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Title: Harm, Responsibility, Age and Consent

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Harm, Responsibility, Age and Consent.

Abstract

This article explores the contradictory ways in which adolescents just under the age of consent are represented in illegal sexual relations with both men and women who are over the age of consent. We are specifically interested in the ways in which the gender of the adolescent and the adult affect public perceptions, legal responses and perceptions of harm of sexual relations. We argue that the development of an indiscriminate legal and policy narrative of child abuse which increasingly includes all aspects of adolescent sexuality, ‘erases’ adolescent subjectivity. By exploring the nuanced ways in which the historical construction of childhood as sexually innocent intersects with current cultural scripts of femininity and masculinity, this article hopes to add to the small but growing literature on the issue of sexual consent, sexual ethics and sexual citizenship for young people.

Key words

Child sexual abuse

Heterosexual scripts

Age of consent

Sexual citizenship

Introduction.

In this article we are interested in exploring consent and its relation to age and gender, for both the instigator of the sexual relation, and the subject for whom consent is (not) required. We are especially interested in the relation between consent and harm where a duty of care, responsibility and authority is relevant, as is the case with teachers for example. The seriousness of the harm of inappropriate sexual activity is also timely since the last decade has seen a range of legislation passed in the United Kingdom, Canada, European Union and Australia, to increase the age of protection from sexual harm to eighteen in certain situations.¹

Such an increase in the age of sexual responsibility demonstrates quite clearly that we are in the midst of a cultural paranoia about young people and sex, a point that has been previously and regularly noted over the last few decades². Since the late 19th century in fact, our societies have become increasingly interested in the normative development of children, the differences between children and adults and have explored a variety of ways in which to demarcate childhood from adulthood³. The creation of adolescence to bridge the divide between childhood and adulthood is one example, and was itself developed in the early 20th century by G Stanley Hall. In this well known formulation, adolescence is understood as a time of storm and strain, where childhood innocence is left behind but where adult capacities are still developing⁴. A developmental psychological creation, adolescence nevertheless has primacy in modern understandings of the (im)mature decision making available to teenagers, and has been used in the 21st century to support legislation to increase the age of the sexual protection of children⁵.

¹ Steven Angelides *‘Inter/subjectivity, power and teacher-student sex crime’*. *Subjectivity*. 26, 87-108. (2009); Helmut Graupner *‘The 17 year old Child: an absurdity of the late 20th century’*. In Helmut Graupner and Vern L. Bullough (eds) *Adolescence, Sexuality and the Criminal Law: Multidisciplinary Perspectives*. Haworth Press: New York, 7-24 (2004); Carol Dauda *‘Sex, Gender and Generation: Age of Consent and Moral Regulation in Canada’*. *Politics and Policy*. 38:6, 1159-1185. (2010)

² Sharon Hayes and Belinda Carpenter with Angela Dwyer *Sex Crime and Morality*. Routledge: London (2012)

³ Belinda Carpenter and Mathew Ball *Justice in Society*. Federation Press: Sydney (2012)

⁴ Gordon Tait *Youth Sex and Government*. Peter Lang: New York (2000)

⁵ Carol Dauda *‘Sex, Gender and Generation: Age of Consent and Moral Regulation in Canada’*. *Politics and Policy*. 38:6, 1159-1185 (2010)

We are also well aware, through the work of first and second wave feminism, that legislation which offers an age of consent for sexual activity of any sort has implicit within it culturally specific understandings of masculinity and femininity as they pertain to sexual activity⁶. The first legislation in 1885 in the UK was in fact gender specific (and heterosexual), outlining as an offence in Section 5 of the *Criminal Law Amendment Act*, carnal knowledge of any *girl* above the age of thirteen and under the age of sixteen⁷. While legislation is now gender neutral, cultural scripts of male sexuality as active and pursuant, and female sexuality as passive and resistant, position sexual consent as a predominantly feminine activity within heterosexuality, especially for young women around the age of consent and despite recent gains in ‘girl power’⁸. This is one reason why age and gender offer challenges to implicit and blanket suggestions of harm and responsibility in sexual relations between children and adults⁹.

It is also with some caution and restraint that we enter into this domain. Research is clear that child sexual abuse is an important issue in all modern societies, with much of it going undetected and unreported. Prevalence studies in Australia, UK and USA find that the incidence of non-penetrative sexual abuse before the age of sixteen range from 5.9 to 33.6 percent for women and 2.5 to 16 percent for men. Notwithstanding the variety of definitions used to achieve these differing figures, even the lowest end in the range suggests that child

⁶ Erin O’Brien, Sharon Hayes and Belinda Carpenter *The Politics of Sex Trafficking: a moral geography*. Palgrave Macmillan: London (2013)

⁷ Mathew Waites ‘Investing a lesbian age of consent? *The History of the Minimum Age for sex between women in the UK*’. *Social and Legal Studies*. 11:3, 323-342 (2002)

⁸ Anastasia Powell ‘*Amor fati?: Gender habitus and young people’s negotiation of (hetero)sexual consent*’. *Journal of Sociology*. 44:2, 167-184 (2008)

⁹ Steven Angelides ‘*Inter/subjectivity, power and teacher-student sex crime*’. *Subjectivity*. 26, 87-108 (2009); Bruce Rind ‘*An Empirical Examination of Sexual Relations between Adolescents and Adults: They differ from those between children and adults and should be treated separately*’. In Helmut Graupner and Vern L. Bullough (eds) *Adolescence, Sexuality and the Criminal Law: Multidisciplinary Perspectives*. Haworth Press: New York, 55-62 (2004); Pat Sikes ‘*Scandalous Stories and dangerous liaisons: when female pupils and male teachers fall in love*’. *Sex Education: Sexuality, Society and Learning*. 6:3, 265-280 (2006)

sexual abuse is endemic with between 3400 and 3800 substantiated cases identified each year in Australia for instance¹⁰.

Given this, how easy it is to suggest, as some before us have done, that ‘gendered constructions of sexuality and dominance make the experience of abuse significantly different for boys and girls’¹¹ and that this is in part premised upon the ‘responses from those around the child’ rather than the action itself¹². In this article we will engage with a growing body of research which questions the taken for granted harm of such encounters for adolescents¹³ as well as research which challenges the assumption that sex between adolescents and adults is always and only inherently traumatic¹⁴.

In order to achieve these aims, this article will do three things. First it will engage with the historical work which problematises childhood as a natural state of affairs, always and inherently sexually innocent. It will do this to situate the age of consent and other protective

¹⁰ Ben Mathews ‘*Teacher Education to meet the Challenges Posed by Child Sexual Abuse*’. Australian Journal of Teacher Education. 36:11, 13-32 (2011)

¹¹ Andrea Nelson and Pamela Oliver ‘*Gender and the Construction of Consent in Child-Adult Sexual Contact: Beyond Gender Neutrality and Male Monopoly*.’ Gender and Society. 12:5, 554-577 (1998)

¹² Gene Abel, Judith Becker and Jerry Cunningham-Rathner ‘*Complications, Consent and Cognitions in Sex between Children and Adults*.’ International Journal of Law and Psychiatry. 7, 89-103 (1984)

¹³ Steven Angelides ‘*Sexual offences against children and the question of judicial gender bias*’. Australian Feminist Studies. 23:57, 359-373 (2008); Steven Angelides ‘*Inter/subjectivity, power and teacher-student sex crime*’. Subjectivity. 26, 87-108 (2009); Pat Sikes ‘*Scandalous Stories and dangerous liaisons: when female pupils and male teachers fall in love*’. Sex Education: Sexuality, Society and Learning. 6:3, 265-280 (2006); Elizabeth Bernstein and Laurie Schaffner ‘*Regulating sex: an introduction*’ in Elizabeth Bernstein and Laurie Schaffner (eds) *Regulating Sex: the politics of Intimacy and Identity*. Routledge: New York, xi (2005); Danielle Egan and Gail Hawkes ‘*The problem with protection: Or, why we need to move towards recognition and the sexual agency of children*’. Continuum: Journal of Media and Cultural Studies. 23:3, 389-400 (2009)

¹⁴ Bruce Rind ‘*An Empirical Examination of Sexual Relations between Adolescents and Adults: They differ from those between children and adults and should be treated separately*’. In Helmut Graupner and Vern L. Bullough (eds) *Adolescence, Sexuality and the Criminal Law: Multidisciplinary Perspectives*. Haworth Press: New York, 55-62 (2004); Steven Angelides ‘*Subjectivity under Erasure: Adolescent Sexuality, Gender, and Teacher-Student Sex*’. The Journal of Men’s Studies. 15:3, 347-360 (2007)

legislation as part of a cultural moment in the history of our understanding of children, sex and harm. Second, we will engage with the issue of authority and responsibility, exploring the various ways in which (sexual) citizenship is conferred and denied to young people and how this influences experiences of victimisation and harm. Third, this article will link such legislation to social scripts of masculinity, femininity and heterosexuality, and thus discuss the gendered nature of sexual activity and sexual consent for young people.

Age.

The enactment of legislation in the late nineteenth century to make sexual relations with children a criminal offence, is considered to be part of a wider concern to express the sexual innocence of children and their need for protection through the domestic realm of the family¹⁵. As Scott and Swain¹⁶ identify, the child rescue movement, established in most modern liberal democracies between 1870 and 1890, was premised “upon ideas of children as innocents in need of protection from the harshness of the adult world”. This way of thinking about children is a relatively recent phenomenon, disseminated by the rising middle class of the nineteenth century and informed by an “intensified emotional investment in the child and a fear of sexual corruption”¹⁷.

The idea that childhood is a natural state of affairs, was first challenged by Philippe Aries¹⁸ who argued that prior to the Middle Ages, the idea of childhood did not exist. Childhood was nothing more than a “brief phase of dependency passed over quickly and bearing little special importance ... those who could fend for themselves were treated as small adults”¹⁹. There was thus little need to separate children out as a social category since they participated in all of the activities of the adult world, witness to criminal activity, drunkenness and sexual

¹⁵ Jeffrey Weeks *Sex, Politics and Society: The Regulation of Sexuality since 1800*. 2nd edition. Longman: London (1989)

¹⁶ Dorothy Scott and Shirley Swain *Confronting Cruelty: Historical Perspectives on Child Protection in Australia*. Oxford University Press: Oxford. (2002, p71)

¹⁷ Jeffrey Weeks *Sex, Politics and Society: The Regulation of Sexuality since 1800*. 2nd edition. Longman: London (1989, p48)

¹⁸ Phillipe Aries *Centuries of Childhood*. Penguin: Harmondsworth (1973/1986)

¹⁹ Phillipe Aries ‘From Immodesty to Innocence’ in Henry Jenkins (ed) *The Children’s Culture Reader*. New York University Press: New York, 100-103. (1998, p15)

relations. In fact, at this time the word child expressed kinship rather than age and could thus refer to anyone of any age – as in “this is my child”²⁰. Between the 14th and 18th centuries, however, the conception of child as separate from adult took shape. “The category of childhood, in which a person was accorded different responsibilities, rights and social functions due to their age, gained acceptance in Western European society through the middle and upper classes”²¹. At this time, childhood did not bear any of the modern connotations of sexual innocence. Sexual contact between children and adults, touching and stroking of the genitals, dirty jokes, sharing rooms and beds and casual nudity, was taken for granted. “Children were assumed to be closer to the body, less inhibited, and thus unlikely to be corrupted by adult knowledge”²².

Consider for example, the diary of Heroad, physician to Henry IV of France, and bear witness to the specific focus on a very young child’s sexuality contained in these pages:

When Louis XIII was not yet one year old: ‘He laughed uproarishly when his nanny waggled his cock with her fingers’. An amusing trick which the child soon copied. ‘Calling a page, he shouted “hey there” and pulled up his robe, showing him his cock’.

On another occasion, he was one year old: ‘In high spirits, notes Heroad, ‘he made everybody kiss his cock. This amused them all in the court’.

And finally, ‘The Marquise often put her hand under his coat; he got his nanny to lay him on her bed where she played with him, putting her hand under his coat’, ‘The Queen, touching his cock, said ‘Son I am holding your spout’²³

During his early life, no-one in the court showed any reluctance or saw any harm in jokingly touching the child’s sexual parts. In this romantically inspired vision of the child, childhood, purity and innocence were linked in the social psyche. Sexual knowledge did not corrupt their innocence. Of course this is also not to argue that the way in which children were reared at this time meant that they were all victims of child sexual abuse. While we might want to look back and retrospectively label such actions in this way, we have not raised them for that purpose. On the contrary, the evidence suggests that these children grew up to be

²⁰ Neil Postman *The Disappearance of Childhood*. Delacourte Press: New York (1994, p14)

²¹ Lyn Finch *The nineteenth century identification of incest as a working class crime: implications for analysis*. In Penelope Hetherington (ed) *Incest and the Australian Community: Australian perspectives*. Optima Press: Osbourne Park, WA (1991, p20)

²² Henry Jenkins *The Children’s Culture Reader*. New York University Press: New York, (1998, p16)

²³ Phillipe Aries *Centuries of Childhood*. Penguin: Harmondsworth (1973/1986, p 100-103)

responsible and healthy adults who were themselves the parents of happy and healthy children. Certainly those at the time did not perceive themselves to be harmed and many of the greatest thinkers of modernity were children and parents during this time period.

This romantic notion of the innocent child lost ground from the mid 19th century, to a more scientific understanding of the child and childhood sexuality. Following Freud, a sexual instinct was identified as existing from birth but it was positioned as dormant, unconscious and latent. A child was innocent precisely because it had no sexual knowledge, yet at the same time children were perceived of as at constant risk of external corrupting influences on their sexuality “which was always on the verge of materialising”²⁴. The child became both a sentimental figure in need of protection and an object of suspicion that needed to be controlled.

From this time, the child is passive and in need of protection, and yet also at the mercy of the “environmental contagion” of its sexual instinct. For example, girls raised by prostitutes could “catch” the deviance of their mothers, while the corrupt social order and the overabundance of “licentious” individuals in the city were particularly dangerous to children. Access to “immoral and prurient influences” promoted the appearance of the sexual instinct, at an age “much younger than nature ever designed”²⁵. Any expression of children’s sexuality as “prematurely adult” positioned it, and the child, as an “abhorrent manifestation”²⁶. Since the most common causes of this external corruption were a “knowing” companion, a poor environment, and bad parenting, a good home and appropriate parenting became crucial to safeguarding the sexual innocence of children.

The explicit sexual discourse on children seemed to fade away during the 1960s and the first formal acknowledgement of the problem and danger of sexual abuse came with the passage

²⁴ Danielle Egan and Gail Hawkes ‘*The problem with protection: Or, why we need to move towards recognition and the sexual agency of children*’. Continuum: Journal of Media and Cultural Studies. 23:3, 389-400. (2009, p389)

²⁵ Danielle Egan and Gail Hawkes *The problem with protection: Or, why we need to move towards recognition and the sexual agency of children*. Continuum: Journal of Media and Cultural Studies. 23:3, 389-400. (2009, p 390)

²⁶ Danielle Egan and Gail Hawkes *Producing the prurient through the pedagogy of purity: childhood sexuality and the social purity movement* Journal of Historical Sociology 20:4, pp 443-461 (2007)

of the *Child Abuse Prevention and Treatment Act* (CAPTA 1974) in America in the 1970s. Positioning the child as only and in all circumstances a victim of harm, this legislation marked a major break with earlier discourses that emphasised the sexual instinct. Children were perceived of as “powerless”, “unknowing”, and “unable to consent”; there was “a presumed lack of sexual knowledge” and “an inability to make or understand sexual decisions”²⁷. This is a very different understanding of the relations between sexuality and children noted in the court of Henry IV of France, but it is also a different understanding of the relations between children and sex promulgated in the later 19th and early 20th century. While the latter formulations placed great emphasis on a lack of sexual knowledge in children as a crucial part of their innocence, they also perceived children as having a sexual instinct, an inherent sexuality that was just below the surface, and that could arise at any minute.

To position children as antithetical to sex as this most recent configuration has done, has two important ramifications for our discussion. First, child sexual abuse takes on the qualities of a universal diagnostic term, such that all victims are irrevocably damaged, forever outside normal sexual relations. The trauma of child sexual abuse is argued to follow the victim into adulthood, where “the failure to marry or promiscuity seems to be the only criterion generally accepted in the literature as conclusive that the victim has been harmed”²⁸. Second, although a focus on the asexual innocence of the child would seem to support the blameless status of children, the fact that sexual knowledge is also the boundary between childhood and adulthood, marks out the victim of child sexual abuse as “too knowing”. A child who “sexually responds to the abuse, or appears flirtatious and sexually aware” is judged against the modern norm of childhood innocence. The “no longer virginal child becomes damaged goods” and “violating such a child becomes a lesser offence”, with such children often targeted for further abuse²⁹.

²⁷ Kerwin Kaye *Sexual Abuse Victims and the Wholesome Family* In Elizabeth Bernstein and Laurie Schaffner (eds) *Regulating Sex: the politics of Intimacy and Identity*. Routledge: New York, 143-166. (2005, p149)

²⁸ Kerwin Kaye ‘*Sexual Abuse Victims and the Wholesome Family*’ In Elizabeth Bernstein and Laurie Schaffner (eds) *Regulating Sex: the politics of Intimacy and Identity*. Routledge: New York, 143-166. (2005, p157)

²⁹ *Ibid.* p156

Within this emotionally charged arena there can be no discussion of “children’s rights or needs as sexual beings”, no conception that “exposure to sexuality” is an “experience that is worthy of being nurtured or encouraged”³⁰ or even that exposure to sexual activity can take place in a non-abusive frame. Yet at the same time, the move to engage in sexual behaviour is normal, expected and an “eventually encouraged social achievement for young adults”³¹. In fact, in many parts of the world, the chief task of parenting is to prepare children for adulthood in terms of labour and reproduction³². In this current context, the rights of children as sexual beings can only be understood in terms of their right to protection from sexual exploitation. There is no way of thinking about the sexuality of children in terms of sexual responsibility. They are either exposed to sex (consensual or non-consensual), and thus harmed, or sexually innocent, with no space for the unharmed sexual adolescent. The outcome of such ways of thinking about the relationship between children and sex, is to prolong childhood, and to infantilise young men and women.

Consent

By the nineteenth century, the separateness of childhood had become entrenched in Victorian ideology, and a greater capacity for emotional involvement in the welfare of the child, and increased parental authority was being encouraged within the family³³. Central to this new relationship was the denial of certain types of behaviour between an adult and a child, with sexual contact specifically excluded³⁴. It is within this history of the “child as innocent” that the age of consent laws were passed through most parliaments in the western world. As

³⁰ Elizabeth Bernstein and Laurie Schaffner ‘*Regulating sex: an introduction*’ in Elizabeth Bernstein and Laurie Schaffner (eds) *Regulating Sex: the politics of Intimacy and Identity*. Routledge: New York, xi (2005)

³¹ Laurie Schaffner ‘*Capacity, Consent and the Construction of Adulthood*’ in Elizabeth Bernstein and Laurie Schnaffer (eds) *Regulating Sex: the politics of intimacy and identity*. Routledge: New York, 189-205 (2005, p192)

³² Elizabeth Bernstein and Laurie Schaffner ‘*Regulating sex: an introduction*’ in Elizabeth Bernstein and Laurie Schaffner (eds) *Regulating Sex: the politics of Intimacy and Identity*. Routledge: New York, xi (2005)

³³ Jeffrey Weeks *Sex, Politics and Society: The Regulation of Sexuality since 1800*. 2nd edition. Longman: London (1989)

³⁴ Lyn Finch *The nineteenth century identification of incest as a working class crime: implications for analysis*. In Penelope Hetherington (ed) *Incest and the Australian Community: Australian perspectives*. Optima Press: Osbourne Park, WA. (1991)

Finch³⁵ identifies, these laws emerged as the direct result of a desire to demarcate the social age barriers at which a person could be considered and treated as a child, as well as demarcating a line between the sexual and non-sexual person, with the non-sexual child being “out of bounds” as a sexual partner. As Smart³⁶ notes, “we have a number of quite subtle boundaries being established ... Licit sex is not merely defined as that between married (heterosexual) couples, but between people of acceptable age brackets and doing only acceptable things”. Thomson³⁷ goes so far as to say that legitimate adult sexuality is predicated on the exclusion of the child. The age of sixteen thus draws a moral boundary between the adult, over fifteen, who can consent, and the child, under sixteen, who cannot consent and is thus in need of protection.

Such an understanding has been enshrined in Canadian legislation, where in 2008, age of consent to sexual acts was renamed the *Age of Protection* and raised for the first time since 1890, from fourteen to sixteen years of age³⁸. The name change from consent to protection was significant, argues Dauda³⁹. “While age of consent speaks to the personal ability to render a decision ... age of protection avoided the question of personal decision making and diverted attention toward harm”. Around the same time, definitions of child pornography were expanded to include any material depicting persons under the age of eighteen for sexual purposes. In the same amendment, the law “increased penalties and broadened considerably the offence of sexual exploitation of young people under the age of eighteen by authorising judges to infer exploitation based on the nature and circumstances of the relationship, including age alone”⁴⁰.

In a similar fashion, recently enacted EU legislation – *Framework Directive on combating sexual exploitation of children and child pornography* – creates extensive offences of child

³⁵ *Ibid.*

³⁶ Carol Smart ‘*Disruptive Bodies and unruly sex: the regulation of reproduction and sexuality in the nineteenth century*’, in Carol Smart (ed) *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality*. Routledge: London. (1992, p25)

³⁷ Rachel Thomson ‘*An Adult Thing? Young People’s Perspectives on the Heterosexual Age of Consent*’. *Sexualities*. 7:2, 133-149. (2004)

³⁸ Carol Dauda ‘*Sex, Gender and Generation: Age of Consent and Moral Regulation in Canada*’. *Politics and Policy*. 38:6, 1159-1185. (2010)

³⁹ *ibid.*

⁴⁰ *ibid.* p1169

pornography and child prostitution to include all people up to the age of 18 years⁴¹ despite the age of sexual consent ranging from 14-16 years across all EU countries. As Graupner⁴² identifies this could mean that sex between sixteen year olds which comes at the end of an invitation to dinner or the cinema could be construed as remuneration and criminalised as child prostitution. Similarly, photographs of a sixteen year old taken by her seventeen year old boyfriend exposing her pubic area could be defined as a criminal offence of child pornography, as could webcam sex between seventeen year old adolescents. Indeed, the rise in 'sexting' as a sexual activity between teenagers under the age of consent has captured much public attention with concern that this activity may be harmful to adolescents, though also unfairly tag them as purveyors of child pornography⁴³.

Understandings of the age at which a person can consent to sexual activity are also made relative to the perceived power relations between sexual partners. The enactment of Relations of Authority (RA) legislation has made it illegal in the state of Victoria, Australia, for a secondary school teacher to have sex with a student under the age of eighteen even when that student has reached the age of sexual consent⁴⁴, while in the UK, the age of sexual consent is 18 years where there may be an abuse of trust, for example when the older person is in a position of authority over the child⁴⁵. In those countries which have enacted some form of RA legislation (which currently also include the US, some parts of Europe and Canada), individuals under the age of consent and those between the ages of consent and the age of majority are defined as children and also automatically categorised as victims through law. These child victims maintain such a status irrespective of their claims to the contrary.

⁴¹ Helmut Graupner 'The 17 year old Child: an absurdity of the late 20th century'. In Helmut Graupner and Vern L. Bullough (eds) *Adolescence, Sexuality and the Criminal Law: Multidisciplinary Perspectives*. Haworth Press: New York, 7-24. (2004)

⁴² *ibid.*

⁴³ Murray Lee and Thomas Crofts. 'Sexting and young people: risk anxiety and the law.' Second ISA Forum of Sociology. Buenos Aires. 4 August. (2012)

⁴⁴ Steven Angelides 'Inter/subjectivity, power and teacher-student sex crime. *Subjectivity*. 26, 87-108. (2009)

⁴⁵ Rachel Thomson 'An Adult Thing? Young People's Perspectives on the Heterosexual Age of Consent'. *Sexualities*. 7:2, 133-149 (2004)

Ironically, these higher ages of consent for certain types of sexual behaviour, based as they are on a perceived dependence and lack of capacity for decision making of young people up to the age of eighteen, are occurring in a cultural context where material dependence is extended often into the third decade of life, and where sexual activity is “an increasingly important marker of adulthood and autonomy”⁴⁶. Average age at first intercourse is certainly occurring earlier, dropping to sixteen in the first decade of the 21st century, where it had been nineteen only 20 years earlier⁴⁷. This new rite of passage has replaced other markers of adulthood, like entrance into the labour force, or marriage and parenthood. This can mean that the transition to adulthood is more fragmented than in previous generations, as sexual activity comes long before economic independence. And all this in an increasingly sexualised popular culture, where young people are “competent participants” and where attempts to regulate the consumption of sexual information and imagery are “confounded”⁴⁸.

Moreover, the various ways in which sexual consent has been policed in a number of western democracies opens up discussion around the context of age and sexual relations, by explicitly suggesting that harm and a response from the criminal justice system, is contingent. In Canada for example, a *close in age exemption* was introduced into the criminal code in 2006⁴⁹ which allowed for sexual activity between 14 and 15 year old young people and a partner less than 5 years older (that is up to the age of 19 years) while a close in age exemption of under 2 years is in place for 12 and 13 year olds (with a partner up to the age of 14 years). In the UK, variable sentences were in place until 2003 which demarcated a lesser punishment for sex with a child if that child was between 13 and 15 years of age (maximum of two years imprisonment) rather than under 13 years of age (maximum life imprisonment). While there was no defence for sex with a child under 13, if the man was under the age of 24 and the girl between 13 and 15, he was able to defend himself on the grounds that he

⁴⁶ *ibid.* p135

⁴⁷ Anastasia Powell ‘*Amor fati?: Gender habitus and young people’s negotiation of (hetero)sexual consent*’. *Journal of Sociology*. 44:2, 167-184. (2008); Moira Carmody *Sex and Ethics: Young People and Ethical Sex*. Palgrave Macmillan: South Yarra (2009)

⁴⁸ Rachel Thomson ‘*An Adult Thing? Young People’s Perspectives on the Heterosexual Age of Consent*’. *Sexualities*. 7:2, 133-149 (2004, p136)

⁴⁹ Carol Dauda (2010) ‘*Sex, Gender and Generation: Age of Consent and Moral Regulation in Canada*’. *Politics and Policy*. 38:6, 1159-1185.

reasonably believed her to be over 16⁵⁰. Such defences have been in place since age of consent legislation was first passed. In Colonial Australia in the 19th century, the *Crimes (Girls Protection) Bill* in the state of New South Wales was passed in 1910, raising the age of consent to from fourteen sixteen. However, this Act specifically excluded girls of fourteen or fifteen from its protection if they looked over sixteen⁵¹.

These ‘threshold consent’ approaches declare that it is not just the age of the adolescent, but the relative power between the two partners, signified by the (lack of a substantial) gap in their ages, that contributes to harm. The establishment of these consent rules demonstrate that while it is preferable that young people remain sexually innocent up to the age of consent, if they must become sexually active this breach of social norms is more acceptable if they are themselves close to the age of consent and they have sexual relations with someone only recently granted legal sexual autonomy. These laws also speak to two other social anxieties over sexual behaviour, particularly among young people. The first is the concern that a (typically male) unsuspecting subject may engage in sexual activity with someone they ‘thought’ to be over the age of consent, only to discover later that they have ‘accidentally’ committed statutory rape. The second is a societal distaste for May-December romances (where one partner is significantly older than the other), where one of those partners (typically female) is still considered to be a girl or very young woman. Threshold consent laws not only provide a contextual defence for cases of statutory rape, but also impose a societal judgement as to the appropriate age range for sexual partnerships among young people. Ultimately what these laws establish is that it is not the age of the adolescent per se, but the circumstances surrounding the sexual act, that are deemed to be of most importance. If the girl ‘looked over sixteen’, or if the act was with someone in the same age range, then the young person is granted the capacity to consent and is deemed not to be (automatically) harmed.

These understandings speak to the idea of *variable competence*, which is an issue that young people themselves have to grapple with everyday, especially when you consider the varying

⁵⁰ Rachel Thomson ‘An Adult Thing? Young People’s Perspectives on the Heterosexual Age of Consent’. *Sexualities*. 7:2, 133-149 (2004, p136)

⁵¹ Judith Allen *Sex and Secrets*. Allen and Unwin: Sydney (1990)

ages with which they are seen to be responsible citizens. Schaffner⁵² identifies for example, the various ages at which adolescents are legally able to access certain rights and responsibilities in the US: while they may not purchase alcohol till they are 21, they can be tried as a felon at 13, marry without parental consent at 16, enter into a labour contract at 14, and be housed in a juvenile detention facility at 10. Similarly, Dauda⁵³ notes the contradictions in Canadian parliamentary debate between discussions over sexual consent and criminal activity. While discussions during amendments to the *Protection of Children and Other Vulnerable Persons* and to the *Criminal Code* placed young people (particularly young women) as incompetent, lacking both autonomy and responsibility for decision making, debates during an amendment to the *Youth Criminal Justice Act* discussed offending youths (predominantly young men) as aware of their actions and consequences⁵⁴. Finally, Angelides⁵⁵, notes the fact that adolescents as young as twelve “can legally prove their competency to receive contraceptive information, devices or prescriptions ... and to receive an abortion without the approval of their parents.” For Angelides⁵⁶ this is an “explicit recognition if ever there was one of the sexual maturity, competence and sexual power of some adolescents.” It also speaks to a differentiation between autonomy and gender, where young men are positioned as having more access to dimensions of competency and responsibility than young women.

Responsibility

Since the media “discovery” of the paedophile in the 1990’s, sex abuse against children has dominated the press⁵⁷ and while research to date indicates that it is difficult to determine the

⁵² Laurie Schaffner (2005) ‘*Capacity, Consent and the Construction of Adulthood*’ in Elizabeth Bernstein and Laurie Schnaffer (eds) *Regulating Sex: the politics of intimacy and identity*. Routledge: New York, 189-205.

⁵³ Carol Dauda ‘*Sex, Gender and Generation: Age of Consent and Moral Regulation in Canada*’. *Politics and Policy*. 38:6, 1159-1185 (2010)

⁵⁴ see also Rebecca Raby ‘*Children in Sex, Adults in Crime: Constructing and Confining Teens*’. *Resources for Feminist Research*. 31:3/4, 9-28. (2006)

⁵⁵ Steven Angelides *Inter/subjectivity, power and teacher-student sex crime*. *Subjectivity*. 26, 87-108. (2009)

⁵⁶ *ibid.*

⁵⁷ Terry Thomas *Sex Crime: Sex Offending and Society*. Willan: London 2nd edition. (2005)

prevalence of sexual abuse due to high levels of underreporting⁵⁸, official statistics generally indicate the majority of sex offenders are male and most victims female⁵⁹. As a result, most sex offending research has to date focused on male perpetrators and female victims⁶⁰. While there are well identified problems with official statistics on sex offending⁶¹ such problems have generally been used to suggest that the incidence of *female sexual abuse* at the hands of men is under-recorded⁶². This response is possible because feminism has been able to identify and theorise the gendered nature of sex crimes through a recognition that male sexual offenders are not aberrant monsters but rather that their behaviour can be located on a continuum of normative masculinity⁶³. In this way sex offending is taken out of the sphere of the monstrous and placed squarely and firmly in the domestic and the everyday⁶⁴.

However, the articulation of the normative frame of masculinity as a way of understanding and explaining male sexual abuse of children also essentialises women within a normative frame of femininity. Such a perception draws on an understanding of women as naturally

⁵⁸ Alexandra Neame and Melanie Heenan (2003) '*What lies behind the hidden figure of sexual assault? Issues of prevalence and disclosure*'. Australian Centre for the Study of Sexual Assault Briefing Paper, Australian Institute of Family Studies. no. 1, Sept, 2-11. http://www.aifs.gov.au/acssa/pubs/briefing/acssa_briefing1.pdf. accessed 29th January 2013.

⁵⁹ Helen Gavin '*The social construction of the child sex offender explored by narrative*'. The Qualitative Report. 10, 395-415 (2005)

⁶⁰ Roland Landor '*Double Standards? Representations of Male vs Female Sex offenders in the Australian Media*' Griffith Working Papers in Pragmatics and Intercultural Communication. 2:2, 84-93. (2009); Terry Thomas *Sex Crime: Sex Offending and Society*. Willan: London 2nd edition. (2005); Denov, Miriam '*To a safer place? Victims of sexual abuse by females and their disclosures to professionals*'. Child Abuse and Neglect. 27, 47-61 (2003).; Donna Vandiver and Jeffrey Walker '*Female Sex Offenders: An Overview of 40 cases*'. Criminal Justice Review, 27:2, 284-300 (2003)

⁶¹ Moira Carmody and Kerry Carrington '*Preventing sexual violence?*' Australian and New Zealand Journal of Criminology, Volume 33 Number 3 pp.341-361 (2000)

⁶² Denov, Miriam '*To a safer place? Victims of sexual abuse by females and their disclosures to professionals*'. Child Abuse and Neglect. 27, 47-61. (2003); Liz Kelly *Surviving Sexual Violence*. Polity Press: Cambridge (1988)

⁶³ Liz Hall and Siobhan Lloyd *Surviving Child Sexual Assault* The Falmer Press: London (1989); Liz Kelly *Surviving Sexual Violence*. Polity Press: Cambridge (1988); Elizabeth Bass and Laura Davies *The Courage to Heal: A guide for women survivors of child sexual abuse*. Harpers Collins Press: New York. Third edition (1995)

⁶⁴ Terry Thomas *Sex Crime: Sex Offending and Society*. Willan: London 2nd edition. (2005)

caring, nurturing, sexually passive, non-aggressive and innocent⁶⁵. This has meant that female sexual abuse of children is positioned in one of three ways: it is an aberrant case and ignored⁶⁶; it is the outcome of coercion or emotional dependence on a male partner⁶⁷; or, if the woman offends alone, her history of previous victimisation at the hands of men is utilised to explain her offending behaviour⁶⁸. In most cases, the woman's sexual offending is minimised and her victimisation highlighted⁶⁹. This renegotiation of their offending enables a reconciliation of their aberrant behaviour and returns them to a socially acceptable version of femininity.

Thus the overwhelming belief that the sex offender is male is supported by the majority of research which fails to contemplate the female sex offender⁷⁰ with most studies failing to even identify the gender of the adult⁷¹. In fact in the 1970s and 1980s female sexual offending was considered so rare as to be "of little significance" an approach which has now become "paradigmatic" within the field of child sexual abuse⁷². While historically this focus on the male sex offender has been supported by official statistics which have placed female

⁶⁵ Mary. M. Brabeck 'Introduction: Who Cares?' in M. Brabeck (ed) *Who Cares? Theory, research and educational implications of the ethic of care*. Praeger: New York, 1-14. (1989); Nel Noddings, *The Challenge to Care in Schools*. Teachers College Press: New York. (1992); Denov, Miriam *Perspectives on Female Sex Offending*. Ashgate Publishing: London (2004).

⁶⁶ Andrea Nelson and Pamela Oliver 'Gender and the Construction of Consent in Child-Adult Sexual Contact: Beyond Gender Neutrality and Male Monopoly.' *Gender and Society*. 12:5, 554-577. (1998)

⁶⁷ Amanda Matravers 'Understanding Women who Commit Sex Offences', in Gail Letherby, Kate Williams, Philip Birch and Maureen Cain (eds) *Sex as Crime?* Willan Publishing: Devon. (2008)

⁶⁸ Andrea Nelson and Pamela Oliver 'Gender and the Construction of Consent in Child-Adult Sexual Contact: Beyond Gender Neutrality and Male Monopoly.' *Gender and Society*. 12:5, 554-577. (1998)

⁶⁹ Steven Angelides 'Subjectivity under Erasure: Adolescent Sexuality, Gender, and Teacher-Student Sex'. *The Journal of Men's Studies*. 15:3, 347-360 (2007)

⁷⁰ Roland Landor 'Double Standards? Representations of Male vs Female Sex offenders in the Australian Media' *Griffith Working Papers in Pragmatics and Intercultural Communication*. 2:2, 84-93. (2009)

⁷¹ Andrea Nelson and Pamela Oliver 'Gender and the Construction of Consent in Child-Adult Sexual Contact: Beyond Gender Neutrality and Male Monopoly.' *Gender and Society*. 12:5, 554-577. (1998)

⁷² Denov, Miriam *Perspectives on Female Sex Offending*. Ashgate Publishing: London (2004).

sex offending at 5% of all sex offending⁷³, more recent research in the US and UK places female sexual offending at 25%⁷⁴ and 30%⁷⁵ respectively, with further research contemplating its rapid increase in relation to male sex offending⁷⁶ and still other research demonstrating that female sex offending is more under-reported than male sex offending⁷⁷.

As with our previous discussion of variable competence, young people and citizenship, however, we wonder if it is possible to appreciate that there may be gendered differences when the “traditional” stereotype of child sexual abuse is reversed and the offender is a young woman and the victim a young man of fourteen or fifteen? Hayes, Carpenter and O’Brien⁷⁸ surveyed 487 media reports from Australia and the UK on female sex offenders over the period 2000 to 2010 and found that women who offended against adolescent boys were the most likely to receive lighter sentences, including suspension of the sentence altogether, when compared with all other female sex offenders. In one high profile case in Australia in 2004, a 37-year-old female teacher found guilty of six counts of sexual penetration with a child under 16 was initially awarded a three year suspended sentence of twenty-two months by the Judge, based on his assessment that she was “clearly not a

⁷³ Pamela Nathan and Tony Ward ‘*Female Child Sex Offenders: Clinical and Demographic Features*’. *Journal of Sexual Aggression*. 8:1, 5-21(2002).

⁷⁴ Boroughs, Deborah S. “*Female sexual abusers of children*”. *Children and Youth Services Review* **26** (5): 481-487 (2004).

⁷⁵ Mark Townsend and Rajeev Syal ‘Up to 64000 women in the UK are child sex offenders’. *The Observer*. Sunday 4th October. <http://www.guardian.co.uk/society/2009/oct/04/uk-female-child-sex-offenders> (2009)

⁷⁶ Julia Davidson *Child Sexual Abuse: media representations and government reactions*. Routledge Cavendish: Abingdon. UK (2008)

⁷⁷ Rebecca Deering and David Mellor ‘*Female Perpetrated Child Sexual Abuse: Definitional and Categorisation Analysis*.’ *Psychiatry, Psychology and the Law*. 14:2, 218-226. (2007)

⁷⁸ Sharon Hayes, Belinda Carpenter and Erin O’Brien (2011) “Constructions of Female Sex Offenders: Exploring Public Discourses”. *British Society of Criminology Conference*, 3-6 July 2011, Northumbria University, Newcastle.

predator.”⁷⁹. Similar court outcomes of perceived leniency have been noted in the US and UK in recent years⁸⁰.

Part of the reason for this leniency is of course the sexual scripts of masculinity and femininity which prescribe certain characteristics as masculine and others as feminine. To perceive women as sexually aggressive is contrary to these scripts and offers up a challenge to powerful stereotypes of women as caring and sexually passive. This extends to different levels of responsibility and culpability⁸¹. The news media are intimately involved in this stereotyped portrayal choosing to report on certain sex offenders and certain sex crimes. By emphasising some crimes and ignoring others, and by sympathising with some victims while shaming others, it draws attention to and creates public perception⁸². In the case of female sex offending, research suggests that the media report this sex crime at an exaggerated rate⁸³.

Similarly, the disproportionate amount of attention in the media on the “sexual proclivities of female teachers,” despite them being in the minority of all offenders, is explained by Cavanagh⁸⁴ as part of a deep social and cultural ambivalence. According to Cavanagh⁸⁵ female teachers who offend against their male students are positioned as doubly damned –

⁷⁹ Steven Angelides ‘*Subjectivity under erasure: Adolescent Sexuality, Gender, and Teacher-Student Sex*’. *The Journal of Men’s Studies*. 15:3, 347-360 (2007); Sharon Hayes, Belinda Carpenter and Erin O’Brien (2011) “Constructions of Female Sex Offenders: Exploring Public Discourses”. *British Society of Criminology Conference*, 3-6 July 2011, Northumbria University, Newcastle

⁸⁰ Steven Angelides ‘*Hot for the Teacher: The Cultural Erotics and Anxieties of Adolescent Sexuality*’. *Media International Australia*. 135: May, 71-81. (2010); Joe Stennis ‘*Equal Protection dilemma’s: why male adolescent students need federal protection for adult female teachers who prey on them*’. *Journal of Law and Education*. 35, 395-403. (2006); Rebecca Deering and David Mellor ‘*Female Perpetrated Child Sexual Abuse: Definitional and Categorisational Analysis.*’ *Psychiatry, Psychology and the Law*. 14:2, 218-226. (2007)

⁸¹ Jeffrey Sandler and Naomi Freeman. *Female sex offenders and the criminal justice system: a comparison of arrests and outcomes*. *Journal of sexual aggression*. 17: 1, 61-76. (2011)

⁸² Kitzinger, J. *Framing Abuse: Media Influence and Public Understanding of Sexual Violence against Children*. Pluto: London. (2004)

⁸³ Steven Angelides ‘*Subjectivity under erasure: Adolescent Sexuality, Gender, and Teacher-Student Sex*’. *The Journal of Men’s Studies*. 15:3, 347-360 (2007)

⁸⁴ Sheila Cavanagh. *Sexing the Teacher: School Sex Scandals and Queer Pedagogies*. Vancouver: UBC Press. (2007)

⁸⁵ *Ibid.*

they are acting against both their nature and the law. As a teacher – in loco parentis – her transgression is akin to breaking the incest taboo. As predatory and assertive she is transgressive to both her own feminine nature and to the masculinity of her male victims for whom she is seen as “confining to an infantile maternal world”⁸⁶. She is nevertheless eroticised as she is punished with an unusually large amount of media discussion about her looks, and her sexual activities with her “victim” – far more than ever occur when the offender is an adult male⁸⁷.

Despite this ambiguity in perceptions of culpability and victimisation, current sexual offence laws presuppose gender-neutral categories of adult as offender and child as victim⁸⁸. The public outcry against the perceived lenient sentence of Karen Ellis, noted above, exemplifies this dominant child sex abuse narrative and forced the Director of Public Prosecution to lodge an appeal on the grounds that the sentence was “manifestly inadequate”. The Appeal was not only upheld, but the offender was imprisoned for two years eight months and registered as a serious sexual offender⁸⁹. Similar reactions in the US to the charges being dropped in the highly publicised LaFave case noted the gender inequality of the matter as a kind of reverse sexism. “Male teachers raping their 14 year old students, lots of them are behind bars, because that is exactly where they belong”⁹⁰. However, following Angelides⁹¹ we query whether the categories of offender and victim “map unproblematically” onto adults and children. The rest of the article considers this complex issue by examining the relation between harm and sex.

Harm

⁸⁶ Ibid, p96

⁸⁷ Steven Angelides ‘*Hot for the Teacher: The Cultural Erotics and Anxieties of Adolescent Sexuality*’. Media International Australia. 135: May, 71-81. (2010)

⁸⁸ Steven Angelides ‘*Sexual offences against children and the question of judicial gender bias*’. Australian Feminist Studies. 23:57, 359-373 (2008)

⁸⁹ Steven Angelides ‘*Subjectivity under erasure: Adolescent Sexuality, Gender, and Teacher-Student Sex*’. The Journal of Men’s Studies. 15:3, 347-360 (2007)

⁹⁰ Gina Pace. ‘Teacher-Sex Outcome Sparks Outrage’ CBS news, March 22. <http://www.cbsnews.com/stories/2006/03/22/earlyshow/main1429564.shtml> (2006)

⁹¹ Steven Angelides ‘*Subjectivity under erasure: Adolescent Sexuality, Gender, and Teacher-Student Sex*’. The Journal of Men’s Studies. 15:3, 347-360 (2007)

The harm of child sex abuse is the focus at this historical moment and such an understanding asserts a dominant narrative of the child as sexually innocent and in need of protection, and women and men as equally capable of sexual abuse. However, such sexual activity also occurs in the cultural context of gender specific sexual scripts and an increasing sexualised social milieu which simultaneously infantilises young men and women while also delaying other routes to adulthood. Are all children equally harmed and all offenders equally culpable when children between the ages of 14 and 17 are involved in cross generational sex? It is clear that the child sex abuse narrative – where children up to the age of eighteen are innocent victims and adults are predatory offenders – “functions to determine the normative boundaries of adolescent subjectivity at the same time as erasing the experiences of actual adolescents themselves”⁹². Perhaps this is why it is research which has spoken to young people about their sexual experiences with adults that has had the most to say about the nuances of harm and culpability. By framing the research in terms of sexual experiences and sexual contact rather than sexual abuse, such research has included a range of children otherwise excluded from research, especially those who do not believe they have been harmed or abused.

According to Rind⁹³ research shows that heterosexual adolescent boys react predominantly positively to sexual relations with women. In eight studies across three countries in the 1980s and 1990s, positive experiences were reported by 50% to 85% of young men, compared with 3% to 25% of negative experiences. Interestingly, all of these studies identified that negative experiences coincided with incestuous contacts and coercion while the positive experiences were related to interest and willingness on the part of the boys involved. Rind⁹⁴ concludes that for heterosexual adolescent boys involved with women, “empirical data are strongly at odds with the assumption of trauma”. Deering and Mellor⁹⁵, also cite a range of studies

⁹² Steven Angelides ‘*Sexual offences against children and the question of judicial gender bias*’. *Australian Feminist Studies*. 23:57, 359-373. (2008, p359)

⁹³ Bruce Rind ‘An Empirical Examination of Sexual Relations between Adolescents and Adults: They differ from those between children and adults and should be treated separately’. In Helmut Graupner and Vern L. Bullough (eds) *Adolescence, Sexuality and the Criminal Law: Multidisciplinary Perspectives*. Haworth Press: New York, 55-62. (2004)

⁹⁴ *Ibid.* p61

⁹⁵ Rebecca Deering and David Mellor ‘*An Exploratory Qualitative Study of the Self-Reported Impact of Female-Perpetrated Childhood Sexual Abuse*’. *Journal of Child Sexual Abuse*. 20:1, 58-76. (2011)

which support this claim, revealing that the majority of male victims perceived early sexual contact with a female as either having a neutral or positive overall general impact. Like Rind⁹⁶ they note that such positive experiences are based on “consensual sexual contact with unrelated female perpetrators that typically occur during the period of adolescence rather than early childhood”⁹⁷.

Nelson and Oliver’s⁹⁸ research compared the gender dynamics in adult-child sexual relations. In a self report questionnaire of 923 college students, 10.4 percent of female students and 5.4 percent of male students reported sexual contact with an adult (eighteen or over) while they were below the age of sexual consent (fifteen or younger). Their findings reveal that the vast majority of adult-child sexual contacts were heterosexual: 98 percent of girls’ contacts were with men while 69 percent of boys’ contacts were with women⁹⁹. They also found that the vast majority of contacts were perpetrated by adults under the age of 22 for both boys and girls and that many of the children interpreted the experience as consensual¹⁰⁰. Overall, 24 percent of the sample said “unambiguously” that they wanted or agreed to the experience, 9 percent used words like “curious”, and “experimentation” while a further 26 percent reported both positive and negative feelings. Forty one percent labelled the experience as coercive or negative. However, if we drill down further into the gender specifics of the research findings we start to appreciate the ways in which the sexual scripts of masculinity and femininity may in fact have an impact on the experience for the child. What Nelson and Oliver¹⁰¹ found was when the adults were men, “80 percent of the boys and 78 percent of the girls said they felt forced or coerced while only 12 percent of the girls and no boys said they agreed to or wanted

⁹⁶ Bruce Rind ‘An Empirical Examination of Sexual Relations between Adolescents and Adults: They differ from those between children and adults and should be treated separately’. In Helmut Graupner and Vern L. Bullough (eds) *Adolescence, Sexuality and the Criminal Law: Multidisciplinary Perspectives*. Haworth Press: New York, 55-62. (2004)

⁹⁷ Rebecca Deering and David Mellor ‘An Exploratory Qualitative Study of the Self-Reported Impact of Female-Perpetrated Childhood Sexual Abuse’. *Journal of Child Sexual Abuse*. 20:1, 58-76. (2011, p 59)

⁹⁸ Andrea Nelson and Pamela Oliver ‘Gender and the Construction of Consent in Child-Adult Sexual Contact: Beyond Gender Neutrality and Male Monopoly.’ *Gender and Society*. 12:5, 554-577. (1998)

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid*

¹⁰¹ *Ibid* p556

the experience”. In contrast, when the sexual contact was with a woman, 82 percent of the boys reported agreeing to or wanting it and only 18 percent reported coercion or abuse.

Like gender, age also affected the experience but more significantly for girls, with 88 percent of those thirteen or under feeling abused or coerced, versus 60 percent of those 14 or 15 years at the time of the sexual contact. In contrast, for boys, the gender of the adult was the most significant. When the adult was a male they were more likely to report abuse or coercion and the only two boys who reported abuse or coercion when the adult was a woman were eight and nine at the time, - “the youngest ages reported in the sample for such contact”¹⁰². For Nelson and Oliver¹⁰³ “the legal category of sexual abuse does not map onto a unitary subjective category of abusive experience”. Part of the reason for this is due to the “lucky boy” syndrome which asserts that young men in relationships with older attractive and sexually experienced women are “living the dream” of heterosexuality, and that rather than being harmed by such encounters, may in fact benefit from them. How widespread is such an understanding? According to Maynard and Wiederman¹⁰⁴ gender and age do have an impact on public perceptions of blame, with younger victims seen as less culpable than older victims, while male victims, especially adolescent male victims with an adult female, are deemed to be more culpable¹⁰⁵. In their research, this was compounded by the gender of the survey respondent which was found to impact on perceptions of blame. More specifically, male respondents were less likely to see sexual interactions between male victims and female offenders as child sexual abuse, while female respondents were more likely to view sexual interactions between adults and children of all ages as child sexual abuse, regardless of gender or sexuality¹⁰⁶.

What evidence is there that the lucky boy syndrome is an accurate reflection of adolescent boys’ lack of harm and victimisation at the hands of adult women? Similarly, are there

¹⁰² *Ibid* p556

¹⁰³ *Ibid* p556

¹⁰⁴ Carrie Maynard and Michael Weiderman ‘*Undergraduate students perceptions of child sexual abuse: effects of age, sex and gender role attitudes.*’ *Child Abuse and Neglect*. 21:9, 833-844. (1997)

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.* See also Jacquie Hetherington and Lynn Beardsell ‘*Decisions and attitudes concerning child sexual abuse: does the gender of the perpetrator make a difference to child protection professionals?*’ *Child Abuse and Neglect*, 22:12, 1265-1283. (1998)

reasons why girls might feel less positive about these sexual contacts with older men? According to Martin¹⁰⁷ it is at adolescence that boys “come to solidify feelings of agency and sexual subjectivity” while for girls the opposite is often the case. Girls tend to emerge from puberty feeling “less agentic and sexually subjective”. Martin¹⁰⁸ argues that there are a number of reasons for this. First, girls tend to reach puberty much earlier than boys and as a consequence often have much less subjective, experiential knowledge as well as less cognitive, rational knowledge about their bodies than boys do when they reach puberty. This is supported by research which demonstrates that girls who are “early developers” fare much worse during puberty than “late developers” (though the opposite seems to be true for boys)¹⁰⁹. Second, puberty makes boys look older and more adult and this means that they tend to receive more independence and autonomy from parents. In contrast, puberty for girls makes them look more sexual and parents’ fears about safety often mean that adolescent girls are not given the freedom and autonomy available to adolescent boys. Unfortunately it is the freedom and responsibility given to boys by their parents which then increases the boys’ own sense of independence and autonomy. This is not as easily or automatically offered to adolescent girls. Third, boys play with and make use of their pubertal bodies, taking pleasure in the strength and virility of their new bodies and abilities while puberty for girls comes with a range of negative cultural associations around menstruation (dirt, shame, taboo) and sexual experience (the danger of rape, the fear of pregnancy, the loss of reputation) for example, which temper positive experiences. As a consequence, the actual physical experience of puberty for adolescent boys and girls is markedly different. Girls tend to feel ambivalence and anxiety about puberty and experience a significant drop in self esteem while boys express excitement and anticipation and their self esteem generally increases during this time¹¹⁰.

However, another reason why sexual contact between adult women and adolescent boys may not be so harmful is due to the way in which the sexual scripts of masculinity and femininity play out in these cross generational experiences. In their research on adult child sexual

¹⁰⁷ Karen Martin *Puberty, Sexuality and the Self*. Routledge: New York (1996, p14-15)

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.* p33

¹¹⁰ *Ibid*

contact, Nelson and Oliver¹¹¹ also examined the behaviour of the offender. They found that the key to most respondent's interpretation of their experiences was whether the adult "asked" the child rather than simply "taking". Asking was linked to positive experiences while taking was linked to negative experiences and male offenders were more likely to take (76 percent of children reflected on these encounters as negative) while female offenders generally asked (75 percent of children reflected on these encounters as positive). For Nelson and Oliver¹¹² "asking and taking appear to be the key". Given that the vast majority of encounters in this research were heterosexual, this seems to further explain why boys especially tended to construct such encounters in a positive light, "as sexual initiation or sexual experimentation" especially given its alignment with the "lucky boy syndrome"¹¹³. According to Nelson and Oliver¹¹⁴ "the positive status enhancement of having sex with a woman" seemed to predominate, with the resultant masculine potency more important than any sense of manipulation. In contrast, while both boys and girls defined the majority of their encounters with men as abusive even if they had not been overtly forced, this tended to mean that the vast majority of girls felt abused, given the dominance of heterosexual sexual contact in this research. Moreover, given our previous discussion of puberty and self esteem, Nelson and Oliver¹¹⁵ argue that it was the boys "potent self images" of masculinity and sex which allowed them to counter any feelings of victimisation, "while passive feminine identities reinforced a sense of helplessness and victimisation" for the girls. This was magnified by the girls' failure to resist the sexual contact in the first place, an important marker of femininity in social and cultural scripts, which also played into concerns over loss of reputation, another important marker of femininity in current social and cultural scripts¹¹⁶. The options of status self enhancement available to the boys was "largely unavailable for girls in similar circumstances"¹¹⁷. This seems to suggest that attention needs to be given to the normative

¹¹¹ Andrea Nelson and Pamela Oliver 'Gender and the Construction of Consent in Child-Adult Sexual Contact: Beyond Gender Neutrality and Male Monopoly.' *Gender and Society*. 12:5, 554-577. (1998)

¹¹² *Ibid.* p569

¹¹³ *Ibid.* p570

¹¹⁴ *Ibid.* p573

¹¹⁵ *Ibid.* p573

¹¹⁶ Moira Carmody *Sex and Ethics: Young People and Ethical Sex*. Palgrave Macmillan: South Yarra. (2009)

¹¹⁷ Andrea Nelson and Pamela Oliver 'Gender and the Construction of Consent in Child-Adult Sexual Contact: Beyond Gender Neutrality and Male Monopoly.' *Gender and Society*. 12:5, 554-577. (1998)

frame of femininity and masculinity in the context of heterosexual sex, operating as it appears to, differentially across the social taboo of sex with children under the age of consent.

Sex

Gendered sexual performances are embedded in cultural norms about sexuality and reflect gendered stereotypes and behavioural expectations. Traditional masculine roles prioritise independence, assertiveness, and sexual exploration, as well as a “bodily centred set of sexual scripts” which see sexual activity as directed toward “self pleasure and tension release” rather than relationship affirmation¹¹⁸. Men are perceived as naturally more aggressive and have the active role in sexual relationships. It is difficult to perceive men as sexually reluctant or as victims of sexual coercion or assault¹¹⁹. In contrast to the traditional masculine script, the traditional feminine script is one that emphasises idealism, passivity and virtue. Feminine gender roles are based more on behavioural restraint and personal control. These current notions of femininity and masculinity arose during the eighteenth century when middle class women chose to take on the habitus of the upper class: ease, restraint, calm and luxurious decoration. Passive and dependent, physically frail and asexual, they displayed “divine composure”: silent, static, invisible and composed¹²⁰. There arose a division between the feminine and the sexual. As sexually passive and innocent, she is sexually harmless - neither sexually aggressive nor an initiator of sex¹²¹. Her role is to influence men to avoid sex – she is the sexual gatekeeper. Importantly for this discussion, such historical notions have a modern effect on sexual scripts for both men and women with such gender roles strongly embedded in many sex education programs offered to boys and girls, which Carmody¹²² argues perpetuate the assumption that women are responsible for resisting sex, while men are responsible for pursuing it. This construction not only undermines attempts to reduce sexual

¹¹⁸ Michael Wiederman ‘*The Gendered Nature of Sexual Scripts*’. *The Family Journal: Counselling and Therapy for Couples and Families*. 13:4, 496-502. (2005)

¹¹⁹ Miriam Denov. ‘*To a safer place? Victims of sexual abuse by females and their disclosures to professionals*’. *Child Abuse and Neglect*. 27, 47-61. (2003)

¹²⁰ Beverly Skeggs *Formations of Class and Gender: becoming respectable*. Sage: London. (1997)

¹²¹ Michael Wiederman ‘*The Gendered Nature of Sexual Scripts*’. *The Family Journal: Counselling and Therapy for Couples and Families*. 13:4, 496-502. (2005)

¹²² Moira Carmody ‘*Sexual ethics and violence prevention*’ *Social and Legal Studies: An International Journal*, 12:2, 199-216 (2003)

violence, but also “precludes a flexible and negotiated consent” for individual sexual encounters¹²³.

In fact it has been argued quite convincingly that traditional gendered scripts about sex figure in the ways in which women think about sex and learn about sex. Sex is more about sexual intimacy than bodily pleasures and there is a continued missing discourse of desire or erotics in research and sex education¹²⁴. Young women in particular have been regarded as particularly vulnerable to sexually transmitted diseases and pregnancies as well as the emotional trauma and psychological harm that comes from unwanted sexual intercourse¹²⁵. In fact research into girls’ sexuality has noted a focus on sex education via discussions of pregnancy and contraception and a subsequent silencing of any discussions about sexual pleasure, desire or the erotic¹²⁶. Tolman¹²⁷ argues that despite the real gains by feminism in reproductive rights and sexual liberation, “the tactics of silencing and denigrating women’s sexual desire are deeply entrenched”. Sex education curricula name male adolescent desire and teach girls to “recognise and keep a lid on the sexual desire of boys” while failing to acknowledge or even recognise the sexual feelings of the girls¹²⁸. Similarly, Fine¹²⁹ noted that adolescent girls’ sexuality was acknowledged by adults in schools but in terms that

¹²³ *Ibid.* p205

¹²⁴ Anastasia Powell *Sex, Power and Consent*. Cambridge University Press: Cambridge. (2010)

¹²⁵ Michelle Fine ‘*Sexuality, Schooling and Adolescent Females: the missing discourse of desire*’. Harvard Educational Review, 58:1, 29-53. (1988); Michelle Fine ‘*Sexuality, Schooling and adolescent females: the missing discourse of desire*’ in Michelle Fine (ed) *Disruptive Voices: the possibilities of feminist research*. University of Michigan press: Anne Arbour, 31-60. (1992); Michelle Fine and SI McClelland ‘*Sexuality education and desire: still missing after all these years*’. Harvard Educational Review. 76:3, 297-338. (2006); Deborah Tolman *Dilemmas of Desire: Teenage Girls talk about Sexuality*. Harvard University Press: Cambridge MA (2002); Anastasia Powell *Sex, Power and Consent*. Cambridge University Press: Cambridge. (2010)

¹²⁶ Anastasia Powell *Sex, Power and Consent*. Cambridge University Press: Cambridge. (2010)

¹²⁷ Deborah Tolman ‘*Doing Desire: Adolescent Girls struggle for/with Sexuality*’ in Michael Kimmel and Rebecca Plante (eds) *Sexualities: Identities, Behaviours and Society*. Oxford University Press: New York. (2004, p88)

¹²⁸ Deborah Tolman *Dilemmas of Desire: Teenage Girls talk about Sexuality*. Harvard University Press: Cambridge MA (2002)

¹²⁹ Michelle Fine ‘*Sexuality, Schooling and Adolescent Females: the missing discourse of desire*’. Harvard Educational Review, 58:1, 29-53. (1988)

denied the sexual subjectivity of the girls. There was, according to Fine¹³⁰ “a missing discourse of desire”. Thorne and Luria¹³¹ recognise that sexuality is differently learned for adolescent boys and girls. “Girls emphasise and learn about the emotional and romantic before the explicitly sexual.” For boys the sequence occurs in reverse. “Commitment to sexual acts precedes commitment to emotion laden, intimate relationships and the rhetoric of romantic love.” Moreover, the focus on appearance in pre-adolescent girls, where girls remark on their own and others looks long before they talk about the appearance of boys, has been linked with “the pattern of performing and being watched” in later female sexual expression¹³².

Adolescent female sexuality mixes in desire and sexual feelings with fear and risk, particularly a fear of pregnancy and a loss of reputation. According to Tolman¹³³ our current society denigrates and suppresses female sexual feelings but also heightens the dangers of girls’ sexuality. As Kimmel and Plante¹³⁴ identified in their research on the sexual fantasies of men and women, whether or not they were active or passive in their fantasy, women always experienced the fantasy as passive while men always experienced the fantasy as active. Such measures of activity and passivity seem to speak to measures of interpersonal sexual power. “By casting themselves as fantasy objects of desire, with less visible sexual agency, women may ultimately be less able to exert sexual desires”¹³⁵.

¹³⁰ *Ibid.*

¹³¹ Barrie Thorne and Zella Luria ‘Sexuality and Gender in children’s daily worlds’. In Michael Kimmel and Rebecca Plante (eds) *Sexualities: Identities, Behaviours and Society*. Oxford University Press: New York, 87-98. (2004, p81)

¹³² *Ibid.* p81

¹³³ Deborah Tolman ‘Doing Desire: Adolescent Girls struggle for/with Sexuality’ in Michael Kimmel and Rebecca Plante (eds) *Sexualities: Identities, Behaviours and Society*. Oxford University Press: New York (2004)

¹³⁴ Micheal S Kimmel & Rebecca F Plante “*The gender of desire: The sexual fantasies of women and men*”, Patricia Gagné and Richard Tewksbury, in (ed.) *Gendered Sexualities* (Advances in Gender Research, Volume 6), Emerald Group Publishing Limited, pp. 55 – 77 (2004)

¹³⁵ *Ibid.* p73

In Powell's¹³⁶ research with young men and women in Australia, these gendered norms of men as active and pursuant, and women as passive and resistant, were evident in their discussions of their sexual relations. For young women, desire was expressed but only in terms of their desire to please and to be loved. In sexual relationships with young men this became manifest in a range of behaviours which situated love with acquiescence, with pleasing the other person, and putting others sexual needs and desires ahead of their own. For young men, taking the initiative was deemed important, with an active (and at times aggressive) male sexual desire expected¹³⁷. Gendered norms of sexual activity also have implications for consent since they may mean that young women choose to have unwanted sex *without* viewing such an encounter as pressured or coerced. Similarly, young women's passivity positions young men as "able to exert pressure whether they actually intend to or not"¹³⁸. Powell¹³⁹ concludes that a number of highly gendered unwritten rules are still in place in young people's sexual encounters which mean that young women in particular "commonly experience pressured and unwanted sex" especially in love relationships and "in the absence of a sense of their needs and sexual desires". The "romantic" or "perfect love" discourses articulated by young women and identified by Holloway¹⁴⁰ mean that young women may submit to sexual pressure in relationships in the name of love, such that love is interpreted as doing what is best for him even if it is contrary to what the women themselves want¹⁴¹. In contrast, (young) men, are perceived as sexually motivated with an irrepressible biological need for sex and are expected to act on these sexual desires with (young) women as the often passive objects of this.

¹³⁶ Anastasia Powell 'Amor fati?: Gender habitus and young people's negotiation of (hetero)sexual consent'. *Journal of Sociology*. 44:2, 167-184. (2008); Anastasia Powell *Sex, Power and Consent*. Cambridge University Press: Cambridge (2010).

¹³⁷ Anastasia Powell 'Amor fati?: Gender habitus and young people's negotiation of (hetero)sexual consent'. *Journal of Sociology*. 44:2, 167-184. (2008)

¹³⁸ *Ibid.* p177

¹³⁹ Anastasia Powell *Sex, Power and Consent*. Cambridge University Press: Cambridge (2010).

¹⁴⁰ Wendy Holloway 'Gender Difference and the production of subjectivity'. In Julie Henriques, Wendy Holloway and C. Urwin, C venn and Valerie Walkerdine (Eds) *Changing the Subject: Psychology, social regulation and and subjectivity*. London: Sage, 223-261. (1984)

¹⁴¹ Anastasia Powell *Sex, Power and Consent*. Cambridge University Press: Cambridge (2010).

What this tends to mean is that in heterosexual sexual relations, consent is a feminine activity. Far from being just a personal and individual choice, consent is also situated within a specific social and cultural context. Certainly it is the case that “instances of pressured or unwanted sex are most often attributed to differences in men’s and women’s gender roles”¹⁴². Sexual miscommunication is often thus tied up with the sexual scripts of masculine activity and assertiveness and feminine passivity and accommodation. It is women who are the ones responsible for communicating their refusals clearly, and this is evident in the vast array of rape prevention strategies, where women are encouraged to say no clearly or given assertiveness training to help them communicate their (lack of) consent. However, research into the issue of sexual consent demonstrates that such consent is rarely verbal, with young men and women especially relying on a vast array of unspoken body language¹⁴³. What this suggests is that while legal models of consent rely upon expressed verbal communications this is not how sex is negotiated in every day practice.

Age of consent laws figure in such discussions since they frame the sexual cultures within which young people become sexual agents. In Thomson’s¹⁴⁴ research with young people, the connection between culture, the law and intimate relations is clearly seen in their understanding of age of consent laws as much more about the protection of girls than boys. Girls in particular “were not confident that their interest would be served if sexual negotiations were completely private” and as a consequence many of them were against the age of consent being lowered to fourteen (as was a consideration in the UK at the time of the research)¹⁴⁵. Concerns over sexual pressure dominated the discussions of young women with many describing the difficulties of “consenting to sex within a cultural context within which pressure from partners was the norm”. Most young women positioned (albeit reluctantly) age of consent laws as “a necessary if rather ineffective safety net which could be invoked if they were cornered”¹⁴⁶. This is partly due to that fact that sexual activity for young women presents a contradiction between the requirement of them to act as sexual gatekeepers and to

¹⁴² Anastasia Powell ‘*Amor fati?: Gender habitus and young people’s negotiation of (hetero)sexual consent*’. *Journal of Sociology*. 44:2, 167-184. (2008, p170)

¹⁴³ Anastasia Powell *Sex, Power and Consent*. Cambridge University Press: Cambridge (2010).

¹⁴⁴ Rachel Thomson ‘*An Adult Thing? Young People’s Perspectives on the Heterosexual Age of Consent*’. *Sexualities*. 7:2, 133-149. (2004)

¹⁴⁵ *Ibid.* p140

¹⁴⁶ *Ibid.* p140

control sexual encounters, but to do this from a position of relative passivity¹⁴⁷. In contrast, young men positioned sexual pressure as more about the expectation to be sexually active than any pressure from sexual partners and “did not articulate any dangers in engaging in morally illegitimate sex in the same way as girls”¹⁴⁸. The young men also insightfully identified the “asymmetry of the law and the presumption that only males can be agents or aggressors”¹⁴⁹. With age of consent laws constructed in terms of (female) protection and (male) sexual agency, “the law on heterosexual consent suggests a social context characterised by mutually exclusive and oppositional gender roles”¹⁵⁰.

What seemed to be most important to young women in terms of their readiness for sex, was the idea of *positive consent* - “negotiating the space to allow a choice to be made”¹⁵¹. Such positive consent was based on “readiness” and included freedom from pressure, self respect, trust and legitimate access to contraception. Interestingly, as previously noted, a similar dynamic seemed to be required for both adolescent boys and girls in cross generational sex, where asking rather than taking positioned the sexual contact as more positive than negative. And while positioning the adult women as initiators of sex did challenge prescribed sexual scripts of masculinity and femininity for adolescent boys, none perceived the experience as negative. Similarly, for those adolescent girls in heterosexual encounters with men who positioned asking rather than taking as the initiation of the sexual contact, positive rather than negative experiences were identified. What this tells us is that cross generational sexual contact can be positioned as consensual by both adolescent boys and girls and that this increases feelings of potency and control for the younger person. While for a range of cultural, historical and social reasons, this feeling “is easier for boys to achieve”, such alternate constructions are of central importance in determining harm and victimisation for both genders¹⁵².

Conclusion.

¹⁴⁷ *Ibid.* p143

¹⁴⁸ *Ibid.* p143

¹⁴⁹ *Ibid.* p141

¹⁵⁰ *Ibid.* p142

¹⁵¹ *Ibid.* p144

¹⁵² Andrea Nelson and Pamela Oliver ‘*Gender and the Construction of Consent in Child-Adult Sexual Contact: Beyond Gender Neutrality and Male Monopoly.*’ *Gender and Society.* 12:5, 554-577. (1998, p573)

In this article we have suggested that the sexual citizenship of young people is a more complex and nuanced relation than legislation and policy is currently able to articulate. In the shift to identify and protect some children from the harm of sexual abuse, all children, often up to the age of eighteen, are positioned as victims within the child abuse narrative. But has this narrative gone too far in its rescue and protect mission? We have suggested that this may be the case. In doing so we have engaged with the various reasons for the differing sexual experiences available to children of this age by discussing the heterosexual scripts of masculinity and femininity, their differing social and cultural experiences of puberty, and the distinct ways in which adult men and women (most often under the age of twenty two) initiate heterosexual contact with children under the age of consent (most often fourteen or fifteen). In all cases we have discussed research which reports on a range of experiences, from harm to enjoyment.

What is clear is that in the policing of sexual relations of some children between the ages of fourteen and seventeen the sexual subjectivity of the young person is in danger of being erased. This seems to most often occur when the child is a young boy between fourteen and seventeen. There is clearly a discord between the child sex abuse narrative of protection and harm, and the lucky boy myth, of desire and culpability. According to Angelides¹⁵³, in the first decade of the 21st century the ‘discursive spaces’ available to articulate the lucky boy myth are very few and this is indicative of the growing strength of two related ideas: the equal culpability of male and female offenders, and the equivalent harm for male and female victims. Such gender neutrality however, masks the social disquiet over adolescent boys, and what to do with them, and it is this, according to Angelides¹⁵⁴ which creates the public furore over female sex offenders in the first place. It is thus not simply the social fear of the “premature and harmful introduction of young people into the world of adult sexuality” but rather a cultural concern about male adolescent sexualities which are “too knowing”, too developmentally aware, too adult. As noted previously, sex education may have taught girls to be the sexual gatekeepers of boys’ sexual activity, but this implies that the “underlying concern has been holding back the power and force of male adolescent sexuality”¹⁵⁵. Such

¹⁵³ Steven Angelides ‘*Hot for the Teacher: The Cultural Erotics and Anxieties of Adolescent Sexuality*’. *Media International Australia*. 135: May, 71-81. (2010)

¹⁵⁴ *Ibid.* p79

¹⁵⁵ *Ibid.* p80

public fear of adolescent boys is already articulated in terms of criminal behaviour, with their culpability and dangerousness identified and punished in Youth Justice Acts Internationally¹⁵⁶. This concern also speaks to previous ways of thinking about children and sex, which as previously discussed was most popular in the 1930s but fell out of favour from the 1970s when the child sex abuse narrative began its ascent.

Of most concern is the identified mismatch between the subjective experiences described by adolescent boys and girls, and the actual objective outcome of cross generational sex. Such an 'erasure' of adolescent sexual subjectivity is evident in academic, professional and public discourses on cross generational sexual contact. The media are most prolific at denying adolescent boys claims of sexual agency¹⁵⁷. Consider for example the following exchange between *Sixty Minutes* reporter Liz Hayes and adolescent boy Ben Dunbar:

Dunbar: In the way that it happened you could say I was a predator. I mean, I went after her ... I took my chances. And I just went for it.

Hayes: But you know that's impossible, you can never be the predator. You know that don't you?¹⁵⁸.

It seems a little odd that we are willing to accept uncritically an adolescent subjectivity which claims to have been harmed and victimised, but not accept an adolescent subjectivity which claims desire, autonomy and consent¹⁵⁹. Such a reliance on rigid gender scripts creates expectations in which girls are passive resisters, and boys are sexual aggressors, except when the sexual contact is cross generational. Then the sexual activity is harmful regardless of individual context, experience or consent. This not only erases the sexual subjectivity of the young person, but effectively silences them. There may however, be another reason, aside from their differing experiences at puberty and sexual relations with adults in predominantly taking rather than asking situations, why girls are more likely to identify being harmed by sexual contact with adults. If passivity is so easily aligned with victimisation, and

¹⁵⁶ Elizabeth Bernstein and Laurie Schaffner 'Regulating sex: an introduction' in Elizabeth Bernstein and Laurie Schaffner (eds) *Regulating Sex: the politics of Intimacy and Identity*. Routledge: New York, xi.(2005)

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.* p351

¹⁵⁹ *Ibid.*

victimisation with harm, girls have a limited sexual script from which to challenge this representation. In contrast, boys have both the ammunition and the impetus to renegotiate such a script which aligns passivity with victimisation, harm and *femininity*. It is thus the rigid sexual scripts offered to young people that may be at the heart of this differing sexual experience of cross generational sex.

