

Subjectivity under Erasure: Adolescent Sexuality, Gender, and Teacher-Student Sex

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This article offers a reading of a recent Australian teacher-student sex scandal in order to interrogate the relationship between gendered subjectivity and cultural codes of gender. The questions of whether gender ought to make a difference to how we understand instances of so-called “intergenerational sex” and whether cultural codes accurately reflect sexual subjectivity are posed. It is argued that while cultural codes are not external or equivalent to subjectivity, this does not mean that they are not expressive of elements of subjectivity. The article concludes with the suggestion that the failure to attend to the nexus of the social and the psychical not only serves to strengthen a very recent and particular set of historical, political, and ideological forces but also risks creating foundations for misreadings of the history of male adolescent subjectivities.

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Michael Roper begins his article in this volume with the observation that “subjectivity occupies an awkward place in much recent work on gender.” I take him to be referring not to the fields of psychoanalytic gender scholarship, but to those most heavily influenced by what he describes as the “cultural turn” (p. 252), or what we might along with Hayden White (2000) term the “discursive turn.”¹ Roper is here building on his

¹ Hayden White (2005) demurs from the use of the phrase “linguistic turn” because, he argues, structuralist and poststructuralist analyses formative of this “turn” were far more concerned with discourse than with linguistics and the structure of the sentence. He insists on a distinction between language and discourse, arguing that discourse “is a highly sophisticated, self-conscious use of language at a level more general than the sentence.”

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earlier interrogations of gender history, in which he laments a prevailing tendency “to conceive of masculinity in terms of external codes and structures” (2005, p. 57) rather than to explore how individual subjects psychically and emotionally negotiate, invest in, resist, and shape these “external” codes, or cultural representations. He resists the “assumption . . . that the culturally constructed meanings of masculinity and femininity are wholly defining of subjectivity.” Roper here intervenes in the field of gender studies with important arguments that have also been made by many psychoanalytic cultural theorists (Bracher, 1993; Chodorow, 1999; Copjec, 1994; Dean, 2000).

I share this unease about the erasure of subjectivity in some of those applications of gender studies inspired by social constructionism and poststructuralism, even as I am thoroughly indebted to a good deal of the excellent research produced by these fields. I have argued elsewhere (Angelides, 2003), like Roper, that the omission of the psychic dimension in sociological and historiographical analyses often flattens out accounts of the human subject, society, and history, and leaves each of these formations devoid of affect and psychical dynamics. Other vital subjective elements such as ideals, values, fantasies, defenses, and desires are also often discounted, as Mark Bracher (1993) points out, as are the “interpellative forces . . . of discourse that cannot be reduced to a function of representation” (p. 10). Yet it is precisely affects and psychical dynamics—subjectivity—that are chief among the constitutive elements of human relationships, motivation, decision-making, and meaning-making. Moreover, if affects and psychical dynamics are pivotal to each of these human activities, then they are also, incontrovertibly, pivotal to the trans/formation of social and historical meanings and practices. Concurring with Roper’s call to explore “points of connection between the social and the psychic” (2007, p. 2), I would reframe this somewhat to suggest that we ought to strive to produce analyses that at the very least register the inevitable and dynamic two-way relationship between the interlocking and mutually constituting structures of subjectivity and discourse (Dean, 2000).

This article takes up Roper’s provocation in this volume that “there is more to subjectivity than cultural codes.” However, I want to interrogate the relationship between discourse and subjectivity in a slightly different way from him. Reading a recent Australian teacher-student sex scandal, and assumptions about adolescent gendered subjectivity animating much of the social debate surrounding the case, I argue not that cultural codes or representations are “external” or equivalent to subjectivity, but rather that they are inextricable from, and expressive of, aspects of subjectivity. The article concludes with the suggestion that both the reification of culturally constructed codes at the expense of an account of subjectivity, *and* the erasure of subjectivity from cultural codes, are two sides of the same analytic paradigm. Moreover, this dual erasure of subjectivity is far from benign. Not only does it serve to strengthen a very recent and particular set of historical, political, and ideological forces, but it also risks creating foundations for misreadings of history.

Hot for Teacher

In 2004, Karen Ellis, a 37-year-old physical education teacher in a Melbourne secondary school, pleaded guilty to six counts of the statutory offence of “sexual penetra-

tion of a child under the age of 16 years” (*Crimes Act 1958*, [Vic.], s. 45).² Ben Dunbar, the so-called “child” in question, was a student of Ellis’s, and only three months short of his sixteenth birthday and the general age of consent. Dunbar claimed not only to have consented to sex with Ellis but to have initiated it and to have gained positively from the experience. However, within the state of Victoria, Australia, the issue of consent is judicially irrelevant as those under sixteen years of age, *and* those between sixteen and eighteen who are under the “supervision, care or authority of an adult,” are deemed incapable of giving informed consent (*Crimes Act 1958*, [Vic.], s. 48).³ Similar “relations of authority” legislation is commonplace in the United States, Canada, the United Kingdom, and parts of Europe (Graupner, 2004; Levesque, 2000). Within such legislation there is little if any recognition of adolescence, or of different degrees or modes of childhood. For the purposes of law, then, individuals under the age of consent and those between the ages of consent and majority (when in relationships of authority) are generally defined as “children.”⁴ They are also, when involved in sexual relations with adult “offenders” (as defined by law), automatically categorized as “victims.” As we will see, notwithstanding Dunbar’s own protestations, in Victorian law he is constructed only as a “child victim.”

However, I want to resist narrating this story, as has been customary, from the perspective of the law and through the categories embedded within the law, such as adult/child, perpetrator/victim, consent/coercion, power/powerlessness. The reason for this is that if we remain oblivious to the performativity of discourse, in this case legal discourse, “to produce the phenomena that it regulates and constrains” (Butler, 1993, p. 2), then the dynamics, meanings, and effects of an intergenerational encounter are largely predetermined and, I will suggest, potentially—and in this case actually—misrecognized by this legal idiom.⁵ That is to say, if we are to assume, as does the law, that the cultural codes of “perpetrator” and “victim” map unproblematically onto adults and children respectively, then a whole raft of assumptions built into such codes have already prefigured our understanding of the subjectivities of those involved. To circumvent this, I want to begin with the question of adolescent subjectivity.⁶ In eschew-

² The offence of “sexual penetration of a child under the age of 16 years” is akin to the offence in U.S. jurisdictions of “statutory rape”. See *Crimes Act 1958* (Vic), Section 45.

³ The *Crimes Act 1958* (Vic), Section 48, deals with the offence of “Sexual penetration of 16- or 17-year-old child.”

⁴ In some European countries, it does not automatically make it a crime that a relationship of authority exists, as in Australia, but “that the authority is misused in order to gain consent to the sexual contact” (see Graupner, 2004, pp. 130-140).

⁵ It is my view that social and legal commentary has been totally oblivious to the performative function of discourse.

⁶ With regard to the jurisprudence of sexual offences, it is clear that one of the few spaces opened up for the articulation of adolescent subjectivity is through the subject position of “victim.” However, there is rarely space for the articulation of an active and agentic adolescent sexual subjectivity.

ing the language of the law—which has, in almost all socio-legal commentary on this case, been taken at face value as the only accurate and possible representation of the relationship—I shall instead narrate this story from the perspective of Dunbar. It must be said that the formation of subjectivity is neither wholly independent of, nor wholly determined by, the performative function of discourse, but is instead inextricably bound up with it. Dunbar’s account, like any self-report, therefore, is not an unproblematic and self-evident reflection of some ultimate truth. It is a mediated account that draws on a range of cultural codes. However, neither is Dunbar’s self-report something to be dismissed, no matter what his age and no matter how mediated his perspective. Regrettably, Dunbar’s own views have been at best assimilated to, and at worst erased by, the hegemonic discourse of child sexual abuse and the law. It is for this reason that I think it is only fair to give voice to Dunbar’s views on his own terms in order to clear alternative discursive spaces for the articulation of his subjectivity.

Dunbar and Ellis began a sexual relationship in October 2003 while Ellis’s husband was interstate on business. She was having marriage difficulties and her husband was often away on work trips several weeks at a time. As a result of these problems, it seems, the forensic psychologist treating Ellis concluded in her report to the court that she was “vulnerable to ... flirtation and succumbed to it” (*R. v. Ellis*, 2004, p. 71). Ben reinforced this reading, insisting that *he* initiated the relationship and that Karen at first “displayed reluctance” but eventually became involved (p. 69). Explaining his motivation, he said that “everyone at the school thought she was a bit of all right, and so did I, I suppose. I found her attractive ... so when you find someone attractive you go after them” (cited in Tomazin, 2004). “But,” as he remarked in a separate interview, “I mean, I wasn’t hoping for any long-term relationship” (Greenaway & Bonella, 2005).⁷ However, before long, Dunbar’s mother became suspicious, after spotting him getting into Ellis’s car and after having apparently “noticed a change in her son’s behavior” (*R. v. Ellis*, 2004, p. 66). Without talking to her son at all, she then notified the school and the police. Ellis was charged, pleaded guilty, and given a 22-month suspended sentence.⁸

⁷ Interviewer Liz Hayes responded to this claim with an air of disbelief: “You weren’t?” (Greenaway & Bonella, 2005).

⁸ Ellis was also placed on the Sex Offender Register. The register bars her from “child-related employment” and places on her *severe* restrictions, as Smallwood explained: “for the next 15 years you have to keep police informed of where you live; the colour, the registration number of any car that you have. You have to ... keep the police informed as to where your children are; what children are staying at the house. If you decide to go on holidays ... it is a criminal offence not to tell police where you are going; where you are staying.... It would be a criminal offence for you to have contact with; or even do volunteer work; or be on a committee for any preschool, kindergarten, or childcare centre; any educational institution for children; any clubs, associations, or movements, including cultural, recreation, or sporting nature with significant child membership or involvement; religious organizations; fostering children ... and the like” (*R. v. Ellis*, 2004, pp. 74-75).

Between the time of Ellis's arrest and the time Dunbar reached the age of majority (18 years of age), he consistently and adamantly repudiated the label of "child victim." In fact, in the widely publicized television interview that the pair gave on Australia's *60 Minutes* current affairs program two years after Ellis was first sentenced, Dunbar declared himself the marauder. "In the way that it happened, you could say I was a predator," exclaimed Dunbar. "I mean, I went after her.... I took my chances. And I just went for it." Ben was responding to questions from *60 Minutes* presenter Liz Hayes, known for her vociferous denunciation of child sexual abuse and anything proximate to the field of intergenerational sex. However, this was not a straightforward case of intergenerational sex or of child sexual abuse, and Dunbar was anything but a "child" as conventionally conceived. Nonetheless, in spite of Dunbar's self-assured declarations of sexual agency, Hayes was unwilling to accept his attempt at inverting the standard "adult-perpetrator"/"child-victim" formula. "But you know that's impossible," responded Hayes, "you can never be the predator. You know that, don't you?" Hayes' condescension notwithstanding, the rhetorical framing of her question reflects not only a socially predominant conflation of intergenerational sex and child sexual abuse, no matter what the circumstances of the encounter. It also reflects a hegemonic discourse of child sexual abuse that is directed more at instating norms of adolescent sexuality and subjectivity than it is at providing social and discursive spaces for the recognition of the diversity of actual adolescent experiences and perspectives.

In my view Dunbar demonstrates a better grasp than Hayes of the performativity, or, constructedness, of our legal categories and definitions, and of the gulf that often exists between such categories and what they are taken to represent. We get a sense of this in his response to her demand that he recognize himself as a victim: "Well, apparently I'm the victim. You know that's...." Then, in yet another attempt to disavow his subjectivity and impose victim status on him, Hayes remained defiant: "But you are. Not 'apparently.' You are." Still trying to articulate a subtle distinction between discursive categories and subjective experience, he replied, "by the law, yeah, yep." And just when Hayes and the *60 Minutes* editorial team provided Dunbar with one of the few opportunities to affirm his perspective, he was again infantilized: "You don't see yourself as a victim?" Hayes asked in patronizing fashion. "Definitely not, no," he said with palpable self-belief.

However, it was not just the sensationalized *60 Minutes* program that was intent on infantilizing Dunbar and repudiating his experiences and perspective. Public outcry surrounding Ellis's initial suspended sentence had already effectively achieved this. Parents groups and victims of crime and child-abuse support groups chose to ignore Dunbar's vociferous and public rejection of child-victim status and his defense of Ellis, and instead came forward to censure the decision and Ellis' behavior. Comparisons were immediately made to the case of Gavin Hopper, the international tennis coach and Australian physical education teacher, who only three months earlier had received a minimum jail term of two years and three months for a sexual relationship of at least three years duration with a 14-year-old pupil in the mid-1980s. A spokesperson for Parents Victoria said the "main problem is the example that it could show to the com-

munity, and it does seem to show, perhaps, that a female teacher having a relationship with a male student isn't as bad as the opposite situation." Similarly, Noel McNamara from the Crime Victims Association said, "I just think it's disgusting. It's ... clearly a travesty of justice when Hopper gets a jail sentence and Ellis gets a non-custodial sentence.... And ... to draw a line in the sand and make it a gender issue, which has obviously been done [by] Smallwood, it's disgraceful" (Carbonell, 2004).⁹ Notably, however, the young woman involved with Hopper "came out" as a self-identified "victim" more than a decade after the relationship. Dunbar, on the other hand, wanted to give evidence saying, "I am not the victim, she [Ellis] is" ("Appeal fails," 2005).¹⁰ In fact, he said, "If anything I've gained" (*R. v. Ellis*, 2004, p. 70). Although the public condemnation of the decision to suspend the sentence was, on the surface at least, directed at challenging an alleged gender bias in the sentencing of male and female sex offenders, the outcry itself was premised on a conflation of the experiences of male and female "victims." The result was a disavowal of Dunbar's subjectivity as a consenting mature minor.

Public reaction was so intense that the Director of Public Prosecutions lodged an appeal on the grounds that the sentence was "manifestly inadequate" (*D.P.P. v. Ellis*, 2005 p. 3). As Justice Callaway, one of the appeal judges, revealed, the issue of gender equality before the law was indeed the critical issue:

... a sentence of 22 months' imprisonment, wholly suspended, for six counts of sexual penetration in the circumstances of this case is so lenient that it can be explained only by an unconscious sympathy with a female offender or a belief that no real harm had been done to the victim. The sentence unintentionally violated the rule of equality before the law, including equality of concern for male and female victims and equality in the sentencing of male and female offenders. (*D.P.P. v. Ellis*, 2005, p. 7)

The appeal was upheld. Ellis was registered as a serious sexual offender, she was given "a total effective sentence of two years and eight months' imprisonment," fourteen of which were suspended. Callaway remarked that "the respondent must be required to serve part of her sentence in prison ... [otherwise] the principle of equality will not be observed, nor would the Court sufficiently condemn the respondent's conduct" (*D.P.P. v. Ellis*, 2005, pp. 14-15).

⁹ Hetty Johnson, founder of the Bravehearts organisation for child abuse victims, also expressed anger over a perceived double standard in the law: "It's the same offence, it matters not by gender ... that woman is as guilty as Gavin Hopper and she should be sentenced likewise" (cited in Leung, 2004).

¹⁰ The lawyer representing Ellis made this public statement about Dunbar.

Gender Equality, Gendered Subjectivity, and the Gendering of Victim Impact

While it might seem equitable to challenge what at first glance appears to be a gender bias in the law regarding sentencing, I argue that it was not in fact the sentence of Judge Smallwood but the sentence of appeal judges, Judges Callaway and Buchanan, which misjudged the issue of gender. It seems to me that the issue of equality of treatment of offenders and victims occluded not only important considerations pertaining to the gendering of subjectivity and intersubjective dynamics but also, more specifically, to important gender differences regarding the impact of intergenerational sex.¹¹

One of the things highlighted by the Ellis case is that judges have considerable discretion when it comes to sentencing. As Sam Garkawe (2006) reminds us, for “most crimes maximum and minimum penalties are set out in legislation, but there is normally a large range of possible penalties in between that a court can order” (p. 4). For instance, for the crime of “sexual penetration of child under the age of 16,” where the child is under “the care, supervision of the authority of the accused”—the offence committed by Ellis—the maximum punishment is fifteen years imprisonment (*Crimes Act, Vic, 1958, Section 45*). As the phrase indicates, “discretionary sentencing” is premised on a judge’s particular subjective interpretation of the circumstances of a case. The point to underscore here is that the penalties as laid out in the statutes and as handed down by courts are inflected by historically specific assumptions about gender, victim impact and harm.¹² The issue of female sexual offenders receiving lenient sentences by male judges has been a growing concern in Australia, the UK, and the U.S. in recent years. The explanation commonly offered for this apparent gender bias in sentencing is a residual historical presupposition that it is every boy’s ultimate fantasy to have sex with a female teacher and that this often shields boys from harm. Critics of Judge Smallwood’s suspended sentence suggested that his decision was based on just such an outmoded gendered assumption. With the increasing number of cases of adult female offenders coming to the attention of the police, the courts, and the media in the last five or so years, this assumption has been vigorously challenged, just as it was by the Department of Public Prosecution with regard to the original Ellis case.

¹¹ In some instances, I think the phrase “intergenerational sex” is problematic, as it privileges arbitrary distinctions of age as determinative of the “nature” of the sexual encounter. Alternatively, if we were to define some of these sexual encounters between adults and minors on the basis of cognitive development, for example, we may find little difference in levels of cognitive functioning between the two parties involved, and thus a different meaning of “generational.”

¹² See Levine (2006) on the history of the gendering of statutory rape in the U.S. Levine argues that, although gender-neutrality has been enshrined in legislation, “legal scholars too easily slipped into the language of gendered constructs when writing about the *crime*” and have thereby “implied that women are unlikely offenders, and that any harm suffered by males must be trivial” (p. 405). See also Garkawe (2006) for a discussion of how sexual offences and penalties have inscribed in them assumptions about victim impact and harm.

It has been the growing emphasis on gender equality before the law—in terms of both victims and offenders—that has led to a greater focus on rendering sexual acts gender-neutral. High profile child sexual abuse researchers have commented on the recent shift in public attitudes and in attitudes of the police force and the legal system. David Finkelhor, Director of the Crimes Against Children Research Center at the University of New Hampshire, says that “‘there’s been a decline in the double standard. That’s why you’re seeing more of these cases’ As more women enter law enforcement, he said the older attitude that boys are willing, even lucky, participants has changed” (cited in Koch, 2005). Robert Shoop (2004), author of *Sexual Exploitation in Schools: How to Spot It and Stop It*, agrees. “Many people in society feel boys should want sex and it’s not harmful, and girls should not want sex and it is harmful. . . . The reality is, in both cases it’s illegal, it’s harmful and it’s wrong” (cited in Bone, 2005). The insistence on treating male and female victims (and offenders) equally and on challenging the “lucky boy” narrative is reflected in the media coverage of the Ellis case. In the *60 Minutes* interview cited earlier, Liz Hayes staged a contest between current normative thinking and the outmoded notion of the lucky boy narrative. This took place in her discussion with adolescent psychologist Professor Michael Carr-Gregg about teacher-student sex. “So when you hear people say, ‘Good on him, no harm done,’ what do you think?” she asked disingenuously. “I think *taurus excretus*,” he replied. “*Taurus excretus*?” inquired Hayes in a performance of bewilderment. “Bulldust,” declared Carr-Gregg. “It’s absolute nonsense. I don’t know who they think they’re kidding. This is a child.”

Australian newspapers were also awash with articles detailing the cultural remnants of the anachronistic lucky boy narrative. For example, in her article “Teachers’ pets” in Australia’s only national newspaper, the *Australian*, Kate Legge (2006) commented that the court’s re-sentencing of Ellis “sought to drive a stake through the fantasy of older women deflowering young men.” “Adolescent boys who once were heroes are now cast as victims,” writes Legge, “ripe for counselling, not bragging rites” (p. 28). Or take Ian Munro’s (2006) article, “The harm when women prey on boys,” in Melbourne’s *Age* newspaper. On a quest to examine this issue of gender bias in the treatment of sexual offenders and to discredit what he sees as the romantic narrative of the “lucky boy,” the article begins with, and is framed by, the following universalising axiom: “Being seduced by an older woman is seen as a young man’s fantasy, *but it is sexual abuse*” (emphases added). Munro quotes social worker Patrick Leary, who proclaims that the “idea that it’s some sort of fantasy or that it will be a rite of passage is a myth.” Aimed not only at boys, but also at any adult who may be inclined to disagree, these statements clearly have a pedagogical function: to preach the doctrine that a boy’s fantasy of sex with a teacher is a myth that, if acted upon, will result in abuse.

One of the problems with this cultural and historical shift in norms, as evidenced by the Ellis appeal decision, is the operative assumption that sexual offences can be apprehended objectively outside of differential gendered contexts—that is, that sexual offences are gender-neutral. As Judge Callaway noted when handing down his sentence to Ellis, the fact that Ellis is deemed by law a serious sexual offender means that “we

have a discretion ... to impose a sentence or sentences longer than would be proportionate to the gravity of the offences considered in light of their objective circumstances" (*D.D.P. v. Ellis*, 2005, pp. 8-9).¹³ Callaway's claim, when viewed in the context of his earlier statement that "the fact that in this case the offences involved heterosexual intercourse between a mature female and a young male does not make the offending less serious than that between a mature male and a young female" (*D.P.P. v. Ellis*, 2005, p. 6), reveals the belief in the equalization, or, neutralization of gender with regard to victim impact. "We must not replace one set of unjust stereotypes by another that is no less unjust" (*D.P.P. v. Ellis*, 2005, p. 8). Moreover, it is precisely the comparison with the Gavin Hopper case that conditioned the outcome of the appeal case. Ellis was compared to Hopper, and Dunbar was compared to Hopper's victim. That is, in both sets of comparisons the genders themselves were equated and conflated, and gender was neutralized. Yet even the judges in the appeal case made it clear that Ellis was not a predatory offender in the sense of Hopper (*D.P.P. v. Ellis*, 2005, p. 13), and that Dunbar was not a victim in the sense of the Hopper victim. However, in spite of the fact that Callaway accepted "that Benjamin was not sexually inexperienced ... that, in important respects, he took the initiative ... [and that there] was certainly no lack of consent" (*D.P.P. v. Ellis*, 2005, p. 12), the subjectivities of both Ellis and Dunbar—and the intersubjective dynamics structuring their relationship—were downplayed by the appeal judges in the interests of purportedly upholding some notion of objective gender-neutral offences. But how appropriate are such cross-gender comparisons of sexual offences, offenders, and victims? How relevant is the question of gendered subjectivity? What if sexual offences and the ontology of harm (or lack of it) are gendered? What if no harm was produced for Dunbar?

Research on intergenerational sex demonstrates clearly that the question of gendered subjectivity and intersubjective gender dynamics is often a critical—although not uniformly determinative—factor in the formation of sexual agency and sexual competency, as well as a decisive factor as to whether the experience is correlated with negative or positive outcomes for the young people involved. Bruce Rind's (2004) summary of the last two decades of non-clinical data of adolescent males who have had sex with adults shows "overwhelmingly that such relations are characterized mostly by positive reactions based on consent if not initiative on the part of the minor, with perceived benefit rather than harm as a correlate" (p. 55). While we must be cautious of generalizing as to the question of gender difference, this finding is also backed up by the research of Nelson and Oliver (1998), one of the few overtly feminist studies to directly compare gender differences in cross-generational sex. Not surprisingly, Nelson and Oliver found that "the gender of the participants is always central to the experience" (p. 555). Although manifestly critical of all intergenerational sex between adults four years or more older than minors, Nelson and Oliver's results revealed what was for them an unexpected finding: "In general, girls were more likely to interpret their

¹³ Callaway is here quoting from the prosecution's argument in *R v. Ellis*, 2004.

experiences as coerced and harmful, while boys were more likely to interpret their experiences—especially their experiences with women—as consensual and not harmful” (p. 565).¹⁴ The Ellis-Hopper comparison mirrors this gendered pattern. Almost twenty years after the fact the young woman who had the affair with Hopper came forward claiming to have been manipulated by him, to have been too young to give informed consent, and to have been seriously harmed. Ben Dunbar, on the other hand, steadfastly rejected any suggestion that he was unable to consent or that he was harmed or negatively affected. Quite the contrary, in fact:

At no stage has this affected my life. If anything I’ve gained, from not knowing where I was heading in school to doing a pre-apprenticeship course and will come out a second year electrician. I work as a part-time tiler on my free days. I won the best and fairest for cricket which shows that my concentration hasn’t changed and this hasn’t affected me at all. (*R v. Ellis*, 2004, p. 70)

The Ellis case, situated in the context of the broader research findings on the gendering of adult-child sexual experiences, highlights a palpable tension between the ethical and legal ideal of gender equality and the specificity of gendered subjectivity. Nelson and Oliver (1998) are themselves cognizant of this tension, as revealed in their remark that “the gender neutrality of the law belies the reality of gendered social constructions of sexuality that are very real in their consequences” (pp. 573, 576). Interestingly, the way Nelson and Oliver attempt to resolve this tension in the theoretical discussion mirrors in important ways not only the way it was resolved in the appeal case against Ellis, but the way in which social and media commentary has tried to make sense of Ben’s claim to have gained from the experience. At the heart of these efforts at resolving the tension between gender equality and gender-specific subjectivity is a theory—even if sometimes implicit—of the social construction of masculinity and the idea that there is a gulf between external codes of gender and actual gendered subjectivities.

Nelson and Oliver make this explicit, when they propose that “the gendered social construction of sexuality affected children’s subjective interpretations of their experiences” (1998, p. 572). What they mean by this is that at an “objective level” both the boys and the girls were abused (pp. 572, 573), but at a subjective level the boys were able to draw on external codes of masculinity—what they call “alternate constructions of one’s experiences”—which provided them with a “status-enhancing interpretation of their experience” (p. 573). They go on to suggest that “even if they had been manipulated, their sense of masculine potency had been enhanced in the encounter” (p. 573). In other words, boys are able to wear their “conquest” of an older woman as a

¹⁴ Nelson and Oliver (1998) had expected to find not only that “boys’ experiences could be as traumatic as girls’... [but] that the special problems of sexual identity and lack of social support might even make the boys’ experiences worse” (p. 555).

badge of honor, as a sign of masculine sexual prowess. The implication is that in misinterpreting an abusive scenario for a status-enhancing one, the boys are unable to accept the reality of the encounters as abusive and are thus alienated from their “true” subjectivities. A similar distinction between the “objective” sexual offence (abusive act) and the subjective experience structured Judge Callaway’s reasoning in the Ellis appeal case. Recall that Callaway noted the Court had the discretion “to impose a sentence or sentences longer than would be proportionate to the gravity of the offences considered in light of their objective circumstances” (*D.P.P. v. Ellis*, 2004, p. 9). And these so-called “objective circumstances” were the basis for overturning the original suspended sentence and imposing a custodial sentence, in spite of the acknowledgment that Dunbar had consented and felt positive about it. “Unless that is done,” remarked Callaway, “the principle of equality will not be observed” (*D.P.P. v. Ellis*, 2005, p. 15).

The bulk of the media coverage and public commentary—which supported the custodial sentence for Ellis—implicitly or explicitly repudiated as fantasy or myth the “lucky boy” narrative. In doing so, the popular cultural discussion of the case was framed by a similar distinction between external codes of masculinity and the purported “reality” of young male subjectivity. We saw this in the *60 Minutes* interview and the article by Ian Munro discussed earlier. Academic and psycho-medical commentators followed suit. For example, forensic psychologist Rebecca Deering was glossed by Legge (2006) as suggesting that “boys tend not to do (i.e., tell authorities) because masculinity teaches them independence and strength, and society portrays early sexual contact with women as a positive initiation into manhood, an occasion to celebrate.” But, she argues, “male victims mask their hurt and confusion” (pp. 28–29). Or as clinical psychologist Paul Grech claims in a similar vein, “bravado and the superficial perceptions of a heroic deed are not necessarily the reality” (cited in Legge 2006, p. 30).

The problem with this distinction between external codes and subjective reality is that there is no interrogation of their co-constitution and mutual entanglement. Even if some young men do not recognize themselves in external codes of masculine sexual prowess, for instance, and indeed suffer anxiety and other psychological conflicts as a result of a sense of alienation from them, such codes are never simply *external* to subjectivity. Even when resisted, these codes, or norms, are the very site of the ongoing negotiation and articulation of subjectivity. That said, the point I want to stress is that *some young men might very well identify with such codes and feel they are an accurate representation of their experience and sense of self*. Ben Dunbar is perhaps a case in point here. It seems a little odd to me that we uncritically accept the subjective perceptions of those young people who indeed have felt manipulated, coerced, victimized, and sexually abused by adults, yet we trivialize or discount the subjective perceptions of those that not only did not feel abused but felt their experiences were wholeheartedly consensual and positive. This hierarchical ordering of “victim” subjectivity, and erasure of male adolescent sexual agency, is precisely what structured Nelson and Oliver’s study, as well as the appeal case against Ellis and the cultural commentary that closed down any spaces for Dunbar to articulate his voice on his own terms.

Conclusion

Despite strident child protection efforts in our society, what the Karen Ellis affair demonstrates, in my view, is that in the realm of adolescent sexuality and the law, we are often just as adept at policing, punishing, and disempowering competent adolescents as we are at protecting them from harm. We are sometimes more concerned with defending ideological positions, laws, and politics than we are with seeking to understand the complexity of sexual relations and seeking, genuinely, to listen to, understand, and allow for the articulation of a range of adolescent subjectivities. Ellis may have made an unethical decision to enter into a sexual relationship with a pupil at her school. But ought this sexual relationship, which only a cursory scan reveals was consensual and anything but intrinsically damaging, result in a prison term? In my view, Ellis did not deserve to go to jail and Ben Dunbar does not deserve to shoulder the massive guilt he will almost inevitably be haunted and hindered by for having initiated an affair that has sent someone he “know[s] is a good person” (*R v. Ellis*, 2005, p. 70) to prison and that has irrevocably and catastrophically ruined her life.

It is not enough to try and impute total blamelessness onto Dunbar and total culpability onto Ellis. No matter how much we may try to convince them, and ourselves, that Dunbar is a victim and Ellis a serious sexual offender culpable for breaching her duty of care and trust, this will never capture the relationship as it was experienced from the perspectives of the participants. As psychologist Sharon Lamb (1996) points out, even when counselling *actual* victims of sexual abuse it is crucial “to tease out the accurate level of [victim] responsibility” (pp. 179-180). Many victims know that there were moments when they made particular choices or unwise decisions that contributed to the abuse. Lamb goes on to argue that when “we blame victims too little, we make them too small as individuals and reinforce the passivity that was inherent in the experience of victimization” (Lamb, 1996, p. 181). Lamb is, of course, not here talking about those individuals who are competent and consenting minors, such as Dunbar. To extend Lamb’s analysis, I argue that when we blame perpetrators too much—and I am talking here about voluntary, or, consensual relationships such as Ellis and Dunbar’s—we fail to recognize the subjectivities of the young people involved. This can result, as it did with Ellis and Dunbar, in a misrecognition of the intersubjective dynamics structuring the encounter and the misapplication of the categories of perpetrator and victim. Short of complete amnesia or repression, Dunbar will, for the rest of his life, know that, as he himself said, “it takes two to tango,” and that he was an agentic partner in that dance. This is potentially an immense burden of guilt for anyone, adult or child, to endure.¹⁵ To circumvent such a potentially debilitating scenario, Dunbar’s sense of agency and responsibility ought to be properly recognized.

In my mind Ben Dunbar and Karen Ellis have been pawns in a broader historical and political battle over the issue of gender equality before the law. Rendering the

¹⁵ See Angelides (2004) for an argument about the potential detrimental psychological effects of trivializing or ignoring a young person’s sense of sexual agency.

“lucky boy” narrative mere historical myth is one of the political means by which the move toward gender equality (or, neutrality) has been secured. The repudiation of the subject position of “lucky boy” is intimately connected, it seems to me, to what Roper identifies in this issue as the prevailing tendency to view masculinity more “as a matter of social or cultural construction than as an aspect of personality.” Although intimately connected, there is an interesting twist here. What we have seen in the Ellis-Dunbar affair, and in recent social and cultural efforts to invalidate the subject position of the “lucky boy,” is a simultaneous overvaluation and undervaluation of socially constructed codes of masculinity. On the one hand, there is an abiding recognition of the reality of external cultural codes. However, on the other hand, there is a palpable refusal to recognize these codes as expressive of the psychical realities for some individuals. This suggests something slightly different, albeit related, to the concern Roper raises about the naive reification of cultural codes as somehow representative *of* subjectivity. Rather than misrecognising representation *as* subjectivity, I argue that the treatment of Ben Dunbar and others like him demonstrates a failure to recognize subjectivity *in* representation. However, either way we are left with the same problem: a failure to apprehend the intersection of the socio-psychic and the ways in which the two formations of subjectivity and discourse are mutually informing.

In conclusion, I want to suggest that this failure to attend to the interface of the socio-psychic risks installing foundations for future *misreadings* of history. For if sociologists of the present and historians of the future are to relegate the “lucky boy” narrative and subject position to the scrap-heap of history—that is, if they were to take present cultural disavowals of the “lucky boy” as fact—they might be guilty of misreading norms of adolescence for adolescent subjectivities themselves. This means that attempts in the present to construct norms of adolescent sexuality might themselves be inadvertent attempts to forge an as yet unwritten history for the future. However, to accept either of these present or future renderings would be to accept the erasure of an important part of adolescent sexual experiences, which are an important part of history.

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