factor here. The ‘condition of England’ question had resurfaced: there was economic recession, a sudden loss of confidence in the ability of environmental measures to solve social problems and the emergence of new bio-medical ideas which allowed the poor to be labelled, and treated, as ‘outcast’ and ‘a race apart’. As a result, it was, as Walkowitz points out, ‘no historical accident’ that the Criminal Law Amendment Act 1885 was rarely used to prosecute ‘corrupt aristocrats and international traffickers’ (despite their featuring in the public outcry which preceded the passage of the Act). Instead the passing of the Act ‘coincided with a new interventionist approach to working-class culture’.<sup>79</sup>

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<sup>76</sup> Joseph Gusfield, *Symbolic Crusade* (1963).

<sup>77</sup> See Anthony Platt *The Child Savers: The Invention of Delinquency* (1969). As Platt argues in relation to the movement to establish juvenile courts: ‘Child saving may be understood as a crusade which served symbolic and ceremonial functions for native, middle-class Americans. The movement was not so much a break with the past as an affirmation of faith in traditional institutions. Parental authority, home education, rural life, and the independence of the family as a social unit were emphasized because they seemed threatened at this time by urbanism and industrialism’ (at 98).

<sup>78</sup> Piper, *supra* note 13.

<sup>79</sup> Walkowitz, *supra* note 47, at 250-1. It would be mistaken, however, to view the passage of the Act as inevitable. As Stafford points out, publicity generated by the *Pall Mall Gazette* feature ‘resurrected’ a Bill which was ‘as good as dead’ (Ann



Class must however be linked with gender in discussion of these middle class moral campaigns. In Hooper's words, 'The potential for "protection" to become control of female sexuality is a recurring theme'.<sup>80</sup> When Jane Tyrell was (unsuccessfully) prosecuted under the Criminal Law Amendment Act 1885 section 5, Lord Coleridge, C.J. stated, 'The ... Act ... was passed for the purpose of protecting women and girls against themselves',<sup>81</sup> meaning that their sexuality must be controlled for their own good.<sup>82</sup> So, whilst the Governor of the Millbank Penitentiary for Convicts in London might write, 'Could we but raise the standard of morality among men to that which is established among the respectable portion of the

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Stafford, *The Age of Consent* 196 (1964)).

<sup>80</sup> Carol Hooper, *Child sexual abuse and the regulation of women: variations on a theme in Regulating Womanhood* 57 (C. Smart ed., 1992).

<sup>81</sup> R v Tyrell C.C.R. [1894] 1 QB 710 at p 712.

<sup>82</sup> The concern about the age of consent continued well into the 20th century: in 1922 it was raised from 13 to 16 for indecent assault and, though notions of adolescence have changed, sexuality is still a focus of control over older 'children' (Hooper, *supra* note 80, at 60).



other sex’,<sup>83</sup> as Booth noted, the ‘social burden of fornication’ was born almost solely by women and their daughters<sup>84</sup> and the idealised vision of the middle-class woman to which the governor referred was to be the norm imposed on all working class girls.<sup>85</sup>

## 6. Female sexuality and sex roles

### 6.1. Protecting daughters

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<sup>83</sup> Part of a letter written in 1843 to William Logan and reproduced in his book (*supra* note 70, at 17).

<sup>84</sup> Booth, *supra* note 35, chapter 4.

<sup>85</sup> See also, however, Lucy Bland, *Feminist vigilantes of late-Victorian England*, in *Regulating Womanhood* (C. Smart ed., 1992). She argues that efforts ‘to encourage the working class into a middle class “decency”’ give only a partial explanation of the activities of middle class feminists in the 1880s and the 1890s.



It is in any case clear from the legislation itself that gender is an issue: the Offences Against the Person Act 1861 criminalised the procurement for defilement of a girl under 21; and set the age of consent to 12 for girls; the Criminal Law Amendment Act 1885 raised the age of consent for girls to 16 but for boys to 14.<sup>86</sup> That the sexuality of girls was a more important site for intervention than that of boys was self evident to the Victorians: '[E]ach unprincipled, impure girl left to grow up, and become a mother, is likely to increase her kind three to five fold', wrote a Mrs Wardner in 1879.<sup>87</sup>

For the same reason the image of the child was often bound up in moral campaigns for children's welfare with the image of women. Analysis of the passage of the Factories Acts show that much of the campaigning for the welfare of children employed in factories was aimed in large part at the protection of female children. According to the Sub-commissioner of the 1842 Children's Employment Commission:

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<sup>86</sup> See Katherine O'Donovan, *With sense, consent, or just a con? Legal subjects in the discourse of autonomy in Sexing the Subject of Law* (N. Naffine and R. Owens (eds., 1997).

<sup>87</sup> Quoted in Platt, *supra* note 77, at 27. Interestingly, one of Acton's suggestions for preventative work to eliminate prostitution was 'instruction in household work' for working class girls. His argument was that they learnt only sewing and so they migrated to the cities for work where low wages were supplemented by prostitution. If they had learnt housework they would have filled numerous vacancies for domestic servants in the country and the colonies - free from temptation in the cities (Acton, *supra* note 71, at 295-9).



‘The employment of female children ... has the effect of preventing them from acquiring the most ordinary and necessary knowledge of domestic management and family economy, that ... when they come to marry, the wife possesses not the knowledge to enable her to give her husband the common comforts of a home ...’.<sup>88</sup>

That the classifying together of women and children - exemplified by the ‘women and children first’ norm of rescue - stems from ‘chivalrous’ precepts, integral to social structures of patriarchal power and to legitimating particular gender roles, is a well rehearsed argument but its effects in terms of the children concerned is rarely the focus of such analysis. Fears of unregulated sexuality and physical deterioration arising from the exploitation of women and children in the new workplaces were conflated with fears of disruption of gender roles - notably the role of women as mothers and home-makers *and* of girls as potential mothers and home-makers. So, regulating employment and prostitution equated to enforcing particular segregated gender roles. The regulation is via the criminal law to punish the ‘visible’<sup>89</sup> and

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<sup>88</sup> Quoted in Crescy Cannan, *Changing Families, Changing Welfare* 52 (1992), noting its discussion in J. Humphries, *Protective legislation, the capitalist state and working class men: the case of the 1842 Mines Regulation Act*, 7 *Feminist Review* (1981).

<sup>89</sup> For an excellent discussion of the current operation of criminal laws in relation to prostitution, in this instance the Street Offences Act 1959, see the discussion of the case of *DPP v Bull* [1994] 4 All E.R. 411 by Alison Diduck and William Wilson, *Prostitutes and Persons* 24(4) *Journal of Law and Society* 504 (1997).



via philanthropic activity to secure the ‘redomestication of apparently eroticised women’ .<sup>90</sup>

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<sup>90</sup> Carol Smart, *Disruptive bodies and unruly sex: the regulation of reproduction and sexuality in the nineteenth century* in Smart, *supra* note 85.



Such state intervention in the lives of women and children upset no moral code: it occurred only when the state was supporting a paternal role or itself taking on the paternal role. ‘The state gradually became a sort of moral husband through the development of forms of ‘protective legislation’.<sup>91</sup> In the factories women and children were beyond the protection of the head of the family and the state could justifiably intervene to exert the moral authority and discipline of the father. In that process, children’s sexuality is regulated: ‘Victorian women - respectable Victorian women - were idealised as asexual, domestic and pure, and such ideals were also applied to children’.<sup>92</sup> Not only were ‘proper’ women ‘pure’ so were their children.<sup>93</sup> As Hendrick says of the confusion in the minds of reformers, stemming at least partly from their ignorance of adolescence as a particular stage of development,

‘The logic of the thinking seemed to be that if the sexuality were removed, then so would be the “evil” - the girl-child would be restored to a state of purity in which she could exhibit a comforting and non-threatening self-sacrificing love’.<sup>94</sup>

## 6.2 Gender and childhood

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<sup>91</sup> *Id.* at 25.

<sup>92</sup> Gittins, *supra* note 20, at 167.

<sup>93</sup> See Smart, *supra* note 90, at 29.

<sup>94</sup> Hendrick, *supra* note 1, at 64.



‘In their state of unawakened sexuality, chaste women and all children shared a common nature’<sup>95</sup> but the alignment of images of child and women was at least partially dependent on the androgenous or even distinctly female conception of children which was constructed by the middle of the 19th century. Erasmus and Locke had thought of the child as a boy but by the third and fourth decades of the 19th century advice books for parents were blurring gender distinctions, notably in dress, and ‘If anything people were more likely to imagine the romantic child as female rather than male’.<sup>96</sup> The image of the female child persisted to the end of the century but by then, according to Cox, Little Lord Fauntleroy had been joined by action man.<sup>97</sup> Nevertheless, the lack of a dominant image of a male child as macho man in the making had allowed for dominant ideas of female sexuality to become part of the image of childhood.

## 7. Conclusions:

It is not surprising that, notwithstanding the influential writings of men like Locke and JS Mill, a discourse of children’s rights developed, historically, much later than a discourse of, and indeed, campaigns for, children’s welfare. The images of children which sustain a discourse of rights are those of ‘knowing’ and - in some measure at least - autonomous people with a sufficient level of understanding to exercise rights. Such images are threatening to adults and particularly so when they include the possibility of sexual independence. In contrast, the image of the child as a victim - vulnerable and dependent - is one which sits more happily with adult perceptions and concerns and which has made possible the passage

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<sup>95</sup> Cox, *supra* note 3, at 138.

<sup>96</sup> Cunningham, *supra* note 2, at 75.

<sup>97</sup> Cox, *supra* note 3, at 137.





of child welfare legislation.

Yet, 'the child as victim' is itself a particular construction. Historically it has included dominant images of the child as voiceless and - above all - innocent, not simply of the ways of the world and of human potential for evil but, more specifically, sexually 'innocent'. There is a sense in which the price paid by children over the last 150 years for the presumed benefits of child welfare legislation and provision has been their 'de-sexing'.

The child is now conceptualised as a victim in a range of circumstances which has been narrowed to encompass little more than abuse by parents (physical and now, in the discourse of divorce,<sup>98</sup> psychological and emotional abuse) and sexual abuse (that which most corrupts childhood innocence). Constructions are not fixed: it may be that the economics of health care will allow of the construction of the child as a victim of environmental pollution. What is still apparently authoritative is an image of childhood and child victimisation which has no conceptual 'room' for a child whose sexual activity is - to a lesser or greater extent - self-willed. That image, in place by the beginning of this century, is lasting evidence of the 'success' of Victorian child-saving campaigns in relation to children at home, at work and on the streets.

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<sup>98</sup> Christine Piper, *Divorce Reform and the Image of the Child* 23(3) *Journal of Law and Society* 364 (1996).

