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Articles

“Even a Worm Will Turn at Last”: Rape Reform in Late Nineteenth-Century America

Jane E. Larson*

Even a worm will turn at last, and when her degradation was thus deliberately planned and sanctioned by the state . . . , then

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womanhood's loyalty to woman was aroused; it overcame the silence and reserve of centuries, and Christendom rings with her protest to-day [sic].

Frances E. Willard

I. INTRODUCTION

This Article describes the late nineteenth-century campaign to raise the age of sexual consent as the first wave of anti-rape activism in the United States and a precursor of the modern rape reform movement. This account draws upon evidence from reform efforts in all the states and territories in the period 1885-1900, but focuses in particular on the successful effort to change the law in the District of Columbia. Age-of-consent reform strengthened the crime commonly referred to as “statutory rape,” or heterosexual intercourse with an underage female with or without her consent. (At common law and in early American statutes, rape was an offense only against a female.)

When agitation for reform of statutory rape law first began in the United States in 1885, the age of consent in most states was ten years. Ten years was the English common law rule adopted by most of the newly-formed United States and the District of Columbia. Four years later, in 1889, Congress revised the statutory age in the D.C. criminal code upwards to sixteen years, where it remains today.


2. A definitive history of the age-of-consent campaign would require state-by-state legislative histories supplemented by local evidence of reform activism in each jurisdiction. Such a project for selected states is currently in progress by Leslie Dunlap, Ph.D. candidate, Department of History, Northwestern University.

3. Statutory rape, a specific classification of rape, is unlawful sexual intercourse with a person who has not attained the legal age of consent. See Rollin M. Perkins & Ronald N. Boyce, Criminal Law 198 (3d ed. 1982).

4. See 75 C.J.S. Rape §§ 1, 7 (1952) (early American rape laws gender-based).

5. See 75 C.J.S. Rape § 13 (1952).

6. See id.

7. In 1790, when the states of Virginia and Maryland ceded land to form a federal district to house the new seat of national government, see Act of July 16, 1790, ch. 28, § 1, 1 Stat. 130, the laws of both states were adopted to apply to that part of the District of Columbia that had been ceded by each state. Shortly after moving to the District, Congress fixed this pattern of mixed state law by enacting a statute that incorporated by reference Virginia and Maryland law, thus establishing a body of law for the District of Columbia. Act of Feb. 27, 1801, ch. 15, §§ 1, 2, 2 Stat. 103, 103.

8. D.C. Code Ann. § 22-501 (1981) (assault with intent to commit child sexual abuse); id. § 22-4108 (first degree child sexual abuse); § 22-4109 (second degree child sexual abuse); § 22-4101(3) (“child” means person who has not yet attained age of 16 years).
state and territorial legislatures significantly raised the age of consent.\(^9\) Today, all states criminalize statutory rape in some form and the age of consent in the majority of states is sixteen years.\(^10\)

Credit for this sweeping and successful legal reform belongs to the Woman's Christian Temperance Union (WCTU). In the latter part of the nineteenth century, the WCTU was the largest women's organization in the nation,\(^11\) the first mass (as opposed to elite) political organization for women in American history.\(^12\) Suffrage leaders Susan B. Anthony and Ida Husted Harper described the organization as “the most perfectly organized body of women in existence,” successful both in shaping public opinion and enacting legal reforms.\(^13\)

The WCTU wove its age-of-consent campaign from the many strands of feminism, evangelism, maternalism, domesticity, and moral reform that energized the mainstream of the woman movement\(^14\) in the late nineteenth century. The tide of women that flowed into the public sphere through organizations like the WCTU\(^15\) and women’s clubs\(^16\) accepted a “separate spheres” ideology. They regarded gender differences as real, believing that women and men had different interests and needs as well as different purposes and roles in society. Nonetheless, they insisted that the distinct values and interests of women and girls—like those of men and boys—belonged at the center of public policy and public concern. By the end of the

\(^9\) At the time the campaign began in 1885, the laws of at least 34 states and territories placed the age of consent at 10 years, and one (Delaware) at seven years. See 4 THE HISTORY OF WOMAN SUFFRAGE 465-1011 (Susan B. Anthony & Ida Husted Harper eds., 1902) (state-by-state histories of legal reforms concerning women’s rights from 1882-1900). In the first year of the reform campaign (1886-87), 20 states passed legislation raising the age of consent. See id. By 1900, only three states (all in the South) still had 10 years as the statutory age. In 21 states sexual consent had been raised to 16 years, and in 11 other states the age was 18 years. See id.


\(^11\) See id. at 3.

\(^12\) See id. at 3.

\(^13\) 4 THE HISTORY OF WOMAN SUFFRAGE, supra note 9, at 1046.

\(^14\) What 20th-century readers know as the “women’s movement” or “feminism” was typically called the “woman movement” in the 19th century. To raise “the woman question” was to consider the broad range of issues related to women’s status, rights, and role in society, from suffrage to property, citizenship, wages, sexual mores, and participation in positions of public influence from lawmaking to the ministry.

\(^15\) On the WCTU, see infra notes 86-149 and accompanying text.

nineteenth century, this version of a gendered political consciousness had made middle-class Protestant women, both white and African-American, a formidable force in local, state, and national politics, despite women's almost universal disenfranchisement and disqualification from public office.

The age-of-consent initiative represented an aggressive move by the WCTU and its allies to change male sexual behavior and protect girls and women from laws and cultural values that threatened their well-being. Like the antiprolitation and social purity movements with which they were closely linked, age-of-consent reformers saw sexuality as a vehicle of power that in complex ways kept women subordinated in society. In response, they created a vigorous sexual politics that challenged not just private, but also public power. Ultimately, they questioned the state's conferral of privilege in law of male sexual interests to the detriment of women and girls; they thus exposed the state's complicity in what otherwise appeared to be wholly private acts of sexual oppression.

I argue below that the age-of-consent campaign should be viewed as the first American women's rape reform initiative, a political agenda that took on new life in the feminist resurgence of the late twentieth century. Like their contemporary counterparts, these early rape reformers forced the public to acknowledge the sexual danger, abuse, and violence that lay underneath cherished myths about love and romance, to question female security within the sanctity of the family or in the hands of male protectors. Specifically, these reformers asserted that the legal definitions of coercion and resistance in the existing law of forcible rape were unrealistic and harsh; that much so-called "consensual" sexual contact with young women and girls took place within the family, or in dating, or acquaintance relationships marked by violence, coercion, pressure, or fraud; that employers and professionals often abused their economic power or social authority to solicit sex. In identifying and publicly airing these sexual abuses, nineteenth-century reformers not only succeeded in stiffening rape laws as they applied to an especially vulnerable class of potential victims (girls and young women), but also

17. Social purity began in the 1860s in England, Europe, and the United States as an opposition to state-regulated prostitution. Later, social purity grew into a broader attack on "commercialized vice" and the "white slave traffic." Purity reformers also sought to end the tolerance in law and custom for male sexual license and aggression, and to require men to conform to the same standards of sexual conduct imposed upon women. See generally David J. Pivar, Purity Crusade: Sexual Morality and Social Control, 1868-1900 (1973) (documenting social purity in United States and growth of social reform movement).

laid the groundwork for a more comprehensive reform of rape law almost a century later that extended these and other legal protections to adult and married women.

II. AGE OF CONSENT AND SEXUAL POLITICS

This early and influential attempt to create a politics of sexuality has been little studied by historians of the nineteenth-century women's movement. Feminist efforts to defend girls against sexual injury remain vitally alive amongst feminists in our own times. Yet issues of incest, teenage pregnancy, early sexualization of children and youth, child prostitution and pornography, and the sexual “harvesting” of young women by older men tend to be discussed as if women had never raised these as matters of public debate until the second wave of feminism. Other aspects of nineteenth-century organized women’s politics, such as efforts to reform marriage (and thereby gain for married women rights to property, to custody of children, to wages, and to their own bodies), the suffrage movement, and struggles to improve women’s education and
work opportunities all receive attention. Scholars represent these as progressive movements on behalf of women and claim them as legitimate ancestors of modern feminism. Yet many historians who take note of activism by these same women’s rights reformers on issues of sexual regulation, portray these campaigns as politically repressive and motivated principally by fears of sexuality or by racism and nativism. These scholars refer to nineteenth-century sexual reform movements dismissively as “sex panics,”

elite efforts to control the freer sexual values and behavior of poor and working-class, immigrant and nonwhite women and men in an era of disorienting social, demographic, and economic change. Some modern feminists also criticize early sex reformers for not advancing the goal of sexual freedom or openly embracing women’s sexual pleasure as their political agenda.

Resistance to embracing this early wave of sex reform as a forerunner of modern feminist critiques grows in part out of legitimate recognition of the racism and nativism that permeated nineteenth- and early twentieth-century progressivism, including

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progressive women's organizations. Although the WCTU's ringing phrase "womanhood's loyalty to woman" promised a unity of interest and effort amongst all women, the claim by white women reformers to be the caretakers of social morality effectively included only women from dominant cultures, religions, and races. Poor women, immigrant women, and women of color were "corrupted by their culture" or less moral in the eyes of their elite sisters. Characterized as more in need of maternal guidance than competent to mother the world, these less privileged women were marginalized as "grateful recipients of the moral reform message," never embraced as active agents of "organized womanhood."

The tangible effort to keep nineteenth-century sex reform at a distance also grows out of a discontinuity between the rhetoric and goals of these early sex reformers and those of modern sexual libertarians, a group that includes many feminists. If modern liberals celebrate unconstrained sexuality as natural and positive, early sex reformers saw sex as cultural, good or bad depending upon prevailing political arrangements. If twentieth-century libertarians suspect state intervention in private sexual relationships as repressive, age-of-consent reformers saw such intervention as a progressive move necessary to dismantle repressive traditions of private power.

Given the blur created by such ideologically charged accounts of history, perhaps it takes a legal scholar to call attention to the age-of-consent campaign simply for its remarkable successes and sweeping effects on rape law. Yet I believe this reform campaign also should interest historians and feminist thinkers. The campaign advanced the idea that the conditions of sexuality are implicated in women's second-class civil and economic status. This insight, explicitly articulated by other early feminists, remains central to feminist politics today, grounding efforts to change norms and laws concerning rape, sexual harassment, dating, marriage, prostitution and other sex work, and pornography, to name only a few modern applications. To downplay women's heritage of resistance to injustice in the sexual exchange in favor of traditions of resistance to economic or political injustice fundamentally misrepresents early feminism, as well as its continuity with modern women's liberatory politics. Early feminists argued that in being denied the vote, women were constituted as a

27. Valverde, supra note 25, at 18.
28. Id. at 20.
29. But see Ellen C. DuBois, The Radicalism of the Woman Suffrage Movement: Notes Toward the Reconstruction of Nineteenth-Century Feminism, in MAJOR PROBLEMS IN AMERICAN WOMEN'S HISTORY: DOCUMENTS AND ESSAYS 209, 209-10 (Mary Beth Norton ed., 1989) (arguing that campaign for vote could contain within it all other political, economic, social, and sexual claims of 19th-century woman movement).
subordinate political class. In being denied full property and contracting powers, married women became economic dependents. So, too, the lack of adequate legal protections against sexual force and exploitation made women a sex underclass.

To nineteenth-century sex reformers, it was hypocritical to demand that girls remain chaste before marriage when the law treated girls over the age of ten years as "fair game" for seduction or violation. Not only did such a low age of consent expose the young to sexual pressures that even adult women found hard to navigate, but law and custom harshly punished girls who acted on their sexual desire or surrendered to sexual coercion. At the same time, the Victorian regime of sexual morality found it unrealistic or even impossible to expect any similar measure of restraint from men. This double standard held women responsible for policing sexual boundaries for both sexes. Age-of-consent reformers argued that so long as law and custom tolerated men's indulgence, it was inevitable that someone's daughter, sister, or mother would be "sacrificed to lust."

The reformers insisted that this double standard existed not only in social custom but also in law. Although an age of consent or capacity was part of many laws from ancient times, in the late nine-

32. The common law terms a person under the age of majority an "infant," see 1 WILLIAM BLACKSTONE, COMMENTARIES *459, or in modern usage and law, a "minor" or a "child." See HOMER H. CLARK, JR., THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 230 (1968). In order to protect children from their own bad choices and from exploitation of their immaturity by others, the law renders underage persons formally incompetent to make decisions that will have significant or lasting consequences. The reason for establishing such an age in the law is "to secure [minors] from hurting themselves by their own improvident acts." 1 BLACKSTONE, supra, at *462. Holdsworth likewise comments that although the law cannot deny the minor all legal powers, "[e]qually it would obviously be unfair to treat [the minor] as a full-grown man." 3 W.S. HOLDSWORTH, A HISTORY OF ENGLISH LAW 398 (1909). Thus, long before modern notions of childhood as a time of innocence, see DEGLER, supra note 22, at 66-73, the common law judged children to lack many of the physical, mental, and moral resources of adults and established the principle that the law should protect children and youth, even as it permits them to begin to venture into adult worlds and activities.
33. Use of an age of consent or capacity to differentiate the legal position of children from that of adults is not unique to the law of rape; the common law established a threshold age with respect to many legal rights and duties. See 2 SIR FREDERICK POLLACK & FREDERIC WILLIAM MAITLAND, THE HISTORY OF ENGLISH LAW BEFORE EDWARD I 438 (2d ed. 1952). In recent centuries, that age has been 21 years for most legal purposes. See id. at 439; see also 1 BLACKSTONE, supra note 32, at *461; 3 HOLDsworth, supra note 32, at 396. Like the age of consent to sexual relations, the common-law age of consent to marriage always was considerably lower than 21 years. See JAMES A. BRUNDAGE, LAW, SEX, AND CHRISTIAN SOCIETY IN MEDIEVAL EUROPE 433-34 (1987). Another significant exception to the 21-year mark concerns the age at which a child may be held criminally or tortiously liable, which at common law was seven years. See 3 HOLDsworth, supra note 32, at 396-97. A later common-law rule increased the age to 14 years, at which age a boy was considered capable of committing rape. See 65 AM. JUR. 2D R ape § 27 (1972); 75 C.J.S. Rape § 46(c) (1952). In our own country and century, the sternness of this rule has been further softened by the creation of juvenile court jurisdiction over crimes committed by children under the age of 18 years. See, e.g., ANTHONY PLATT, THE CHILD-
teenth century the legal standards to shield children from commercial misjudgment or exploitation were markedly more protective (twenty-one years)\(^\text{34}\) than those contained in the law of rape to protect girls from sexual misjudgment, exploitation, or violence (ten years). In fixing an age of discretion or majority, the state declares that beneath this age young people do not have the maturity of judgment to qualify them for full moral responsibility or independent action in matters of importance affecting their interests.\(^\text{35}\) Emily Blackwell, a physician and prominent purity activist, bluntly stated: “The present [age of consent] amount[s] virtually to the protection of children only of the years during which the physical abuse of children is so brutal an offence as to excite indignation even among the majority of persons of vicious life.”\(^\text{36}\) The markedly lower legal standard of protection for girls making sexual decisions communicated the message that whereas a boy required years of education, nurturing, and experience to develop the intellectual, moral, and emotional strength, and judgment to fit him for manhood, a girl needed only to reach the age at which she could be sexually penetrated without grievous physical injury to function as a woman.

To age-of-consent reformers, the disparity in legal protection reflected not simply an elevation of property interests over moral or personal interests, but also the elevation of the sphere of market activity dominated by men over the sexual and familial arrangements occupied by women. “Why are the laws so shamelessly unequal now?” demanded national WCTU president, Frances Willard, in a speech she gave repeatedly throughout the 1880s. “Why do they bear so heavily upon the weaker, making the punishment for stealing away a woman’s honor no greater than that for stealing a silk gown; purloining her character at a smaller penalty than the picking of a pocket would

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\(^{34}\) Outside of the law of rape, the most important legal application of the protective rule of youth’s incapacity is the doctrine that a minor is not bound by a contract if he or she chooses to disaffirm the obligation. See generally CLARK, supra note 32, at 230. The rule remains intact in modern contract law. See generally 1 E. ALLEN FARNsworth, FARNsworth ON CONTRACTS § 4.4 (1990). By statute, the age of consent to contract dropped in recent decades to 18 years in order to mirror the lowering of the voting age. See CLARK, supra note 32, at 230.

\(^{35}\) The legal age of majority does not rest on the belief that no child is competent, but rather that it is more likely than not that persons under this age will lack full competence, that greater harm will be done by overestimating maturity than by underestimating it, and that the burden of risk in a transaction with a youth should rest upon the adult. See Arthur Allen Leff, The Leff Dictionary of Law: A Fragment, 94 YALE L.J. 1855, 1978 (1985) (using age of majority to determine legal rights and liabilities is particularly clear example of legal system’s occasionally overwhelming need for certainty and easy administration, even at cost of injury to accuracy and particularized justice).

incur?"\(^{37}\) Once reformers focused on the age-of-consent issue, it seemed indisputable that the law protected boys entering manhood with greater vigor and solicitude than girls entering womanhood. No better political symbol than these disparate legal rules regarding capacity to consent could have been found for the alliance of government with the interests of men over those of women.

### III. The Larger Agenda of Rape Reform

Consistent with the principle of the legal incapacity of youth, the common law always distinguished between the forcible rape of an adult woman and sexual intercourse with a female child.\(^{38}\) The earliest English rape statute, the Statute of Elizabeth I, included in its definition of rape “carnal[] know[]ledge]” of “any woman child under the age of ten years.”\(^{39}\) This rule entered the common law of the newly-formed United States and later was codified in state law,\(^{40}\) making ten years the age of sexual consent for girls in most parts of

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37. Willard, *supra* note 1, at 37. Another response of the WCTU to this degrading picture of what girls were for (and by inference what women were for) was a popular book Willard wrote in the midst of the age-of-consent campaign. See Frances E. Willard, *How To Win: A Book For Girls* (New York, Funk & Wagnalls 1888). It was a book, Willard wrote, about “success in life . . . in something besides the sense treated of in books of etiquette and fashion magazines, or systematically taught in dancing schools.” *Id.* at 13. The message of the book is that girls and women must choose to control their own destiny and act with a sense of purpose, “to hold in her firm little hand her own best gift.” *Id.* In her speech to the 1887 national WCTU convention, Willard affirmed that “[t]he W.C.T.U. is doing no work more important than that of reconstructing the ideal of womanhood.” Frances E. Willard, President’s Annual Address, in *Minutes of the Fourteenth Annual Meeting of the National WCTU* 90 (Nov. 16-21, 1887) [hereinafter *FOURTEENTH ANNUAL MEETING*].

38. See, e.g., Statute of Westminster I, 1275, 3 & 2 Edw. 1, ch. 13 (Eng.) (“[T]he King prohibiteth that none do ravish, nor take away by force, any Maiden within Age.”). This was true not only in common law, but also in the various laws of continental Europe. See Brundage, *supra* note 33, at 311.

39. See Statute of Elizabeth I, 1576, 18 Eliz., ch. 7 (Eng.) (“If any person shall unlawfully and carnally know and abuse any woman child under the age of ten years, it shall be felony without the benefit of clergy.”).

40. Rape entered Anglo-American jurisprudence as a common-law crime. Practically all states adopted the English common-law definition of the crime, even though the age of consent varied somewhat from state to state, being either 10 or 12 years. See 75 C.J.S. *Rape* § 13 (1952); *see also* 65 Am. Jur. 2D *Rape* § 15 (1972) (discussing general background on first statutory rape statutes). In the antebellum United States, rape law did not apply to females as a class: Enslaved girls and women were by statute and custom excluded. See Elizabeth Fox-Genovese, *Within the Plantation Household: Black and White Women in the Old South* 326, 374 (1988).
the country. Thus established, the law remained largely unchanged until the late nineteenth century when reformers took up the issue.

Practically, a statutory age in rape law defines when a defendant may raise a defense of consent. If a girl is under the statutory age, it does not matter that she consented to, or even actively solicited, sex; the defendant incurs liability for rape by the mere fact of the sexual intercourse itself "with or against her will." But if the alleged victim is over the statutory age, she must meet the more restrictive definition of forcible rape, which usually requires that she refute a defense of consent. Until recent rape reforms took effect, courts typically required evidence of overwhelming force and utmost resistance as proof that the victim had not consented, making the claim of consent a formidable and often insurmountable defense to a charge of forcible rape.

Historians Linda Gordon and Ellen DuBois argue that nineteenth-century feminists did not directly confront sexual crimes against women, especially rape. Instead, Gordon and DuBois contend that early feminists projected the problem of sexual abuse outward by focusing on prostitution as the quintessential crime against women. Elizabeth Pleck disputes this claim, arguing that although prostitution was the favored symbol of woman's sexual victimization, nineteenth-century feminists also were activists on issues of rape. A neglected piece of evidence in this historical debate is the sustained legislative campaign in the period 1885-1900 to raise the age of sexual consent in the law of statutory rape.

I argue that the age-of-consent campaign addressed rape law in a far broader sense than is suggested by our modern understanding of statutory rape as fully consensual heterosexual intercourse with an underage female. As I contend below, this early campaign also spoke

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41. A few states codified the age at 12 years, apparently because the age at which a girl at common law could consent to marriage was 12 years (14 years for a boy). See 1 Edward Coke, Institutes of the Laws of England 79a (Philadelphia, R.H. Small, 1st Am. ed. 1853). The age of consent to marriage was related to the age of puberty; that is, the age at which an individual was capable of fulfilling marital obligations to reproduce. Roman law defined "full puberty," at age 17, but "incomplete puberty" at 12 years for girls and 14 years for boys. Brundage, supra note 33, at 357. For reasons unknown, the English common law borrowed the younger ages. One cannot argue that the age of sexual consent similarly related to the age of puberty because 10-year-old females rarely are physically mature. And this was even less likely to have been true in earlier centuries. In the early 20th century, feminist and progressive reformers also sought to raise the age of consent for marriage, typically to 16 years for women and 18 years for men. See Grossberg, supra note 20, at 141-44.


44. See DuBois & Gordon, supra note 26, at 32-33.

to forcible rape, acquaintance rape, incest, workplace sexual harassment, and sexual abuse by professionals. Thus, it is not true that the nineteenth-century women's movement ignored rape. On the other hand, it is important to note that by focusing exclusively on sexual crimes against unmarried girls and young women, the adult, white, mostly married women who led the age-of-consent campaign did remain silent about the sexual abuses committed against women like themselves, keeping their accusations at a distance.

Yet it is notable that, in arguing for raising the age of sexual consent, American age-of-consent activists spoke much more about the sexual harms done by the typical seducer or acquaintance rapist than the predations of the procurer or pimp that absorbed antiprostitution or other social purity reformers. In its legislative lobbying, political organizing and public education on the issue, the WCTU targeted the "respectable" man who moved freely in good society, where he met and sexually coerced or betrayed inexperienced girls and young women, rather than the acknowledged sexual criminal. These reformers suggested that girls and women confronted greater sexual danger in the institutions most revered in Victorian culture as centers of safety and moral legitimacy—the family and the household—than in the streets or from strangers. Stories of girls sexually wronged by boyfriends, family friends, stepfathers, employers, physicians, and neighbors thus abound in the WCTU literature.

Historian Mary Odem describes these stories as "seduction narrative[s]," mythology expressing cultural fears rather than social realities:

In their publications and speeches, [age-of-consent] reformers recounted numerous tales of seduction... in which men of status and wealth took advantage of poor, innocent young women, using various forms of trickery and deception, and force if necessary. The fate of female victims was always disastrous; typically they were forced into prostitution or endured a cruel and lonely death. This narrative of seduction had long been

46. In Britain, antiprostitution organizations led the campaign to raise the statutory age from 13 to 16 years. See Judith R. Walkowitz, Prostitution and Victorian Society: Women, Class, and the State 246-50 (1980). An American antiprostitution group, the New York Committee for the Prevention of State Regulation of Vice, and its successor, the American Purity Alliance, worked closely with the WCTU to lobby for age-of-consent reform in this country. See PiVAR, supra note 17, at 139-46. For antiprostitution groups, the role that a low age of consent played in fostering the traffic in girls for prostitution remained the central argument for reforming the law. See id. at 99.

47. British feminists, too, were especially keen to expose the sexual misconduct of men of the middle and upper classes, and especially those who held respected positions in the society, such as physicians, professors, legislators, and clergy. See Jeffrey's, supra note 19, at 69. The conduct of these men, leaders of society, revealed to female reformers the sexual morality that lay underneath conventional pieties.
popular in nineteenth-century melodrama and romance novels, but reformers adapted it to their own social context and political purposes. The female victim was typically a white working-class daughter in the city, and her male predator a middle-class businessman. The seduction frequently occurred in one of the new places of work and recreation for young women that were emerging in urban areas in the late nineteenth century. 48

Odem sees this seduction narrative as false and hysterical, best understood as a symbolic language through which fears of sexual violence are manipulated to reinforce conservative sexual values and control over women. 49

Odem helpfully situates popular themes of sexual danger that permeated the age-of-consent, antiprostitution, and social purity movements within larger cultural, demographic, and political trends of the late nineteenth century. Yet she fails to distinguish “discourses” from longstanding, persistent threads of political struggle over the material conditions of the male-female sexual exchange. If symbolic fears of sexual and social disorder colored age-of-consent reformers’ ideas and words with racism, nativism, and cultural conservatism, if it filled their rhetoric with demons intended to inspire fear in girls and to scare them away from sexuality, so too did realistic fears of women’s vulnerability to sexual violence and exploitation.

My own review of the speeches, testimony, and literature of the American age-of-consent movement leads me to conclude that examples drawn from real-life experiences were much more commonly used to illustrate political claims than the melodramatic plots or cultural myths that Odem emphasizes. Further, rarely did these real-life accounts (or the fictional stories Odem describes) fit what could reasonably be termed a “seduction” fact pattern. As a characteristic example of the seduction myth, Odem cites a popular melodramatic novel, Is This Your Son, My Lord? 50 The novel, written to aid the age-of-consent campaign, describes the “ruin” of an innocent girl by outwardly respectable men. The novel sold 25,000 copies and received much public notice. 51 Yet the plot hardly recounts the story of a seduction, but instead depicts two violent rapes. In Odem’s own words, the plot of the novel is as follows:

Mr. Mansfield, a wealthy mill owner and highly regarded member of his church and community, decides that it is time for his

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48. ODEN, supra note 19, at 16-17.
49. See id.
50. See HELEN HAMILTON GARDENER, IS THIS YOUR SON, MY LORD?: A NOVEL (Boston, Arena Publishing Co., 2d ed. 1894).
seventeen-year-old son, Preston, to become a man by having his first sexual conquest. Looking for a suitable victim, Mr. Mansfield takes Preston to New York City, where they befriend a white working-class girl of fifteen, Minnie Kent, who lives with her poor widowed mother. Mr. Mansfield invites the unsuspecting girl for a buggy ride in the park but takes her instead to a rooming house. After locking the door, he coaxes her to yield to his advances. When the frightened Minnie refuses, Mr. Mansfield takes a revolver from his pocket, forces her submission, and threatens to kill her if she breathes a word to anyone. After ravishing the girl himself, Mr. Mansfield then turns her over to his son.

Odem's own description belies her interpretation of these exchanges as seductions of any kind.

Odem believes, however, that a desire to police the sexuality of young women, particularly of girls part of the growing urban working class, principally animated the age-of-consent movement; that resistance to sexual violence and exploitation was not the primary motive:

Even while [moral reformers] criticized male sexual behavior and attitudes, they were equally disturbed by assertions of sexual autonomy from young women wage-earners. Their campaigns for “protection” had a coercive aspect. Reformers assumed the authority to define an appropriate code of morality for female youth, one that was based on middle-class ideals of female sexual restraint and modesty.

Thus she interprets the frequent references in age-of-consent reform literature, speeches, and organizational records to the “outrage,” “ravishment,” “seduction,” “betrayal,” “inducement,” “persuasion,” “allurement,” or “sexual ruin” of a girl as references to acts of consensual sex, acts that reformers condemned as violations of a middle-class morality of female sexual restraint. But such an interpretation takes these vague and allusive words too much at face value. In discussing sexual issues, Victorians (and women in particular) often left implicit particularly volatile assertions so as to avoid confrontation or affront. Age-of-consent reformers frequently used

52. Id. at 17.
54. Even Ida B. Barnett-Wells, otherwise known for her willingness to court controversy, resorted to allusive language in making some of her most dangerous sexual accusations. In disputing claims that African-American men were rapists and thus deserving of lynching, Wells suggested that white southern women often consented to sexual relationships with black men and then cried “rape” when discovered. But the language she used to make this accusation was hardly straightforward:
words like "ruin," "seduction," and "outrage" to refer to incidences of incest, acquaintance rape, workplace sexual harassment, and sexual abuse within professional relationships. These acts were, in fact, more often cited in the reform literature than Odem's paradigmatic "seduction narratives." This suggests that reformers sought to do much more than simply keep girls from having fun, or even protect immature youth from making bad choices about consensual sex. They sought to ameliorate the difficulty of proving forcible rape under existing law, to punish sexual abuse of children within the family, and to make it possible for girls and young women legally to challenge sexual exploitation by physicians, teachers, employers, and others in positions of authority.

As evidence for this interpretation, I offer eight narratives used in age-of-consent reformers' published materials to argue for liberalization of the statutory rape laws:55

1. A fourteen-year old girl in the employ of the defendant was called away from play with other children, locked into the barn and "[b]efore she in the least comprehended his purpose, resistance was made practically useless, if not impossible."556 Because the girl did not resist "until exhausted or overpowered," a New York court ruled that she had failed to prove that the attack was "against her will."557 Therefore, she could not prevail on her claim of forcible rape.58

Nobody in this section of the country believes the old thread bare lie that Negro men rape white women. If Southern white men are not careful, they will over-reach themselves and public sentiment will have a reaction; a conclusion will then be reached which will be very damaging to the moral reputation of their women.

IDA B. WELLS, Southern Horrors: Lynch Law in all its Phases, in ON LYNCHINGS 4 (Arno Press 1969) (1895). White readers understood Wells's intended meaning perfectly, however, and reacted with fury. Editorials threatened her with mutilation and hanging, and vigilantes seized her newspaper presses and gathered around her home threatening to kill her on sight. Because of the controversy stirred by this editorial, Wells felt compelled to leave Memphis and move to the North. See CRUSADE FOR JUSTICE: THE AUTOBIOGRAPHY OF IDA B. WELLS 182 (Alfreda M. Duster ed., 1970) [hereinafter CRUSADE FOR JUSTICE].


57. 59 N.Y. at 377.

58. Id.
2. A woman testified that she screamed and struggled desperately with her assailant in the face of threats with a revolver and overpowering physical restraint: "He had my hands tight and my feet tight, and I couldn’t move from my place even." Finally, her cries for help were so persistent that the defendant threatened to use the revolver if she again cried out, and still she called for help. Eventually, however, she gave up, believing that further struggle was futile: "I tried my best I could, and I couldn’t do any more, I got so tired out. I tried to save me so much as I could, but I couldn’t save myself, and he held me, and tried to do what he was made to do, and I couldn’t help myself any more. . . . At last I worked so much as I could, and I gave up." Despite the physical restraint used and the deadly force threatened, a Wisconsin court ruled that the woman’s "[r]esistance and the dissent ought to have continued to the last [such that her] physical power [was] overcome by physical force." Because, in her own words, she eventually "gave up," the victim could not support her charge of forcible rape.

3. A teenaged girl "who, by common consensus of opinion in the community was deemed mentally deficient," was invited by a young man, well known to the girl and her family, to attend a party. Instead, the young man drove the girl to an abandoned farmhouse where a half dozen other men waited, two of them married. Seven men had sex with the girl. When she was taken home "in a pitiable condition," she reported to her family what had happened and gave the names of her assailants. On trial for forcible rape, the defendants and other men of their acquaintance testified that the girl was of "previously unchaste character" and had consented to the sex at the farmhouse. All were acquitted.

4. A consumptive girl of sixteen was placed by her father in the house of a physician for treatment. The doctor told his patient that she should have sexual intercourse with him as a treatment necessary for her recovery. He could attempt to "enlarge" her reproductive organs and "turn" her uterus with surgery, the doctor explained, but the operation "would probably would kill her." Further, he told his patient that this was standard protocol for the treatment of female

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59. Whitaker v. State, 50 Wis. 518, 519 (1880).
60. Id.
61. Id.
62. Id.
63. Gardener, Part II, supra note 55, at 32.
64. Id.
65. Id.
66. See id. (reporting 1894 or 1895 case from Marion County, Missouri, as recounted by Clara C. Hoffman, Missouri WCTU President).
patients and that her father had agreed to the course of treatment. The girl submitted. When the physician was tried for forcible rape, the Michigan Supreme Court ruled that fraud or deceit did not come within the meaning of force as used in the statute. The court could convict the doctor of rape only if there was evidence that the girl had been so deceived as to be actually in fear of death unless she submitted.  

5. The Union Signal carried this news item: "Joseph Carr of Sangamon County has been sentenced to five years' imprisonment for criminally assaulting his step-daughter; the first conviction in the county under the new Age of Consent law." Here the law was used to prosecute incestuous rape.

6. A New Haven working girl wrote a letter to Richard Howell, editor of the Sunday Herald in Bridgeport-Waterbury, Connecticut, appealing to the newspaper to "do something for the girls who toil in the factories to protect them from men who are in authority and who insult them by improper advances and mercenary offers." Howell later testified before the Connecticut legislature to advocate raising the age of consent. He cited this letter.

7. A girl of fourteen years, daughter of a hotel keeper in a neighboring town, came to the state fair in the capital in the company of an escort, a young bank clerk. The couple arrived from the countryside by morning train and went to a local hotel for breakfast. The girl's escort secured for her a room "to arrange her toilet," and then entered the room and forced sexual intercourse. Although the girl struggled violently, she did not scream and thereby alarm other residents of the hotel. For this reason, the jury in the escort's trial for forcible rape hung, returning no conviction.

8. The Union Signal ran this letter: "The design of the [age-of-consent] petitioners is . . . to protect children and young girls of pure lives from the many men whose chief pleasure it seems to be to go about, and with devilish insinuations, promises of marriage, and words of so-called 'love,' to persuade good girls to do wrong."
Of these stories only item number eight is a case of consensual sex with an underage girl (albeit consent that may have been procured by fraud). Items one, two, three, and seven are forcible rapes (items one, two, and seven by an employer or acquaintance, and item three a gang rape); item three, the case of the mentally incompetent young woman, is horrifyingly similar to the Glen Ridge case of 1994; number four is an example of sexual abuse by a professional; number five is a case of incest; and number six is a complaint about workplace sexual harassment.

In modern law, forcible rape, acquaintance rape, incest, workplace sexual harassment, and sexual abuse by professionals are analytically distinct categories, not confused either with seduction (sex procured by fraud) or instances of consensual sex with underage persons. But as nineteenth-century American criminal law had been codified from the common law, a sexual violation that did not fit into the categories of forcible rape or statutory rape was a lawful act. Further, the law defined forcible rape very narrowly. It failed to cover many instances of coercive and nonconsensual sex. Only some of the states had statutes prohibiting the incestuous sexual abuse of children. The law did not separately address acquaintance rape until the systematic

75. In 1989, a group of popular football players in Glen Ridge, New Jersey, gang-raped a 17-year-old girl with the mental capacity of an eight-year old. The athletes enticed the girl into a basement with the promise of a date, then raped her with a miniature baseball bat and a broomstick. The defendants claimed the sexual acts were consensual. See, e.g., Robert Hanley, Verdict in Glen Ridge, N.Y. TIMES, Mar. 17, 1993, at A1.

76. The prevailing legal definition of forcible rape in the late 19th century was carnal knowledge (i.e., sexual intercourse) with a mature female “without her consent” or “against her will.” See Bienen, supra note 18, at 174-75. In evaluating the evidence offered when a rape defendant claimed consent and the alleged victim denied it, courts of the period collapsed the idea of “consent” into the notion of “force,” holding that where there was sufficient force there could be no consent, but where force was not substantial, consent would be presumed. See id. at 181-82. Courts also tested an alleged victim’s claims of non-consent by examining the intensity of her physical resistance. If she had offered “utmost resistance” and persisted “to the last,” she would be believed. But if at any time during the attack she had acquiesced—sucumbing to fear, for example, or to a sense of futility in further struggle—the court would find that she eventually consented to the act. See id. at 181-82. Coercion by the exercise of legitimate authority (i.e., the command of a father or an employer) was not understood as the use of “force.”

77. Linda Gordon and Paul O’Keefe confirm that incest was not an unusual family problem in earlier historical periods. They found evidence of sexual abuse of children, almost all girls, by male relatives and guardians in 10% of the case records from three Boston social work agencies between 1880 and 1960. See Linda Gordon & Paul O’Keefe, Incest as a Form of Family Violence: Evidence from Historical Case Records, 46 J. MARRIAGE & FAM. 27, 28 (1984). Incest was not unlawful at common law; rather, its regulation was left to church authority. See generally Henry A. Kelly, Kinship, Incest, and the Dictates of Law, 14 AM. J. JURIS. 69 (1969). Criminal incest statutes in the United States were enacted at varying times (from the Puritan era to the late 19th century) in different parts of the country. See GERHARD O.W. MUELLER, LEGAL REGULATION OF SEXUAL CONDUCT 44 (1961); Graham Hughes, The Crime of Incest, 55 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 322, 326 (1964). Early criminal incest statutes in the United States were directed primarily at incestuous marriages and childbearing rather than protection against intrafamilial child sexual assault. See 3 ENCYCLOPEDIA OF CRIME AND JUSTICE 880, 881-82 (Sanford H. Kadish ed., 1983). In modern law, by contrast, incest is treated as an especially aggravated form of child sexual abuse.
reforms of rape law in the 1970s and 1980s. Workplace sexual harassment and sexual abuse of professional authority are only now becoming legally acknowledged. And even with respect to that narrow category of sex crimes acknowledged by nineteenth-century criminal law, the attitude towards enforcement was equivocal.  

My close examination of the factual scenarios cited by age-of-consent reformers in their literature and speeches suggests that by expanding the definition of statutory rape (a strict liability offense), they sought to import through the back door more liberal definitions of prohibited sexual acts, and of consent and non-consent as it applied in the context of forcible rape. By prosecuting all instances of sexual wrong committed against a girl or young woman as statutory rape, the powerful consent defense could be neutralized. Attorney Georgia Mark wrote a scholarly analysis of rape law published in the national WCTU newspaper, the Union Signal, in which she advised her audience that “when [the defendant] is allowed to set up the plea of ‘consent’ his acquittal is almost certain. If he can prove the voluntary acquiescence of his victim, no matter how or when it was obtained, he need not make any attempt to deny the commission of the crime.”

Within the framework of nineteenth-century rape law, therefore, setting an older age of consent was a strategy for effectively “criminalizing” categories of sexual acts that the existing law did not yet treat as sexual crimes, at least for a small group of especially vulnerable victims (girls and young women). If my strategic interpretation of the age-of-consent initiative is correct, the scope of rape reform aspired to by these early reformers was almost as sweeping as that eventually accomplished by the modern rape reform movement almost a century later.


79. See Mark, supra note 56, at 4.

80. In the 1970s and 1980s, every state considered and most passed revisions of its rape law following models promoted by a coalition of feminists and law-and-order advocates. See Bienen, supra note 18, at 171. Model reforms redefined and expanded the categories of prohibited sexual conduct, refocused the trial process away from the victim’s behavior and previous character, and broadened the kinds of proof tending to show that the victim had not consented—for example, requiring lesser showings of “force” and “resistance.” Modern definitions of “force” include instances in which a victim is threatened or verbally coerced, where the rapist is known to the victim or is her friend or husband, and where the victim has been drugged into unconsciousness or is mentally incompetent. Modern law also recognizes that sex may be coerced by more than physical violence or threats—by psychological coercion or an abuse of professional or familial authority, for example, or by the threat of economic duress available to an employer. See id. at 171-84.
This interpretation of age-of-consent reform as rape reform is further strengthened by evidence that after early successes in strengthening statutory rape law in both the United States and Britain, sex reformers proposed to extend the reforms gained to adult women. In 1900, the national WCTU president proclaimed that, having already achieved such remarkable legislative success in statutory rape reform, "there is growing sentiment in favor of legally protecting womanhood at any age as well as girlhood in her minority." In Britain, the feminist Moral Reform Union called for legislation to allow for prosecution of seducers of women of "all ages." The organization wanted "protection [to be] afforded to women and girls against persecution by immoral men." Either the idea was to make sex with a female unlawful in all circumstances no matter what her age (an implausible interpretation), or these American and British leaders were beginning to say more openly that the "back door" reforms in the law of sexual crime that they had accomplished for girls now should be extended to adult women as well.

Further evidence that the WCTU was concerned about the forcible rape of adult women is the longstanding participation of the large and influential Cook County WCTU in the work of the Protective Agency for Women and Children, founded in Chicago in 1885. The Agency, unique in the nation at the time, was founded with one of its purposes to provide legal support to rape victims. Describing the organization, historian Elizabeth Pleck writes that "[n]ineteenth-century Americans established hundreds of societies for the protection of children, but only one, the Protective Agency for Women and Children . . . protected assaulted wives and rape victims." In sum, rather than directly challenge the narrow legal definition of forcible rape and press for criminalization of other sexual crimes, the early rape reformers tried simply to step around the restrictive and hostile law of forcible rape by raising the age of consent, thereby gaining meaningful legal protection for at least one group of potential victims. With strengthened statutory rape laws, convictions could be achieved in the kinds of factual patterns that otherwise did not meet unreformed definitions of forcible rape, so long as the victim was...

81. President's Annual Address, in MINUTES OF THE TWENTY-SEVENTH ANNUAL MEETING OF THE NATIONAL WCTU 90 (Oct. 1900) (emphasis in original).
82. JEFFREYS, supra note 19, at 20 (quoting MORAL REFORM UNION, ANNUAL REPORTS, 1881-97).
83. See PROTECTIVE AGENCY FOR WOMEN AND CHILDREN, FIRST ANNUAL REPORT 16 (1887). Historian Elizabeth Pleck has brought the work of this agency to light. See PLECK, supra note 20.
84. Id. at 465. The activities of the Protective Agency closely parallel those of the British Moral Reform Union. See JEFFREYS, supra note 19, at 18-21.
young. Modern rape reformers chose a different strategy. They directly confronted the assumptions and values embedded in restrictive forcible rape and sexual assault laws. The political effort that this direct challenge required was enormous, the legislative battles exhausting and intense, the reformers' claims often viewed as extreme and controversial, the organizational resources demanded staggering, and the ultimate outcome only partially successful. A century ago, it is uncertain whether even the powerful WCTU could have achieved such political success with a similar strategy of direct challenge.

IV. THE WCTU

What was it about the cause of statutory rape reform that fired the minds and hearts of women in the WCTU, an organization founded to combat drunkenness and the liquor traffic? Founded in 1874, the WCTU promoted temperance not simply because of the social costs associated with the high rates of alcohol consumption during the nineteenth century, but because men's alcohol abuse caused women particular hardship. Historian Ruth Bordin writes, "[T]he nineteenth-century drunkard's reputation as a wife beater, child abuser, and sodden, irresponsible nonprovider was not undeserved." Because women under the common law regime of marriage were legally subject to a husband's economic and disciplinary authority, wives often suffered violence and poverty at the hands of an alcoholic husband. Even if a wife earned her own wages, that money was in the legal control of the husband and could be put to any use he chose. To nineteenth-century suffrage and temperance leader Susan B. Anthony, the drunken husband was the true image of women's dual oppression by men and the state.

In 1879, the WCTU elected Frances E. Willard as national president, and thereby gained a powerful leader, social visionary,

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85. See Bienen, supra note 18, at 171-72.
86. If to modern ears the temperance cause seems a quaint relic of Victorian distaste for the pleasures of the body, it is important to recall that progressives of the era took it for granted that prohibition of liquor was as desirable as prohibition of child labor and other reforms. See Kraditor, supra note 21, at 15. In our own era, restrictions on smoking have broad public support, and many believe that the ultimate abolition of the tobacco trade would be justified in the public interest.
88. Bordin, supra note 11, at 7.
89. The remarks of Susan B. Anthony, in her 1875 address to the National American Woman Suffrage Association in Chicago, are cited in Aileen Kraditor, Up From the Pedestal: Selected Writings in the History of American Feminism 159-61 (1969).
compelling public speaker, shrewd political strategist, and tireless organizer who, until her death in 1898, would lead the organization towards increasingly political methods and a steadily more radical reform agenda. The social vision Willard imparted to the WCTU was at once deeply pragmatic and profoundly optimistic. She envisioned the purification of all social institutions through women’s work in the WCTU: “White-ribboners” (the colloquial term WCTU women used to identify themselves) would lift up a fallen society in the same ways that women in charitable work had sought to raise up the individual drunkard or prostitute. This image of redemption had strong religious roots in evangelical Protestantism. Willard wrote that the WCTU’s work would reach into “circle after circle of human endeavor and achievement”—the home, church, school, community, government, and economy—until “the coming of Christ into all departments of life” was realized. This, Willard proclaimed, “is, in the last analysis, the purpose and aim of the WCTU.”

Willard’s vision, according to historian Mari Jo Buhle, “was no postmillennial promise of human virtue inducing Judgment Day, but a worldly, almost materialistic vision of heaven on earth achieved through women’s initiative.” If Willard’s language and aims were avowedly spiritual, the means she proposed to use to redeem the world were firmly secular and in the hands of women. Because women would redeem society, women’s progress signaled social progress. “In reconciling the Enlightenment idealism of the first women’s rights advocates with the missionary mentality of rural Protestant women,” Buhle writes, “Willard placed both within an all-encompassing tradition. She had . . . made the existing values gain new, almost revolutionary content.”

This linking of evangelical religion and progressive reform came to be called “social gospel” and Willard emerged as one of its leading proponents. Only social justice could bring temperance, Willard argued, because it was an unjust society rather than personal weakness that drove men and women to self-destructive behaviors.

90. FRANCES E. WILLARD, WOMAN AND TEMPERANCE, OR THE WORK AND WORKERS OF THE WOMEN’S CHRISTIAN TEMPERANCE UNION 42, 43 (Hartford, Park Publishing Co. 1883).
91. MARI JO BUHLE, WOMEN AND AMERICAN SOCIALISM, 1870-1920, at 64 (1983).
92. Id.
94. Accordingly, in addition to supporting laws against alcohol use and traffic, the WCTU also called for prison reform and special facilities for women offenders; worked for the eight-hour working day and legal guarantees of a living wage; established institutions for dependent and neglected children; ran kindergartens and day care facilities for working mothers; advanced proposals and programs for federal aid to education, mothers’ education, and vocational training for women; and supported many other causes broadly designed to improve the social environment, especially for the urban poor. See BORDIN, supra note 11, at 13-14.
In the early 1880s, the WCTU moved to broaden its understanding of "temperance" to include not just abstinence from alcohol, but also restraint in other appetites and desires. In a speech to the British Moral Reform Union in 1891, national WCTU organizer Dr. Kate Bushnell spoke about the true meaning of temperance:

The word temperance . . . had been narrowed down till it only meant total abstinence. In America, the women of the Christian Temperance Union had accepted it in its higher meaning, the combatting of depraved appetite in every form, and for the abolition, all the world over, of all laws that protect depraved appetite.  

It was under this "big tent" definition of temperance that the WCTU moved into sexual politics.

Under Willard's influence, the organization also turned increasingly away from the private or philanthropic solutions traditionally associated with women's "good works" and towards regulatory and public approaches to social problems. In 1887, Willard put the matter succinctly: "Reforms are good, but law is better." Willard argued:

Reformers spend years in trying to alleviate the misery caused by evil institutions and practices, evils which law with its iron hand could crush in a day. This is a truth, which people who are trying to help the masses are not slow to learn. Is it not natural that, weary and worn with vain efforts to stop the thousand rivulets of evil, they should want to get to the source and stop the waters there forever?  

Speaking specifically of the need to enact stronger laws against sex crimes, Willard stated, "It is now the deliberate purpose of as capable and trusty women as live, that the laissez-faire method of dealing with these crimes shall cease; that the method of license, high or low, shall never be for one moment tolerated, and that the prohibitory method shall come and come to stay."  

95. JEFFREYS, supra note 19, at 23-24 (quoting MORAL REFORM UNION, ANNUAL REPORTS, 1881-97).
96. Frances E. Willard, The World Moves on and with It Women, WOMAN'S MAG., Jan. 1887, at 137.
97. Id. at 140.
This turn towards the state\textsuperscript{99} had profound implications for the role of women. Willard insisted not only that WCTU members could, but \textit{must} become involved in politics: "We, as women, have a duty to the state that no one can execute for us. We must do it, or it remains undone."\textsuperscript{100} She sought to reassure her membership that politics were not "such a mystery . . . as some statesmen would have us believe."\textsuperscript{101} Women's experience as the administrative and moral center of the home well equipped them, she claimed, for public debates on policy: "Any government is simply the family magnified. The real heart and soul, the right or wrong of the one, belong to both."\textsuperscript{102}

Willard deliberately used this imagery of "domesticating politics" to politicize the WCTU membership even as she avoided any direct challenge to traditional sex roles. There are obvious parallels between the WCTU's strategy of sidestepping direct confrontation with the shortcomings of rape law, and this strategy of avoiding direct confrontation with dominant gender ideology in calling for women's increasing politicization. Early suffragists' claims for women's rights \textit{as such} had created furious resistance in the years immediately before and after the Civil War, including among many conservative women. But Willard's insistence that women needed the ballot for "Home Protection" made woman suffrage palatable to a far broader constituency. In an elegantly subversive twist on separate spheres rhetoric, the WCTU argued that male lawmakers had failed to defend the home from various predations.\textsuperscript{103} Women could not therefore fulfill their domestic responsibilities to nurture home, children, and community unless men gave them the ballot. "Home Protection" was a major factor in successfully convincing the WCTU membership to embrace woman suffrage,\textsuperscript{104} and proved a sturdy shield against criticism as the Union moved steadily into the heart of radical reform politics.\textsuperscript{105}

\textsuperscript{99} In the closing decades of the century, reformers were coming to abandon a limited conception of the state as responsible only for restraining one person's interference with another's rights, and embracing the emerging notion of a welfare state responsible for nurturing a prosperous, just, healthful, and moral social environment. This new conception of the state would reach full flower in the Progressive Era. See \textsc{Kraditor}, supra note 21, at 73-74.

\textsuperscript{100} Willard, supra note 96, at 140.

\textsuperscript{101} Id.

\textsuperscript{102} Id.

\textsuperscript{103} At its first national convention, the WCTU passed a resolution stating bluntly that "much of the evil by which this country is cursed comes from the fact that men in power whose duty is to make and administer the laws have failed." \textsc{Minutes of the First Convention of the National WCTU} 29 (Nov. 17-19, 1874).

\textsuperscript{104} See \textsc{Bordin}, supra note 11, at 58; \textsc{Mary Earhart, Frances Willard: From Prayers to Politics} 152 (1944).

\textsuperscript{105} On the effectiveness of the Home Protection strategy, see DuBois, supra note 29, at 68-69.
The immediate impetus for the WCTU's age-of-consent campaign came from overseas. Continental and American reform circles were shocked in 1885 by an exposé of child prostitution published in Britain, titled *Maiden Tribute of Modern Babylon*. On July 4, 1885, William T. Stead, editor of the *Pall Mall Gazette*, published a four-part series documenting the abduction, imprisonment, drugging, enticement, and outright sale of poor and working-class girls into prostitution in London. Most shockingly, Stead wrote about how he had purchased a thirteen-year-old girl, Eliza Armstrong, from her mother for the price of five pounds. The British public reacted powerfully to the series and some 250,000 people flocked to a demonstration in Hyde Park to demand passage of an age-of-consent reform bill that had been stalled in the Parliament for years.\(^{107}\) Parliament acted quickly, passing the Criminal Law Amendment Act of 1885 to raise the age of sexual consent for girls from thirteen to sixteen years.\(^{108}\)

Upon reading the Stead exposé and discovering that American law provided even less protection to girls than British law, Frances Willard immediately urged her membership to begin work not only on child prostitution, but on "crimes against women" generally: "[T]he effect upon our minds of such unspeakable disclosure... has so stirred the heart of womanhood throughout this land, that we are, I trust, ready for an advance," she proclaimed.\(^{109}\) "We have been the victims of conventional cowardice too long."\(^{110}\) Willard contended that "[c]rimes against women seem to be upon the increase everywhere."\(^{111}\) She noted that, in a recent survey conducted by a Chicago reform newspaper, "in forty of the cases of direct outrage [i.e., forcible rape], sixteen of the victims [were] girls."\(^{112}\) In the first organizational cry for age-of-consent activism, she called upon her membership to work to pass "such laws as would punish the outrage of defenceless [sic] girls and women by making the repetition of such
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outrage an impossibility.” Only women could persuade lawmakers “to furnish this most availing of all possible methods of protection to the physically weak,” Willard claimed. Despite her references to women’s physical weakness and lack of defenses against sexual abuse, Willard made it clear that what women wanted was adequate protection by laws and social norms, not the traditional shelter of a chivalrous father or husband: “Men alone will never gain the courage thus to legislate against other men.”

In response to this call to arms, the WCTU revived at the 1885 national convention the Department for Suppression of Social Evil (an antiprostitution project that had fallen into inactivity), renaming it the Department for Promotion of Social Purity. In executive session, the national leadership laid out initial plans for a campaign to seek legislation to raise the age of sexual consent in all the states and territories, especially those under the jurisdiction of Congress, most prominently the District of Columbia.

In Britain, age-of-consent reform had arisen as an organic part of the popular movement against efforts to legalize or regulate prostitution. In the 1860s, the British Parliament enacted the Contagious Diseases (CD) Acts, which provided for the forced inspection, detention, and treatment of women suspected of prostitution in military districts. Feminist Josephine Butler launched an unrelenting campaign to repeal the law, linking feminists with radical workers’

113. Id. at 74.
114. Id.
115. Id.
116. Since 1877 (only three years after the WCTU was founded), some WCTU locals had been working with sexually abused and exploited women. See MINUTES OF THE FOURTH ANNUAL MEETING OF THE NATIONAL WCTU 107 (Nov. 6-11, 1878). This work with “fallen” (i.e., seduced, promiscuous, or prostituted) women followed the pattern of the WCTU’s early work with drinking and alcoholic men, which concentrated on the “rescue” of individuals through religious conversion and social support. See BORDIN, supra note 11, at 13 (discussing “moral suasion” approach to intemperance); id. at 110 (noting early “rescue” work of Committee on Work with Fallen Women). Just as the WCTU provided shelter and support for men seeking to break out of a drinking life, some state and local unions opened “houses of refuge” for prostitutes seeking to escape the brothels or the streets. See id. For details on these refuge houses, see Norton Mezvinsky, The White-Ribbon Reform, 1874-1920, at 235-36 (1939) (unpublished Ph.D. dissertation, University of Wisconsin).
117. See Age of Consent, UNION SIGNAL, Dec. 3, 1885, at 3.
119. See WALKOWITZ, supra note 46, at 3. The opposition objected to the differential treatment accorded to prostitutes and their customers under the CD laws (which inspected and licensed women in order to protect customers). But the antiprostitution movement opposed prostitution in any form, state-regulated or deregulated. They saw the sale of one’s sexuality as analogous to the sale of one’s person in slavery. The international movement to abolish

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organizations and middle-class progressives in opposition to the CD Acts. This opposition accused the state of authorizing men’s sexual tyranny over women. In the face of this opposition, members of Parliament repealed the law in 1886 and took other measures to distance themselves from the potent accusation that the government “licensed” vice.

In the Anglo-American legal and political world at the end of the nineteenth century, antiprostitution proponents broke the polite silence surrounding sexual exploitation amongst the Victorian middle-class. They recast silence, once considered the right way to deal with sexual immorality, as criminal neglect. By exposing men’s sexual wrongdoings, respectable women in Britain inserted themselves into the public discussion of sexuality and law. By the mid-1880s, having definitively defeated reglementation, antiprostitution activists hoped to broaden their agenda by addressing what they diagnosed as the underlying cause of prostitution—the sexual double standard, including its legal expressions such as the disparate ages of consent. In the United States, this broadened movement for “social purity” centered in New York around an elite cadre of longtime activists.

This New York circle saw an alliance with the WCTU on the age-of-consent issue as its entry into mass politics. The WCTU’s organizational size and strength could spread the sex reform message quickly into the grassroots of communities throughout the nation. For her part, Frances Willard took on the age-of-consent issue with full awareness of the potential clout of her organization in local and national politics. Prostitution was called “the new abolitionism,” and many purity activists came to the movement from antislavery abolitionism. See Pivar, supra note 17, at 7. This explains in part the origin of the term “white slave” as used to refer to prostituted women: “There are three sets of slaves that we women are working to emancipate,” Frances Willard said. “They are, white slaves, that is degraded women; wage slaves, that is the working classes; and whiskey slaves, that is the product furnished by brewers and distillers.” President’s Address, in MINUTES OF THE SECOND BIENNIAL CONVENTION OF THE WORLD WTCU & TWENTIETH ANNUAL MEETING OF THE NATIONAL WTCU 37 (Oct. 18-21, 1893) [hereinafter SECOND BIENNIAL CONVENTION]. Odem notes, however, that the term also reflected the disinterest that white reformers showed in the sexual abuse faced by black women and girls. See Odem, supra note 19, at 26. White abolitionists had challenged the sexual exploitation of black women under slavery. See BLANCHE GLASSMAN HERSH, THE SLAVERY OF SEX: FEMINISTS-ABOLITIONISTS IN AMERICA 8-9 (1978).

After emancipation, however, white sex reformers largely ignored the racial dimensions of sexual violence as experienced by black women and girls.

120. See Walkowitz, supra note 24, at 90.
121. See Pivar, supra note 17, at 139. The seed of the American purity movement was the New York Committee for the Prevention of State Regulation of Vice, under the guidance of Aaron Macy Powell, Anna Rice Powell, and Dr. Emily Blackwell. In 1895, the New York Committee joined with other moral reform groups to form a national organization, the American Purity Alliance. On the Alliance, see generally THE NATIONAL PURITY CONGRESS: ITS PAPERS, ADDRESSES, PORTRAITS (Aaron M. Powell ed., New York, American Purity Alliance 1896) [hereinafter NATIONAL PURITY CONGRESS PAPERS].
122. See Pivar, supra note 17, at 139; Antoinette Brown Blackwell, Social Purity, PHILANTHROPIST, Mar. 1889, at 5.
national politics: "[A]s yet, no great philanthropic or religious organization . . . has attached to the driving-wheel of its already well adjusted and powerful machinery, the belt that should turn this silver wheel of social purity," she observed in 1886. But, she promised that

our own W.C.T.U. can bring to this ineffable opportunity the best condition it has known. Reaching out to every corner of the republic through a national organization that knows no sect in religion, no sectionalism in politics, no sex in citizenship; appealing to the largest and the most homogenous band of practical philanthropists yet developed among women, the results of our united efforts ought to be greater than any heretofore attained.124

Taking on age-of-consent reform signaled a definitive shift in WCTU politics; thereafter, until a more cautious leadership in more conservative times took over the organization following Willard’s death in 1898, the rhetoric of WCTU leaders and members reflected a recognizably feminist analysis of women’s position and an orientation towards political and systemic solutions to social problems. In the mid-1880s, the WCTU had come to see drinking as a reaction to poverty, overwork, and deprivation among working men, and so they supported labor law reform as a cure for intemperance. Likewise, when the Union came to see sexual abuse of women and girls as related to social norms that tolerated male aggression, and also to women’s subordinate status in society, they turned to legislative and political solutions. "Just as in our temperance movement, we thought at first chiefly of reforming fallen men," said Willard in 1887, "so in this work, to help fallen women was my first purpose; but now, while just as loyal to that aim, I see that women must not, need not, fall."125 If women prostituted themselves because of family dislocation, grim and depressing working conditions, wages inadequate for a decent living, or enticement and betrayal by a man, each and every one of these causes needed redress.

In addition to raising the age of consent, Willard urged her members to support measures to remedy women’s vulnerability and dependency in a far-reaching way:

To my mind here lies the core of the woman question: Teach girls to work and you diminish by one-half their temptations to

123. Co-operating with the “White Cross Army”: Plan of Work for 1886, UNION SIGNAL, Jan. 28, 1886 at 12 [hereinafter Plan of Work for 1886].
124. Id.
125. Frances E. Willard, President’s Annual Address, in FOURTEENTH ANNUAL MEETING, supra note 37, at 89.
a life of sin. . . . Put a money value upon a wife's industry in helping to build and maintain a home. . . . Give women the ballot, that such representatives of the people may be put in power as shall make . . . equitable laws.\textsuperscript{126}

Her broader agenda included sex education in homes and schools, higher education and vocational training for girls and women, laws to redistribute family wealth in compensation for women's economic dependence in marriage, and suffrage for women.\textsuperscript{127}

Because the WCTU membership remained tied to the social norm of separate spheres, it was vitally important for WCTU leaders consistently to assert the "womanliness" of its members' growing political activism on these fronts. "Womanliness first—afterwards what you will," Willard declared.\textsuperscript{128} In urging the WCTU to commit to age-of-consent reform, lawyer Georgia Mark wrote that "[n]o truly womanly heart can resist the call to work for the preservation of the purity of young girls. There could be no work more distinctively womanly than this."\textsuperscript{129} Womanliness also was key to Willard's charismatic public persona. The press and public endlessly remarked on Willard's appealingly feminine manner and dress, her gracious manners and pleasing voice.\textsuperscript{130} Willard's own "womanliness" disarmed her critics and proved compellingly reassuring to her followers.

This reinforcement and reassurance was vital to the WCTU's success. In taking up issues of sexual politics, many WCTU women feared that their own reputations would be damaged. A focus of Willard's leadership was to educate her membership to give up the social convention of ostracizing "bad" girls, to ally themselves with sexually disrespected women, and to master their fear of speaking in public to audiences of men about controversial sexual subjects. "[I]t is a marvel not to be explained," Willard reflected in a speech to the annual convention in 1885, "that we go on the even tenor of our way, too delicate, too refined, too prudish to make any allusion to these awful facts, much less to take up arms against these awful crimes."\textsuperscript{131}

\textsuperscript{126.} The National Women's Christian Temperance Union and Social Purity, PHILANTHROPIST, Feb. 1886, at 6.
\textsuperscript{127.} On sex education, see id. On education, work, property rights, and the ballot, see Frances E. Willard, President's Annual Address, in MINUTES OF THE THIRTEENTH ANNUAL MEETING OF THE NATIONAL WCTU 78 (Oct. 22-27, 1886) [hereinafter THIRTEENTH ANNUAL MEETING].
\textsuperscript{128.} Frances E. Willard, President's Annual Address, in MINUTES OF THE NINTH ANNUAL MEETING OF THE NATIONAL WCTU 70 (1882).
\textsuperscript{129.} Mark, supra note 56, at 5.
\textsuperscript{130.} See RUTH BORDIN, FRANCES WILLARD: A BIOGRAPHY 9-11 (1986).
\textsuperscript{131.} Frances E. Willard, President's Annual Address, in TWELFTH ANNUAL MEETING, supra note 109, at 73.
Willard pointed to the fact that women had led the antiprostitution and age-of-consent battles of England, and yet had lost nothing of their femininity, respectability, or "spiritual elevation" by these activities.\textsuperscript{132}

This kind of shoring-up was not simply prudent; it was necessary. By aggressively confronting statutory rape as an example of the sexual double standard, WCTU members also challenged prevailing norms of gender behavior and conventions of sexual respectability. Their professed goal was not simply to change the law but, according to an editorial in the *Union Signal*, "to maintain the law of purity as equally binding on men and women."\textsuperscript{133} An "equally binding" standard of sexual conduct meant that men would be forced to adopt the sexual restraint to which they had previously expected only women to adhere.\textsuperscript{134} By making such a public challenge, middle-class women reformers both situated themselves in opposition to the men of their own race, class, and family, and also allied themselves with poorer and marginalized women. Understanding that society did little to restrain men from sexual promiscuity or predation, age-of-consent reformers viewed with sympathy the reasons why girls and women "fell." Their sympathy extended not only to the seduced daughter from a middle-class home, but also to the white working girl.\textsuperscript{135} Poor white women had a reputation for sexual promiscuity and often were treated as if their sexual integrity was not worth defending.\textsuperscript{136} Reformers sought to educate legislators and the public about the increased sexual dangers that poor and working women faced. They

\begin{footnotes}
\item[132] Plan of Work for 1886, supra note 123, at 12. Willard was careful to stress that British antiprostitution leader Josephine Butler was the wife of a minister, and that Ellice Hopkins, another well-known British activist who had testified in the Parliament on the need to raise the legal age of consent, was a gentlewoman. Id.
\item[133] Editorial, UNION SIGNAL, Dec. 24, 1885, at 3. The 1885 Annual Meeting of the National WCTU passed a resolution that men and women should be held to the same "social standard of purity," making abolition of the double standard official Union policy. See TWELFTH ANNUAL MEETING, supra note 109, at 43. Similar resolutions passed at virtually every WCTU annual convention well into the 20th century.
\item[134] This should be distinguished from the egalitarian claims made in the 20th century that women should adopt the looser sexual morality practiced by men. See generally RE-MAKING LOVE: THE FEMINIZATION OF SEX (Barbara Ehrenreich et al. eds., 1986) (discussing 1960s and 1970s); Christina Simmons, Modern Sexuality and the Myth of Victorian Repression, in PASSION AND POWER: SEXUALITY AND HISTORICAL MEANING 157 (Kathy Peiss & Christina Simmons eds., 1989) (discussing 1920s).
\item[135] White age-of-consent reformers rarely acknowledged the extreme sexual abuses faced by African-American women and girls in this period. See ODEM, supra note 19, at 9-10. On the response of African-American women reformers to this silence, see infra notes 262-66 and accompanying text.
\item[136] For class-based stereotypes about the sexuality of poor white women, see FOX-GENOVESE, supra note 40, at 192-241; CHRISTINE STANSELL, CITY OF WOMEN: SEX AND CLASS IN NEW YORK, 1789-1860, at 20-30 (1987).
\end{footnotes}
sought to acknowledge the economic deprivation that led some to barter sex for necessities or small luxuries.137

In emphasizing this sexual vulnerability, the mostly married, middle-class, white women active in the age-of-consent campaign broke with conventions of sexual respectability that required middle-class women "of good character" to shun women "of bad character." This effort to identify across lines of social status and to understand harsh economic and sexual realities did not, however, make elite reformers particularly sympathetic to the fact that some young working women "[took] pleasure in confounding Victorian standards of female respectability."138 Rebelliousness, a love of fun and display, and attraction to an emerging consumer and youth culture were other reasons why young women of the era took sexual risks and violated prevailing norms.139 But even if the sexual world of youth was less grim and more pleasurable than the reformers recognized, they nonetheless did not overestimate the risks of these romantic and sexual adventures. Young working women in search of love and fun were even more vulnerable to rape and abuse. And, despite more open sexual relations with men, they alone continued to bear the consequences of premarital pregnancy and sexual disrepute.140 Once a girl began a life of promiscuity or prostitution, or became pregnant outside of marriage, the double standard (enforced by men of her own class) often prevented her from marrying.141 Without the possibility of the economic security of marriage, the path downward from early sexual experience to prostitution was not merely the product of sex reformers’ melodramatic imaginations, but a harsh reality dictated by the confluence of sexual, social, and economic pressures that fenced in poor women’s lives.142

At a time when many women and men believed that to speak of sexual immorality was itself immoral, WCTU activists boldly discussed sexual wrongs from the platform and in the press. They urged the

140. See ALEXANDER, supra note 138, at 21-30; PEISS, supra note 139, at 109-16.
141. See ALEXANDER, supra note 138, at 24.
public to demand better laws and adopt less hypocritical sexual mores. Despite their sometimes ornate oratory, WCTU campaigners for age-of-consent reform committed themselves to throwing off the blinders of convention, ignorance, sentiment, and authority that had clouded discussions and understandings of human sexuality. Such a forthright manner led the press on occasion to criticize the WCTU’s work for sex reform. In 1886, a St. Louis paper wrote:

When the women become so lascivious and degraded that to restrain them from sexual vice it is necessary to warn them against it beforehand; to inform them fully of its nature and effects; to teach them its anatomy, physiology, Miss Willard’s work may be appropriate, as it will certainly be ineffectual. . . . [H]er harmfulness to society has no limit than that of her influence.

This embrace of a sexual reform agenda proved popular at the grassroots level of the WCTU organization, even though some parts of the membership continued to fear controversy. One year after Willard inaugurated the national Department of Social Purity there were thirty-four purity departments in the states and territories. Willard later wrote that no new project had attracted members at the rate of purity work.

Another impetus for age-of-consent reform in the United States—and one that attracted more socially conservative women to


144. St. Louis Republican, Feb. 18, 1886, microformed on WCTU series, roll 35, frame 158. The timidity that this kind of social condemnation could instill in middle-class women of the era, in the first years of the WCTU’s age-of-consent campaign, was sufficient to prevent Willard from finding a volunteer to take on the role of national superintendent of Social Purity. She had to assume that role herself. See FRANCES E. WILLARD, GLIMPSES OF FIFTY YEARS: THE AUTOBIOGRAPHY OF AN AMERICAN WOMAN 419 (Chicago, Woman’s Temperance Publication Ass’n 1889). Willard remained superintendent of this department until 1892, when Dr. Mary Wood Allen succeeded her.

145. The WCTU’s organization encouraged local autonomy. The annual convention adopted a national program of work, but each local or state union could decide for itself what parts of that program it wished to pursue. Apart from a commitment to temperance, any union or member could choose not to pursue any part of the national agenda. See BORDIN, supra note 11, at 97. This bottom-up organizational structure allowed some local unions to move out ahead of the national union on controversial issues, and others to hesitate or lag behind. This was clearly the pattern on the issue of woman suffrage, see id. at 59, and also on age-of-consent reform and other social purity issues. Bordin claims that there was, for example, much less acceptance of social purity work in unions located in the South. See id. at 111.

146. See THIRTEENTH ANNUAL MEETING, supra note 127, at xxxv. Among the projects that local WCTUs took up were travelers’ aid societies to direct young female migrants entering the cities to safe housing and employment. See BORDIN, supra note 11, at 111 & n.93 (citing THIRTEENTH ANNUAL MEETING, supra note 127, at xxix-xliii) (describing 13 stations operating in Illinois, Nebraska, Indiana, Iowa, Maine, Colorado, and Michigan).

147. See WILLARD, supra note 144, at 428.
the purity agenda—was the growing concern for child protection.\textsuperscript{148} As an organization, the WCTU was actively involved in early child protection efforts. It worked to establish asylums for abandoned children and reformatories for criminal and delinquent children, sought laws to prohibit the employment of children in dangerous occupations and eventually to regulate all child labor, and advocated for laws to prosecute and remove custody from parents or guardians who cruelly beat, abused, or tortured a child.\textsuperscript{149}

V. THE BATTLE IN D.C.

The legislative push for age-of-consent reform in America began in earnest in 1886 when Rev. Dr. Benjamin De Costa of the White Cross Society\textsuperscript{150} drafted a model statute establishing eighteen years as the statutory age for consent to sex.\textsuperscript{151} At the same time, the national leadership of the WCTU began comprehensive research into the existing pattern of rape law throughout the United States, laying the groundwork for a state-by-state reform campaign.\textsuperscript{152}

Early on, the organization targeted the District of Columbia as a key arena for the effort and focused considerable organizational resources and energies there in the period spanning from 1885 to 1900. The United States Congress has plenary and exclusive power\textsuperscript{153} over the District's "local" laws, and great symbolic sig-

\begin{footnotes}
\footnote{148. See generally GORDON, supra note 19.}
\footnote{149. See BORDIN, supra note 11, at 101-03. Note that Representative William Frye sponsored the first child-abuse law of the District of Columbia. Later, as a Senator, he became the chief sponsor of age-of-consent bills on behalf of the WCTU. See, e.g., H.R. 4293, 45th Cong. (1878).}
\footnote{150. The White Cross Society, a social purity organization, was formed in Britain and imported into the United States. It was a group for young men, designed to offer sex education and encourage them not to have sex before marriage. See PIVAR, supra note 17, at 111. Frances Willard undertook to promote the White Cross, see, e.g., Rev. B.F. De Costa, D.D., The White Cross and White Ribbon, UNION SIGNAL, Dec. 3, 1885, at 5, and it became a mass movement in the United States in the late 1880s. See PIVAR, supra note 17, at 111-13.}
\footnote{151. "Dr. De Costa, of New York, our staunch friend and supporter, has sent us a form of a statute which, in the opinion of the best judges in England and America, will meet the case." Frances E. Willard, President's Annual Address, in THIRTEENTH ANNUAL MEETING, supra note 127, at 77.}
\footnote{152. In 1887, the Department of Social Purity made a comprehensive report to the national convention regarding current law on age of consent for the various states and territories. See FOURTEENTH ANNUAL MEETING, supra note 37, at clxxix.}
\footnote{153. The U.S. Constitution grants Congress the power to control the seat of the federal government, including its laws: "The Congress shall have power ... [t]o exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States." U.S. CONST., art. I, § 8, cl. 17. Acting on this grant of power, Congress in 1790 accepted territory ceded by the states of Virginia and Maryland to create the national seat of government, see Act of July 16, 1790, ch. 28, § 1, 1 Stat. 130, and moved the seat of government from Philadelphia to the new federal district. From that day forward, Congress has legislated for the District in matters great and small. Although District government was reorganized in 1967 to grant limited home rule, Congress retains the power of final approval over the annual budget and the power to prevent local legislation from going into effect. For a}

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nificance therefore attaches to local legislation that the Congress makes for the District of Columbia. Rightly or not, these laws historically have been taken as a symbol of the federal government’s opinion about what is good and just for the nation as a whole. For this reason, advocates of sweeping legal changes have strategic reasons to press for a victory in the District early in a national campaign.154

Age-of-consent reformers fully appreciated the political symbolism of the District of Columbia: “Surely no part of all the world, so small as our ten miles square, can be quite such an important post. For are we not to hold the fort for the National W.C.T.U. as the Nation’s heart, from whence are issued the laws for the whole Republic?” proclaimed the WCTU of the District of Columbia.155 More prosaically, Willard explained the strategy of targeting the District and the territories under the power of the federal government for a national reform strategy: Such legislation would establish a new national ideal, she stated, and encourage the various states to reform their own houses.156 The national WCTU relied upon legislators from Maine, Senator William P. Frye and Representative Nelson Dingley, Jr., and upon Senator Henry W. Blair of New Hampshire, a longtime temperance advocate, to sponsor its age-of-consent bills in the Congress.

Beginning in the 49th Congress (1886-87), petitions asking for age-of-consent reform in the District poured into the Congress from state and local WCTUs, social purity organizations, ministers and church organizations, and charitable and philanthropic organizations.157


154. Proof of the enduring symbolism of the seat of the republic were the painful public debates over the legality of the slave traffic and slave ownership in the District of Columbia, debates which lasted more than 50 years. See generally CONSTANCE MCLAUGHLIN GREEN, THE SECRET CITY: HISTORY OF RACE RELATIONS IN THE NATION’S CAPITAL 20-21, 28-34, 37-38, 44-47, 53-54, 59-60, 272-75 (1967). The approximately 3000 enslaved persons in the District were emancipated in 1862. See id. at 59-60. African-American men gained the vote in the District in 1866, see id. at 75-80, during a period in which the Republican White House and Congress began to use the District as a proving ground for civil rights laws later intended to be applied to the country as a whole. See id. at 75-76. When black male suffrage first was proposed, conservatives in the Congress leaped to expose and challenge the deeper political consequence of the proposal: “This contest is but an experiment, a skirmish, an entering wedge, to prepare the way for a similar movement in Congress to confer the right of suffrage on all the negroes of the United States.” CONG. GLOBE, 39th Cong., 1st Sess. 246 (1866) (remarks of Sen. Garrett Davis of Kentucky). My thanks to Joe Miller for directing me to this quotation.

155. Mrs. M.E. Griffith, President’s Address, in TWENTIETH ANNUAL REPORT OF THE WCTU OF THE DISTRICT OF COLUMBIA 11 (Oct. 4-5, 1894) (emphasis in original).

156. See Frances E. Willard, Editorial, ALPHA, Oct. 1, 1886, at 8-9. Alpha was published by the Moral Education Society of Washington, D.C., an organization devoted to promoting sex education.

157. Many petitions simply contained long lists of the signatures of male and female citizens from cities and towns throughout the country. In all, the House of Representatives and the
bills to raise the age of consent were introduced in the 49th Congress but none got out of the Committee on the District of Columbia, to which they had been referred in both houses.158

During 1888-89, the pitch of lobbying intensified.159 Soon after the 50th Congress convened, Senator Frye and Representative Dingley again introduced bills to raise the age to eighteen years.160 The House Committee on the District of Columbia acted, reporting H.R. 5870 as a substitute for the Frye-Dingley bills.161 The Committee acknowledged the need for some reform, but substituted fourteen for eighteen years as the proposed statutory age.162 The substitute bill quickly passed the House.163

With the bill now pending before the Senate, the lobbying efforts of the WCTU moved into high gear. Since 1887, the WCTU's chief advocate in Washington, D.C. had been a Nebraska attorney, Ada M. Bittenbender.164 Bittenbender became national superintendent of the WCTU Department of Legislation and Petitions in 1887, and from 1887-1890 gave most of her attention to federal legislation, spending considerable time in Washington. Bittenbender testified many times before the Congress to advocate bills backed by her organization and

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158. See S. 1765, 49th Cong. (1886); H.R. 6469, 49th Cong. (1886); S. 2809-11, 49th Cong. (1886).
159. On national coordination of the petition campaign, see Ada M. Bittenbender, Report, in MINUTES OF THE FIFTEENTH ANNUAL MEETING OF THE NATIONAL WC!TU 143-46 (Oct. 19-23, 1888) [hereinafter FIFTEENTH ANNUAL MEETING]. More than 40 petitions were submitted to the two houses in that term, including from six state and 11 local WCTUs, the Friends’ Yearly Meeting (Quakers) of six states, and the International Council of Women. The International Council of Women was an umbrella for hundreds of local organizations, allied by a belief in women’s institutions as forces of social change and transformation. The Council symbolized the extent to which, by the late 1880s, women’s organizations represented a genuine mass political movement and a major political force in American society. See BUHLE, supra note 91, at 53.
160. Both bills were referred to the Committee on the District of Columbia in the House and the Senate. See S. 441, 50th Cong. (1887); H.R. 1496, 50th Cong. (1888).
161. H.R. 5870 reported as substitute for H.R. 1496, 50th Cong. (1888); S. 441 indefinitely postponed.
163. See 19 CONG. REC. 1096 (1888).
164. Bittenbender was a temperance advocate and suffragist. In 1881, she helped to organize the Nebraska Woman Suffrage Association and served as its president in 1882. She became active in the Nebraska WCTU in late 1882, and served as the state superintendent of temperance legislation from 1883 to 1889. She is credited with successful advocacy of measures giving Nebraska women equal rights to the guardianship of their children, building an institution for delinquent women in the state, introducing temperance education into the schools, and abolishing tobacco sales to minors. Bittenbender read law in the office of her husband, attorney Henry Clay Bittenbender, and in May 1882 passed the state bar examination and became Nebraska’s first woman attorney. As her husband’s law partner, Bittenbender gained a reputation as a successful litigator in both state and federal courts. She was admitted to practice before the U.S. Supreme Court in 1888, and in that year became attorney for the national WCTU. See 1 NOTABLE AMERICAN WOMEN, supra note 51, at 153.
was described as "an elegant and persuasive advocate of her cause." She is credited with having drafted the first age-of-consent bill for the District of Columbia. In addition to Bittenbender, the WCTU called Frances Willard to Washington to lobby personally for the eighteen-year bill in February 1888. While in Washington, Willard attended the meetings of the International Council of Women, a powerful coalition of women's clubs, reform groups, suffrage organizations, and temperance associations then meeting in the District. From this influential gathering she solicited two petitions in support of the pending legislation, and these were promptly presented to the Senate.

In the Senate, the bill was reported back with an amendment to raise the statutory age to sixteen years and to remove the territories from those federal jurisdictions covered by the law. There was limited floor debate on the bill. Senator Joseph R. Hawley of Connecticut, for example, asked whether it was appropriate to punish boys under sixteen years for sex with girls their own age, particularly in instances where the girl, "[who] may be the blameworthy person escapes." Sexual interaction between a boy and girl of the same age, this legislator argued, is nothing more than fornication; why should it carry heavier consequences for the boy than for the girl? "You are taking what in the common law is simply fornication, a penitentiary offense, and making it punishable very severely as rape." Despite this faint protest, the Senate passed the bill and appointed a conference. The House initially refused to concur in the Senate amendments, but after some negotiation, the conference agreed to raise the statutory age to sixteen years and to increase the penalties for sex with an underage girl. The jurisdiction of the bill covered only the District of Columbia, leaving the states and territories free to legislate for themselves on the issue. As of 1889,
Congress raised the age of sexual consent for girls in the District of Columbia from ten to sixteen years.\(^{177}\)

Despite this victory, the WCTU leadership felt disappointed. They had sought eighteen years as the minimum age of consent. In reporting on the victory to the membership, Bittenbender promised that “[o]ther amendments for further protection of women and girls will be urged during the next Congress.”\(^ {178}\) Instead, however, the national headquarters turned to reforms in the states and territories. The District of Columbia did not again become the center of focused lobbying for further reform until 1896.

In the interim years, the WCTU focused on state campaigns throughout the country. The state and local temperance unions had been actively organizing a parallel state-by-state reform campaign since Willard’s call-to-arms in late 1885. In the legislative sessions of 1886-87 alone, twenty states or territories raised the age of consent.\(^ {179}\) By 1895, twenty-three states and territories had raised the age to sixteen years or more. By 1900, thirty-two states had done so.\(^ {180}\) The public credited the WCTU with achieving these reforms, as a Chicago paper editorialized in 1895: “By alerting the public to the problem and by petitioning legislators, that group of sturdy women, well-skilled in influencing opinion, has, more than any other single body, brought about the passage of state legislation raising the age of protection in many states.”\(^ {181}\)

VI. STRATEGY AND TACTICS

Historian Nancy Cott argues that women’s organizations “pioneered in, accepted, and polished modern methods of pressure-group politics.”\(^ {182}\) An examination of the WCTU’s legislative campaign around the age-of-consent issue is good evidence for her claim. Not only did the Union show remarkable ingenuity in finding paths into the political process despite women’s disenfranchisement, but it effectively used the campaign to build its size, strength, and solidarity. The campaign also established a base for making coalitions with other constituencies such as suffrage, labor, the churches, and other reform organizations. Just as important, participation in the campaign gave

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177. Both houses agreed to the conference amendments. See id. (House); 20 Cong. Rec. 1128 (1889) (Senate). The President signed the legislation and the bill became law. See Act of Feb. 9, 1889, ch. 120, 25 Stat. 658.


179. See 4 THE HISTORY OF WOMAN SUFFRAGE, supra note 9, at 465-1011.

180. See id.


individual Union members with little previous political experience the
opportunity to develop organizing and advocacy skills. Participation
contributed to an increasingly sophisticated understanding of political
behavior among the large and geographically dispersed Union
membership. Ruth Bordin writes that temperance leaders
"represented the largest and most geographically widespread body of
women to acquire political action skills in the history of the republic
to that date." 183

In the earliest planning stages of the age-of-consent campaign in
1885, Aaron Macy Powell and Emily Blackwell of the New York
Committee for the Prevention of State Regulation of Vice, in
consultation with Chief Justice Davis of the New York Supreme
Court, drafted a petition to solicit mass support for age-of-consent
legislation. 184 Beginning in 1886, that petition was widely circulated
through the state and local roots of the WCTU’s nationwide or-
ganization:

PETITION of the
WOMEN’S CHRISTIAN TEMPERANCE UNION
for the
PROTECTION OF WOMEN

To the Senate and House of Representatives: The increasing and
alarming frequency of assaults upon women, the frightful indigni-
ties to which even little girls are subject, and the corrupting of
boys, have become the shame of our boasted civilization.

A study of the statutes has revealed their utter failure to meet
the demands of that newly awakened public sentiment which
requires better legal protection for womanhood and childhood;

Therefore we, men and women of [blank left for organization],
State of [blank left for individual state] do most earnestly appeal
to you to enact such statutes as shall provide for the adequate
punishment of crimes against women and girls. We also urge that
the age at which a girl can legally consent to her own ruin be
raised to at least eighteen years; and we call attention to the
disgraceful fact that protection of the person is not placed by our
laws upon so high a plane as protection of the purse. 185

This petition, sometimes mass-reproduced by a printing press, and at
other times painstakingly hand-copied over and over by dedicated

183. See BORDIN, supra note 11, at 56.
184. See PIVAR, supra note 17, at 139-40.
185. THIRTEENTH ANNUAL MEETING, supra note 127, at 145. In her speech to the national
convention that year, Willard urged members of the state and local unions to concentrate on this
petition in their work for the coming year. See id. at 77. Willard’s speech, including the petition,
was reprinted in the Union Signal on November 11, 1886, assuring wide distribution to the tens
of thousands of subscribers throughout the country. In 1884, the Union Signal had nearly 14,000
subscribers; by 1890, its circulation approached 100,000. See BORDIN, supra note 11, at 90.
local activists, became the organization's most effective lobbying tool. I found hundreds of these form petitions containing thousands of signatures in the legislative files of Congress concerning the District of Columbia. The records of state legislatures surely contain thousands more.

In legislative campaigns both for age-of-consent reform and temperance measures, the WCTU perfected the art of political pressure through mass petition. Since early in the nineteenth century, American women had relied upon the petition or memorial as a means to influence legislators; being disenfranchised, women citizens could not hold lawmakers accountable by ordinary electoral means. Because petitioning was seen as an act apart from "ordinary" political mechanisms, women could petition legislators without the appearance of "unwomanliness." Frances Willard called hers "the age of petitions, rather than votes, for women."

The WCTU petitioned Congress and state legislatures with vigor. It used petitions in the same way that modern interest groups use public opinion polls, to register with politicians the strength of feeling among its constituents on a particular issue. In 1886, for example, the Union Signal reported that 200,000 women had signed a petition asking Congress to raise the age of legal consent to eighteen years in the District of Columbia. In 1888, seventy yards of signatures (15,000 names) were pasted onto a single sheet and ceremoniously presented to the Senate in support of such legislation. In Nebraska, a petition bearing 3000 names was borne into the legislative hall by two representatives who walked up the outside aisles, stretching the petition like a canopy over the heads of the assembled legislators. The WCTU was also well aware of the harassment value of the petition, and at times bombarded a state legislature on a daily basis while a desired bill was pending.

186. For examples of women's early petitioning for protective sex laws, see BARBARA J. BERG, THE REMEMBERED GATE: ORIGINS OF AMERICAN FEMINISM—THE WOMAN AND THE CITY, 1800-1860, at 167 (1977) (describing American Female Moral Reform Society in 1840s); SMITH-ROSENBERG, supra note 26, at 120 (same). In the 19th and early 20th centuries, women's modes of political involvement more often focused on education, publicity, and lobbying than on running their own candidates. See COTT, supra note 182, at 97.
188. Frances E. Willard, Address, in NATIONAL PURITY CONGRESS PAPERS, supra note 121, at 124, 125.
190. See Frances E. Willard, White Cross and White Shield, 1888, UNION SIGNAL, Mar. 15, 1888, at 12.
192. See, e.g., Since Our Last Time, UNION SIGNAL, May 27, 1886, at 1 (noting that every day since bill was introduced in Massachusetts State Senate, WCTU sent petitions). In another
Seeking to replicate the politically energizing effect of the “Maiden Tribute” exposé on the British public, national WCTU organizer Dr. Kate Bushnell also set out to publicize an American instance of forced prostitution or “white slavery.” Bushnell described a young woman who had answered an advertisement for employment in upper Michigan, but upon arriving there had been locked in a guarded compound for prostitutes maintained to service men working in the nearby lumber camps. In an account published in the Union Signal and widely reported in other newspapers, Bushnell wrote of the young woman’s desperate attempt to escape through the swamps, pursued by vicious dogs. Her captors caught and returned her to the compound, severely punished her, and then turned her out once again for sex work. According to Pivar, initial press and public reaction to the lumber camp exposé was disbelief, but after corroboration was offered the public’s reaction was powerfully supportive.

Other lobbying tactics in the WCTU age-of-consent campaign included solicitation of personal letters of support addressed to legislators from eminent citizens; public education, including mass meetings, lectures, and speeches; and efforts to persuade the press to run favorable editorials or news stories at critical moments in the legislative process. In Michigan, reformers went through the cars on trains, asking travellers to vote on the issue. In the Texas campaign, one legislator is reported to have said that “he would vote for anything if only the women of his district would let him alone.”

Although formally in the role of supplicant to its legislative representatives, WCTU members did not hesitate to threaten, scold, and shame legislators just as voters might. The Union Signal proposed, for example, to expose and publicize any legislator’s opposition to rape reform, commenting that “[t]he record will be of

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instance, the Nebraska WCTU advised other state and local unions to benefit from its experience. It had miscalculated in presenting a voluminous petition on the opening day of the legislative session. Because “the incident would have been forgotten,” the “over-zealous[]” Nebraska reformers had to procure new petitions to be sent to the state capital every few days: “Had the first huge petition been divided into installments,” a state leader wrote, “a respectable number of names would have reminded the legislators of their duty every morning until it was performed.” Gardener, Part II, supra note 55, at 24 (quoting report of Nellie M. Richardson, State Superintendent of Legislation and Petitions, Nebraska WCTU).

193. See Another Maiden Tribute, UNION SIGNAL, Feb. 17, 1887, at 8-9; The Lumberman’s Camps, UNION SIGNAL, Mar. 24, 1887, at 7; The Lumberman’s Camps, UNION SIGNAL, Sept. 8, 1887, at 12. The parallels between this story and accounts of runaway slaves are striking. See, e.g., Harriet Beecher Stowe, Uncle Tom’s Cabin (Modern Library 1985) (1852).

194. See PIVAR, supra note 17, at 137.


singular value if carefully preserved and used at future elections.\textsuperscript{197} When the New York State Legislature took up a bill to roll back reforms achieved two years earlier, a WCTU leader went before a legislative committee and said: “I represent 21,000 women and any man who dares to vote for this measure will be marked and held up to scorn. We are terribly in earnest.” The matter was dropped.\textsuperscript{198} The national office provided lobbying as well as legal support to the state-by-state campaigns. National organizers traveled to meet with local unions.\textsuperscript{199} The national office provided state and local unions with a model bill, and urged locals to write to the national headquarters for a copy before approaching lawmakers: “Hastily prepared laws often leave loopholes which defeat the very end in view,” Willard counseled.\textsuperscript{200}

The national WCTU spread the word about the need for age-of-consent reform to the grassroots through its popular “mothers’ meetings.”\textsuperscript{201} The mothers’ meetings were designed to teach women how to educate their children about sexuality and personal morality.\textsuperscript{202} The national Social Purity Department prepared curriculum pamphlets for local unions, which advised mothers to take charge of the development of their children’s sexual values, particularly the values of their sons.

Although mothers’ meetings were the least overtly political of the many facets of the WCTU age-of-consent campaign, women involved in lobbying for legislation in the states and territories frequently became much more openly feminist on the basis of those experiences. State legislators often made salacious and ridiculing remarks in floor debate and committee hearings on age-of-consent bills.\textsuperscript{203} In incidents in several states, legislators proposed dilatory amendments to mock the proposed reform, such as proposing that the age of consent be raised to eighty-one years,\textsuperscript{204} that all girls be required to wear a

\textsuperscript{197} Signal Notes, UNION SIGNAL, June 10, 1886, at 14. True to their word, reformers publicized in careful detail the names of legislators who spoke or voted against age-of-consent legislation. See, e.g., Gardener, Part II, supra note 55. As a response, some legislatures invoked procedures to avoid having a recorded vote taken on age-of-consent bills. See, e.g., Gardener, Final Paper, supra note 55, at 404 (citing report of Sen. G.W. Granberry of Arkansas).

\textsuperscript{198} The HISTORY OF WOMAN SUFFRAGE, supra note 9, at 866.

\textsuperscript{199} See, e.g., UNION SIGNAL, Apr. 29, 1886, at 9 (describing visit by organizer Zerelda Wallace to Lafayette, Indiana local union in spring of 1886).

\textsuperscript{200} Id.

\textsuperscript{201} See Age of Consent and White Cross, UNION SIGNAL, May 30, 1895, at 12 (discussing letter from Dr. Mary Wood Allen, National Superintendent, Purity Department).

\textsuperscript{202} See Frances E. Willard, Social Purity Work for 1887, UNION SIGNAL, Jan. 18, 1887, at 12; see also BORDIN, supra note 11, at 111.

\textsuperscript{203} See, e.g., Gardener, Part II, supra note 55, at 14 (discussing incidents in Colorado); id. at 31 (discussing incidents in Missouri).

\textsuperscript{204} See Gardener, Part II, supra note 55, at 25 (citing report of John O. Yeiser of Nebraska). Another legislator proposed 45 years. See id. at 8 (citing report of Hon. Carrie Clyde
chastity belt,\textsuperscript{205} or to mandate that all women must consent to sex after the age of eighteen years.\textsuperscript{206} It was standard practice for local WCTU women to pack the spectator galleries during legislative debate in the statehouses, and later to report in nationally distributed newspapers and magazines what was said and done there. In response, some legislators tried to exclude women spectators from the debates, either by going into executive session or by pleading that the proceedings were improper for women to hear. “Undignified and ungentlemanly remarks, which stirred the ire of more than one within the hearing of their voices, were made by those endeavoring to close the doors,” observed one reformer about floor debate in the Michigan Senate.\textsuperscript{207}

More fundamentally, the fact that male legislators resisted revision of the rape law to protect girls was a forceful refutation of the argument that men would protect women in politics and law. As one activist wrote from the field in 1886:

As to leaving the reform desired entirely to the men, we have left it entirely to them for three hundred years, for this disgrace to our civilization dates back to the common law of England, but the advancement of society has not caused legislation on this point to advance one iota. . . . We think three hundred years is long enough to wait the tardy action of the men who make our laws.\textsuperscript{208}

Women working on state-level campaigns found it absurd that legislators would claim that existing rape laws “protected” girls and women. These activists came to believe that legislatures composed entirely of men were not acting in good faith in refusing to change the law, but instead out of self-interest. “Men legislate favorably for men,” one WCTU activist bluntly concluded in 1895.\textsuperscript{209} Frances Willard described the “supreme power” held by men over women as a “supreme temptation” to legislate “first for himself and afterward for the physically weaker one within ‘his’ home.”\textsuperscript{210} She declared,

It will not do to let the modern man determine the “age of consent,” settle the penalties that men should suffer whose indignities and outrages upon women are worse than death, and

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Holly of Colorado). Yet another suggested 75 years. See id.
205. See Gardener, Part II, supra note 55, at 25 (quoting John O. Yeiser of Nebraska).
206. See id.
208. Morality That is Immoral, supra note 189, at 2 (internal quotation marks deleted).
209. Gardener, Part II, supra note 55, at 32 (quoting Clara C. Hoffman, Missouri WCTU President).
\end{flushleft}
by his exclusive power to make all laws and choose all officers, judicial and executive, thus leaving his own case wholly in his own hands. To continue this method is to make it as hard as possible for men to do right and as easy as possible for them to do wrong.\footnote{211}

To witness male lawmakers behaving as if they shared a common interest in the sexual exploitation of girls and young women (even if an individual man had no such desires and had committed no such crimes) irretrievably demolished the argument that women could rely upon male chivalry for sexual protection: “[W]e see how slight the protection which the law throws round [our] innocent daughter[s], how these laws seem framed for the especial purpose of aiding mature vice in its lustful war against youthful, confiding innocence,” the Union Signal editorialized.\footnote{212} If women had no sexual defenders, WCTU members concluded, they would have to take up their own defense; if men acted as a sex class, so too must women:

If any mother of young daughters [does] . . . not long for the ballot for the sake of protecting those daughters, she must be more bigoted even than we were ten years ago—and that is hardly possible—before we had recognized that God’s way out of this horrid environment of crime is the ballot in the hands of women. So long as men alone make the laws, womanly purity will not have half a chance to defend itself.\footnote{213}

Throughout the state-by-state campaigns, WCTU leaders, in reporting on their successes and failures, showed sharp awareness of their disadvantage in not being able to lobby as voters or to solicit the votes of women legislators. In reporting on a failure to get acceptable legislation in Maine, for instance, one state leader commented, “[W]e shall continue to ask, even though it may not be granted till the woman element is admitted into governmental affairs.”\footnote{214} Similarly, when reporting on the successful 1891 effort to raise the statutory age to eighteen years in Wyoming, a national WCTU organizer wrote to the Union Signal from “our grand state of Wyoming, where women stand side by side with their husbands in the great battle of life”:

In Cheyenne they had just secured a bill raising the age of consent to eighteen years, which is, I think, the highest of any of

\footnotes\footnote{211. Id.\footnote{212. Age of Consent, UNION SIGNAL, Dec. 3, 1885, at 2.\footnote{213. Id.\footnote{214. From the Watch-Tower, UNION SIGNAL, Mar. 31, 1887, at 3 (quoting Mrs. Stevens, Maine WCTU President).}}}}
the states. I asked the women how they obtained this excellent law, and they replied: "We women vote in Wyoming, and our legislators understand they must give us what just laws we ask for, or they will not hold office again."216

In offering political analysis of legislative failures or successes, the Union Signal editor or correspondents from the state and local unions regularly referred to the woman suffrage connection, and to women's need of the ballot for "self-defense" against the sexually self-interested behavior of male legislators.

Yet these pro-suffrage comments were reserved for inside audiences, the readers of the Union Signal. Age-of-consent activists took a different tack when dealing with male legislators. When angered or disappointed by adverse legislative action, WCTU activists commented bitterly on the antisuffrage argument that women need not involve themselves in politics because fathers, husbands, and sons would serve as their protectors. When the Kansas Senate sought to roll back earlier gains in age-of-consent legislation, a Kansas reform leader commented:

While Kansans are "proverbial" for their advocacy of the superior moral atmosphere of their state, yet we bow our heads in shame that there were to be found in our Senate enough members to pass a bill lowering the age of protection for girls from eighteen to twelve years. . . . Although the bill was promptly killed . . ., yet we can never have just the same feeling of pride in our statesmen which we had before, for the record they made stands against them, not only on the books of the Senate, but upon the hearts of the "motherhood of Kansas," and we can never again feel that our moral interests are quite so securely guarded by them.217

Consistent with the WCTU's separate spheres ideology, this rhetoric was designed to appeal to the gender identity of male legislators. Just as the WCTU justified its activism within the framework of "womanness," it called upon male legislators to behave with true "manliness." The late Victorian ideal of manliness rested upon willful control of passion and impulse, especially sexual passions.218 This

215. In fact, Kansas, a state where women enjoyed limited suffrage, had raised the statutory age to 18 years in 1887, and fought off a subsequent attempt to roll back the age to 12 years. See infra note 314 and accompanying text.


ability to master emotion and desire through strong character and a powerful will was a primary source of white men's authority in this era: A man who could control himself demonstrated that he was fit to assume the patriarchal role of protector and governor of his wife, children, servants, and employees. As Gail Bederman describes it, "The mingled honor, high-mindedness, and strength stemming from this powerful self-mastery was encapsulated in the term manliness." In reminding male legislators of their duty as protectors, and in particular, of the importance of sexual self-restraint as an aspect of manliness, women reformers made support for protective sex laws a test of the masculinity of legislators. To vote against the reform would ally the legislator with rapists, seducers, and pimps, men whose self-indulgence and lack of control evidenced weakness. To vote for the reform, on the other hand, demonstrated powerful, masculine self-restraint, and affirmed that the legislator was a protector of women and children. By playing on the gender identity of middle-class men—an identity otherwise challenged by the women’s movement—age-of-consent reformers succeeded in turning the ideology of masculinity against itself. Male legislators could be persuaded to vote against the immediate sexual interests of their gender as an expression of loyalty to a higher gender ideal.

These images of womanliness and manliness also worked as codes of race and class. As noted earlier, if the rhetoric of “womanliness” evoked universal qualities of maternal nurturance and female moral superiority, in practice the moral and cultural authority of domestic feminism flowed only to white, Protestant, and middle-class women. So, too, in an era in which there were violent lynchings, aggressive campaigns to disenfranchise African-American men, and a rising tide of nativist fears concerning immigration, appeals to the benevolent patriarchy of “manliness” would have been understood to mean white men, economically secure men, Protestant men—in short, “civilized” men. **

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219. See generally MANLINESS AND MORALITY, supra note 218; VANCE, supra note 218.


221. See supra notes 53-54 and accompanying text.

222. See generally Bederman, supra note 220 (discussing racial content of Victorian ideal of masculinity).
Given the extraordinary success of the age-of-consent campaign, and especially the surprisingly muted opposition to it, this strategy appears to have proven powerfully effective. Such manipulation of the idea of manliness is an example of what Bederman describes as "mobilizing dominant discourses in subversive ways," and is yet another example of the WCTU's characteristic "backdoor" political strategy.

In addition to building political pressure for legislation, the WCTU used the age-of-consent campaign as a means to build coalitions with other reform organizations. In 1888, a petition denominated as from "citizens of the United States" was submitted to the Senate, signed by luminaries of the suffrage movement including Susan B. Anthony, Julia Ward Howe, Mary A. Livermore, Clara Barton, and Abby May. In general, suffragists supported the age-of-consent campaign, even though they did not make it a political priority. Elizabeth Cady Stanton described the younger age of consent as an "invasion of the personal rights of woman, and the wholesale desecration of childhood." Many state suffrage organizations joined state and local WCTUs in circulating petitions and lobbying legislators for age-of-consent reform.

Other important allies in the petition campaign were the churches. Of the many hundreds of organizations that petitioned Congress at the behest of the WCTU to raise the age of consent in the District of Columbia, the greatest number were Protestant churches (both white and African-American). Women's clubs, labor unions, and populist organizations also provided significant support.

The WCTU also sought the support of men's organizations in the campaign. Its most sturdy ally in petitioning Congress for reform in the District of Columbia, for example, was the radical labor organization, the Knights of Labor, led by Terence V. Powderly.

223. Id. at 22. Bederman discusses how African-American activist Ida B. Wells appealed to a gendered and raced image of "manliness" in order to encourage whites to oppose lynching.
225. HELEN HAMILTON GARDENER, PRAY YOU, SIR, WHOSE DAUGHTER? viii (Boston, Arena Publishing Co. 1892).
226. State-by-state activity on the age of consent is detailed in 4 THE HISTORY OF WOMAN SUFFRAGE, supra note 9, at 465-1011.
227. These included the Religious Society of Friends (Quakers), Protestant churches (Methodist Episcopal (M.E.), African Methodist Episcopal (A.M.E.), Baptist, Presbyterian, Congregationalist, and evangelical congregations predominantly), a black Roman Catholic Church, immigrant (particularly Scandinavian) churches, a Church of the Latter Day Saints (Mormons), rescue missions for prostitutes and unwed mothers, literary and cultural clubs, women's clubs, local suffrage organizations, men's temperance organizations (Good Templars), the Grange, and an assembly described only as "a group of farmers meeting in a schoolhouse." These petitions are contained within the files of the House and Senate Committees on the District of Columbia, 49th through 55th Congresses, National Archives, Washington, D.C.
Frances Willard, impressed by the Knights' equal rights and temperance stances, approached Powderly in 1886 to ask for his help. According to Willard, Powderly agreed immediately to lend his aid by circulating the petition amongst his membership. When the petition was presented to Congress on February 20, 1888, it contained 14,367 signatures, all of which had been pasted on a petition more than two hundred feet long and half a yard wide. More than half of the signatures had been contributed by the Knights of Labor, and the majority of all signatures were those of men.

By contrast, African-American women in the WCTU organization played little role in the age-of-consent campaign. This absence is especially notable in the District of Columbia campaign, where there were large, influential, and active black women's clubs. In the District, a city with a sizable African-American population

228. On the Knights of Labor, see Leon Fink, Workingmen's Democracy: The Knights of Labor and American Politics (1983). The Knights advocated equal pay for equal work, admission of women to union membership and woman suffrage: Members also took an oath of temperance. See id. at 12. On the Knights' commitment to temperance and women's rights, see id. at 8-10. Willard herself was inducted into the Knights of Labor in 1887. See Bordin, supra note 11, at 105.

229. See Willard, supra note 144, at 422-23. Although the purity movement tended to have middle-class leadership, values, and biases, the 19th-century radical labor movement generally supported the broader reform tenets of social purity. See Buhle, supra note 91, at 249-57 (discussing support for social purity goals in U.S. radical labor movement); Dubinsky, supra note 24, at 69 (same in Canada); Walkowitz, supra note 46, at 129-30 (same in Britain); Walkowitz, supra note 24, at 11, 82, 84, 214 (same).

230. See Willard, supra note 190, at 12.

231. See Fifteenth Annual Meeting, supra note 159, at 143-44; Willard, supra note 144, at 422-24; Frances E. Willard, Three Weeks of Campaigning, Union Signal, Feb. 17, 1887, at 4-5.

232. See Ada M. Bittenbender, Report, in Fifteenth Annual Meeting, supra note 159, at 144. For the rest of her life Frances Willard kept a photograph of Terence Powderly on her desk (amongst others, such as British antiprostitution crusader Josephine Butler) as inspiration for her organizing efforts. See Bordin, supra note 130, at 143.

233. African-American women had been involved in temperance work since the mid-19th century. See Salem, supra note 16, at 36. After the Civil War, attracted by the WCTU's social gospel agenda, African-American women joined the union, seeing temperance as an aspect of "uplift" for their community. See id. As it grew in the 1880s, the WCTU expanded its outreach among various ethnic groups, creating a superintendent for work among Scandinavians as well as a department for work among "colored people." See Bordin, supra note 11, at 84. African-American women became state and local superintendents of these "Departments for Work Among Colored People." Women who held this post in the national organization included antislavery lecturer Frances Ellen Watkins Harper and Lucy Thurman, later president of the National Association of Colored Women (NACW). See Salem, supra note 16, at 12, 35. Lucy Thurman said that she had "always favored the organization of unions among the colored women for it will be to them just what it has been to our white sisters, the greatest training school for the development of women." Minutes of the Twenty-Second Annual Meeting of the National WCTU 208 (1895) [hereinafter Twenty-Second Annual Meeting]. Most black clubwomen, however, combined temperance with other reform efforts, sometimes working within the WCTU structure but more often organizing temperance work within other organizations. There was, for example, a Temperance Department in the NACW. See Salem, supra note 16, at 36-37.

234. Thirty-three percent of the District's population in 1891 was African-American. See Green, supra note 154, at 200.
and a well-established tradition of black women's civic activism, it was instead the African-American churches and clergy and the local educational elite (the faculty and students of Howard University) who petitioned the Congress to raise the statutory age to eighteen years. Although women doubtless played a leading role in urging these black congregations to declare for the reform, we must ask why women's organizations with a strong presence in the District and active social purity programs of their own—the Colored Women's League, the Home for Friendless Girls, the Sojourner Truth Home for Working Girls, the Lucy Thurman WCTU or the National Association of Colored Women—did not actively participate in the lobbying for age-of-consent reform in that jurisdiction.

This absence is all the more noticeable because African-American women's organizations in the late nineteenth century had an abiding concern for protecting girls and women in their communities from sexual abuse and exploitation, and supported the social purity agenda generally. Sexual exploitation under slavery had left free black

235. See SALEM, supra note 16, at 7-14.
236. See Petition of Baptist Ministers' Union (Colored) of Washington D.C. to the Senate Committee on the District of Columbia, 54th Cong. (Jan. 19, 1897) (on file with National Archives RG 46, Box 75); Petition of Shiloh Colored Baptist Church, Washington D.C. to the Senate Committee on the District of Columbia, 54th Cong. (Jan. 19, 1897) (on file with National Archives RG 46, Box 75); Petition of St. Luke's Colored Baptist Church, Washington D.C. to the Senate Committee on the District of Columbia, 54th Cong. (Jan. 19, 1897) (on file with National Archives RG 46, Box 75); Petition of St. Augustine's Church in Washington D.C. (self-described as "the only colored Roman Catholic Church") to the Senate Committee on the District of Columbia, 54th Cong. (Jan. 13, 1897) (on file with National Archives RG 46, Box 64).
237. See Petition of United Faculties of Howard University (70 faculty and 629 students) in Washington D.C. to the Senate Committee on the District of Columbia, 54th Cong. (Jan. 13, 1897) (on file with National Archives RG 46, Box 64).
239. On these organizations, see SALEM, supra note 16, at 12-14, 22-35; GREEN, supra note 154, at 144-45. The evidence from state campaigns is sparse, but an African-American women's club was active in the effort to raise the age of consent in Nebraska. Hon. Dr. M.O. Ricketts, the only African-American serving in the Nebraska legislature in 1895, was a lead supporter of the reform bill in that state. Ricketts procured a petition for the bill signed by over 500 black women of Omaha. See Gardener, Part II, supra note 55, at 26 (reporting account of John O. Yeiser of Nebraska).
240. See HIGGINBOTHAM, supra note 238, at 185-229; SALEM, supra note 16, at 28; Darlene Clark Hine, Rape and the Inner Lives of Southern Black Women, in SOUTHERN WOMEN: HISTORIES AND IDENTITIES 177, 186-87 (Virginia Bernhard et al. eds., 1992); Fannie Barrier Williams, The Club Movement Among Colored Women of America, in A NEW NEGRO FOR A NEW CENTURY 379, 384, 393 (Booker T. Washington et al. eds., 1900). The values of African-American clubwomen of this era were as firmly middle-class as those of the WCTU: "Black women valued self-help, protection of women, honesty, and justice. . . . As educated, elite women, they actively supported the major women's reform movements seeking moral purity, temperance, self-improvement, and suffrage." SALEM, supra note 16, at 28-29. Like their white counterparts, black clubwomen were firmly committed to a single standard of sexual morality within their community, and sought to educate men as well as women of their race about social purity values. To help mothers in this task of moral uplift, black clubwomen established mothers'
women in the post-Reconstruction period with a reputation among whites for sexual availability and promiscuity.\textsuperscript{241} In addition, race and sex discrimination had excluded African-American women from the mainstream of the labor force and concentrated them in domestic service,\textsuperscript{242} an occupation especially marked by sexual exploitation. As a result, black women and girls faced relentless sexual harassment on the street and in the workplace, especially from white men who viewed them as legitimate or “easy” targets. One household worker wrote, “I believe nearly all white men take, and expect to take, undue liberties with their colored female servants—not only the fathers, but in many cases the sons also.”\textsuperscript{243} Younger black women and girls were particularly vulnerable:

It is commonly said that no girl or woman receives a certain kind of insult unless she invites it. That does not apply to a colored girl or woman in the South. The color of her face alone is a sufficient invitation to the Southern white man. . . . Out of sight of their own women they are willing and anxious to entertain colored women in various ways. Few colored girls reach the age of sixteen without receiving advances from them—maybe from a young “upstart,” and often from a man old enough to be their father, a white haired veteran of sin.\textsuperscript{244}

As clubwoman and feminist Anna Julia Cooper noted, in words that echo those of white age-of-consent reformers, the real sexual morality issue for African-American women is not “temptations” as much as it is the “painful, patient and silent toil of mothers to gain title to the bodies of their daughters.”\textsuperscript{245} Yet the widespread belief that African-American women were promiscuous made it especially difficult for black girls and women to seek legal protection from the courts for these sexual abuses. Courts tended to assume that all black


\textsuperscript{245} \textit{Black Women in Nineteenth-Century American Life: Their Words, Their Thoughts, Their Feelings} 329 (Bert James Loewenberg & Ruth Bogin eds., 1976).
women (like poor white women) possessed "bad character," and thus were likely to be lying about rape.246

Despite these shared interests in protecting girls and young women, black women reformers avoided alliance with the national WCTU on the age-of-consent issue because of the ongoing controversy surrounding Frances Willard on the issue of race. Throughout the 1890s, as whites increasingly established Jim Crow policies throughout the public sphere, women's organizations, including the WCTU, also became increasingly segregated. As the WCTU grew in size and aspired to national influence, the participation of African-American women was increasingly restricted in order to encourage white southern participation:

To become national, the[] organization[] had to gain or retain southern support. To expand, [it] had to reflect, or at least not threaten, popular racial attitudes. The WCTU, which had started to organize in the South during the 1880s, found race a controversial issue to be ignored or handled tactfully in order to gain members and support.247

In the late 1880s and early 1890s, Willard made speaking tours throughout the South in this ambitious organizing effort.248 On those tours she regularly engaged in racial insult, saying in one published interview, for example, that "[t]he colored race multiplies like the locusts of Egypt, and the grogshop is the center of power.... The safety of women, of childhood, of the home is menaced in a thousand localities."249 In these desperate times for Southern blacks, when black men were being lynched in intensifying numbers and often on charges of rape,250 Willard's race-baiting was dangerously provocative as well as unjust.

Although such language was unexceptional among progressive whites of her era, Willard was confronted in a public forum. Ida B. Wells took her anti-lynching crusade to Britain in 1894, telling English audiences that white progressives in America had failed to speak out against lynching. In Willard, Wells found a newsworthy example of the racist hypocrisy of the American reform elite. In speeches and interviews, Wells told the British public that the temperance leader not only had refused to condemn lynching,251 but "had added fuel
to the fire of mob violence.\textsuperscript{252} Wells cited Willard's words quoted above and also revealed that the WCTU's Southern unions were racially segregated.\textsuperscript{253} In shocked response, a British anti-lynching society was formed.\textsuperscript{254} In equally shocked defensiveness, the American press leaped to Willard's side, attacking Wells's confrontationism.\textsuperscript{255}

Despite this furor, Willard's public position on race, rape, and lynching remained equivocal.\textsuperscript{256} The WCTU passed an antilynching resolution at its annual convention in 1893,\textsuperscript{257} but in her presidential address that same year Willard said: "Our duty to the colored people ha[s] never impressed me so solemnly as this year when the antagonism between them and the white race have seemed to be more vivid than at any previous time, and lurid vengeance has devoured the devourers of women and children."\textsuperscript{258} By referring to lynched men as "devourers of women and children," Willard again seemed to legitimate the prevailing justification for lynching—that the act was a response to sexual assaults by black men.\textsuperscript{259}

Black clubwomen refused to acquiesce in the face of this ambivalence by Willard and her nationally-respected organization. The \textit{Woman's Era}, a monthly newspaper published in Boston and the first newspaper published by black women in America, editorialized that "we have failed to hear from [Willard] or the Woman's Christian Temperance Union any honest, flat-footed denunciation of lynching and lynchers."\textsuperscript{260}

In the stir of response to the charges against Willard, one self-appointed defender was a white man, John Jacks, president of the Missouri Press Association. Jacks wrote a letter to the British anti-lynching association stating that "the Negroes in this country are wholly devoid of morality, the women are prostitutes and all are

\begin{itemize}
\item \textsuperscript{252} GIDDINGS, \textit{supra} note 241, at 90-91.
\item \textsuperscript{253} See CRUSADE FOR JUSTICE, \textit{supra} note 54, at 112-13, 156. The WCTU allowed local and state unions to determine whether racially to integrate or segregate. In the North, segregated WCTU locals were designated "colored," or nothing, signifying "white." In the South, the African-American state and local unions were called "No. 2." See SALEM, \textit{supra} note 16, at 36 & n.40.
\item \textsuperscript{254} See CRUSADE FOR JUSTICE, \textit{supra} note 54, at 210-11.
\item \textsuperscript{255} See GIDDINGS, \textit{supra} note 241, at 90-92.
\item \textsuperscript{256} See, e.g., CRUSADE FOR JUSTICE, \textit{supra} note 54, at 204-08 (quoting rebuttal interview published in Britain).
\item \textsuperscript{257} See SECOND BIENNIAL CONVENTION, \textit{supra} note 119.
\item \textsuperscript{258} Id. at 138.
\item \textsuperscript{259} In 1894, the WCTU again resolved to oppose "all lawless acts" (presumably referring to lynching), but at the same time condemned "the unspeakable outrages which have so often provoked such lawlessness." MINUTES OF THE TWENTY-FIRST ANNUAL MEETING OF THE NATIONAL WCTU (Nov. 16-21, 1894).
\item \textsuperscript{260} GIDDINGS, \textit{supra} note 241, at 91-92 & n.16.
\end{itemize}
natural thieves and liars." This sexual slander infuriated black clubwomen in the United States. In 1895, motivated in part by the need to challenge such stereotypes, Josephine St. Pierre Ruffin called for a national convention of African-American women, resulting in the founding of the National Association of Colored Women.

Although Jacks's letter cannot be attributed even indirectly to Willard, events were such that in the crucial years of 1894-95, when the lobbying effort on age-of-consent reform was in high gear in the District of Columbia and elsewhere in the country, black women's clubs had every reason to avoid both Willard and the WCTU. Instead, African-American women reformers relied on rescue and education efforts within their own communities to deal with sexual exploitation, work that had begun in Washington as early as 1886. Elsewhere in the country black clubwomen did likewise, establishing organizations to aid young women in their community and particularly to assist the stream of black female migrants into Northern cities from the rural South seeking better work and a freer life. Although African-American women activists shared common interests with white age-of-consent reformers, they were neither invited nor did they seek to share common organizational space with the WCTU. Instead, other parts of the African-American community, less directly involved in the bitter Wells-Willard controversy, took on the public

261. DOCUMENTARY HISTORY, supra note 243, at 436.
262. These accusations of sexual immorality were taken as vicious insults by elite African-American women of the era: "Too long have we been silent under unjust and unholy charges," said Josephine Pierre St. Ruffin at the founding of the NACW. See ELIZABETH LINDSAY DAVIS, LIFTING AS THEY CLIMB 17-18 (1933).
263. See DAVIS, supra note 262, at 17-18; Williams, supra note 240, at 393. "At the core of essentially every activity of NACW's individual members was a concern with creating positive images of black women's sexuality." Hine, supra note 240, at 186.
264. Such work was among the founding principles of black women's clubs:
265. See GREEN, supra note 154, at 145-47.
266. See JONES, supra note 242, at 155-60. These migrants often found themselves sexually taken advantage of by employment agencies, employers, and lodging houses, some of which were procurers for brothels. See id. at 155-56. Black clubwomen established organizations like the White Rose Home in New York City and the National League for the Protection of Colored Women (NLPCW) to protect, direct, aid, and train African-American female migrants. See SALEM, supra note 16, at 44-46.
role of interracial alliance and coalition-building in the age-of-consent campaigns, including in the District of Columbia.

VII. OPPOSITION

The WCTU campaign to raise the age of sexual consent did not go unopposed either in the District or in the states. In most cases, however, legislative opposition was surprisingly muted. In 1895, the influential reform magazine *The Arena* arranged to have a constituent write a personal letter to every state legislator in the country to ask him to state his position on raising the age of consent to the age of majority (i.e. twenty-one years). Of more than 9000 letters sent, only two opponents of the proposal were willing to go on the record in response.\(^267\) Other indications of opposition to age-of-consent reform can be gleaned, however, from the scrupulous records that local WCTU members kept of legislative debates in their respective states and territories.

Those legislators who opposed rape reform made the following arguments: (A) “designing and dissolute” girls and women will blackmail boys and men if stronger laws are enacted; (B) sexual access to prostitutes, promiscuous girls, and nonwhite women is a man’s traditional prerogative; (C) physical maturity is moral maturity; girls need only to reach puberty in order to be ready for their adult sexual function; (D) the penalty for forcible rape is too harsh for the lesser offense of statutory rape; (E) rape law is not women’s business; (F) gender equality means no special sexual protection; and (G) protective sex laws limit the personal liberty of women as well as of men.

A. Blackmail

In every state legislature the prevailing argument against age-of-consent reform\(^268\) was the fear that “unchaste”\(^269\) and “designing”\(^270\) girls and young women—“scarlet women,”\(^271\) “[w]orking

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\(^{267}\) See *Opposing Views*, supra note 55, at 209. Supporters, by contrast, flooded the magazine office with replies. See id.

\(^{268}\) It is routinely claimed that stronger sex laws will lead to extortion, although no evidence can be offered for such assertions. Even so, skepticism about the credibility of female accusers has led to lackluster enforcement of sex crimes from the common-law era to the present. See CLARK, *supra* note 78, at 52-55; SUSAN ESTRICH, *REAL RAPE* 17-19, 25, 114 n.41 (1987). With respect to statutory rape in particular, blackmail fears persisted well into the modern era. The Model Penal Code Commentary, for example, suggests that the blackmail threat is especially serious in cases of statutory rape. See *MODEL PENAL CODE* § 213.6 commentary at 421 (1980).

\(^{269}\) See Gardener, *Part II*, supra note 55, at 21 (reporting account of Nellie M. Richardson, State Superintendent of Legislation and Petitions, Nebraska WCTU).

\(^{270}\) *Id.* at 27-28 (quoting report of John O. Yeiser of Nebraska).

\(^{271}\) *Id.*
girls, especially typewriters . . . urged on by designing mothers,"272 "lecherous, sensual negro wom[e]n,"273 and "inmates of houses of ill-fame"274—would take advantage of the law. Opponents predicted that undeserving girls and young women would use tougher statutory rape provisions to "inveigle young men into illicit relations and then use the law to extort blackmail,"275 "seduce young men into criminal intercourse and afterwards blackmail their victims,"276 "filch[] a little money out of the pockets of an ‘innocent’ yet a trifle swift youth,"277 or "entrap unwary youths, and thus blackmail them into marriage, or else extort money for their silence."278 Other legislators asked if it was fair for a boy or man who went "innocently" into a brothel to find himself liable on a charge of rape for having sex with an underage prostitute.279 Such a reform, it was predicted, would "send youths to the gallows, and fill our penitentiaries with immature boys."280 Amongst the many calls to "protect our boys," one newspaper editorial piteously asked, "Have these clamorous women no sons? Protection for sons as well as daughters!"281

B. Prostitutes, “Bad” Girls, and Nonwhite Women

Sometimes euphemistically and sometimes bluntly, opponents of age-of-consent reform argued that sexual access to prostitutes, promiscuous girls, and nonwhite women was a man’s prerogative and should not be penalized. Southerners referred to the "undue sensuality" or "early sexual maturity" of African-American282 and Mexican283 girls and women, suggesting that these females did not deserve the sexual respect and protection rightly deserved by "respectable" girls and women. Other opponents referred to working

274. Id. at 215 (reporting statement of Rep. C.H. Robinson of Iowa).
276. Id. at 27-28.
277. Id.
279. See, e.g., Gardener, Part II, supra note 55, at 28; Opposing Views, supra note 55, at 223; id. at 215, 216.
281. See Gardener, Part II, supra note 55, at 21 (reporting account of Nellie M. Richardson, State Superintendent of Legislation and Petitions, Nebraska WCTU).
283. See Gardener, Final Paper, supra note 55, at 410 (recounting report of Helen M. Stoddard, Texas WCTU President, that Texas legislators argued that Mexican girls physically matured earlier than white girls and that, “being developed, the girl could consent”).
women ("especially typewriters") as having loose morals. In many states, opponents spoke about underage prostitutes whose debauched condition justified any man's sexual use of them. An Iowa legislator complained, for example:

The advocates of a change in the law raising the age of consent . . . to eighteen years, always contemplate that the victim is of previous chaste character; and yet . . . it is a fact as true as it is deplorable, that the majority of the inmates of houses of ill-fame have fallen long before they have arrived at that age.

One legislator went so far as to assert the sexual right of all men over all women: "God gave men their passion and . . . it was the duty of the other sex to concede to them."

C. Physical Maturity Is Moral Maturity

Medical and pseudo-scientific arguments about the age of sexual maturity also were popular among opponents. The premise of these arguments was that when a girl reached physical maturity (defined as the age of first menstruation) she was sexually functional and hence, by natural law, capable of sexual consent. Most such claims tended to be talismanic: "Nature fixed the age of consent." Other opponents delivered lengthy expositions of the biological imperative of physical maturity as the threshold of moral and intellectual competence, commenting on the impact of puberty on the "emotional nature," "ratiocinative faculty," and "logical prowess" of girls faced with sexual solicitations.

D. Rape Penalties Too Harsh

Many states, particularly in the South, prescribed the death penalty for rape. Such harsh punishment, enacted in many instances out of largely imaginary fears of interracial rape, seemed a horrifying consequence when it might be applied to white boys and men who engaged in sexual misconduct much closer to home. To many opponents, statutory rape was simply not as bad a crime as forcible rape; it should not lead to death, perhaps not even to imprisonment. In response to such concerns, many states, including the District of Columbia, raised the age of sexual consent, but also

284. Id. at 410.
287. Id. at 17 (quoting report of Hon. Emerson Benedict of Nebraska).
289. See, e.g., id. at 213.
prescribed less severe penalties for statutory rape.\footnote{290} This is the model eventually followed by the modern rape reform movement in broadening the categories of sexual assault, but grading punishments in accordance with the seriousness of the offense.

\textbf{E. Rape Law Not Women's Business}

Some legislators were simply offended that women were attempting to dictate men's sexual conduct. In the legislative debates over age-of-consent bills, there was a strong vein of sexual antagonism, with male legislators deriding women's organizations and defending their interests against what they saw as the frightening strength of organized women.\footnote{291} A Michigan legislator said contemptuously that "[h]e would be ashamed to have his vote influenced by any woman on earth."\footnote{292} A Colorado lawmaker said that "[h]e did not believe in women taking the place of men and passing such laws—it was all out of place in this body."\footnote{293} A Nebraska legislator described the age-of-consent movement as based on "sickly sentimentalism . . . advocated by women who have not the least idea of law-making."\footnote{294} Throughout the campaign, women reformers raised the ire of legislators merely by speaking frankly and in public about sex.

\textbf{F. Equality Means No Special Protection}

A male legislator in Nebraska, speculating about the reasons for the opposition of his peers to raising the age of consent, wrote that some lawmakers saw the claim for protective sex laws and women's equality as inconsistent:

\begin{quote}
[T]o my mind the unuttered but nevertheless felt prejudice against the widening of the sphere of woman's activity [explains the opposition]. It might have been formulated thus: "Women want to be placed on an equal footing with men, why should they have this special protection?" It is simply the unformed but influential fact in men's minds that they were willing to vote for the protection asked, but only on terms that women should relinquish all claims to a wider sphere of activity.\footnote{295}
\end{quote}

\footnote{290. See 19 CONG. REC. 1095-96 (1888).}
\footnote{291. Jeffreys observes that this also was true in age-of-consent debates in Britain, where one parliamentarian described the pressure from women's organizations as "henpecking." See JEFFREYS, supra note 19, at 83 (citing Parliamentary Debates, July 5, 1922, and quoting Lt. Colonel Moore-Brabazon).}
\footnote{292. Gardener, Part III, supra note 55, at 217.}
\footnote{293. Gardener, Part II, supra note 55, at 8 (quoting Rep. Allee of Pueblo County, Colorado).}
\footnote{294. Id. at 22.}
\footnote{295. Id. at 27 (quoting report of John O. Yeiser of Nebraska).}
He went on to suggest that "[c]onsiderable credit must be given to this idea from the fact that every member of the legislature who opposed the age-of-consent bill at any period during its passage also opposed the bill to submit to the people an amendment to the constitution for the enfranchisement of women." 296 Although this argument that equality means that women "play by the same rules" as men is perhaps most familiar and persuasive to modern readers, it was less commonly made in the late nineteenth century, perhaps because of the widespread acceptance of fundamental sexual differences between men and women. Nonetheless, a Kentucky lawmaker defended his state's statutory age of twelve years as a fair balance between the interests of the "young girl" and the "male member of society, who is also worthy of protection." 297 Both male and female feel sexual desire, he argued, and the law should not impose differential penalties upon them for participating in the same sexual act.

On such an equality principle, some states enacted statutory rape laws that exempted underage boys from liability for sex with underage girls, or that punished boys only when they had reached the age at which the common law attributed criminal responsibility generally, i.e., fourteen years. Age-of-consent reformers sometimes opposed bills to exempt boys from liability as unacceptably weakening the proposed law, but they came to support rape laws that limited the age of legal liability for boys and young men to between sixteen and eighteen years. 298 In the effort to raise the age of consent to eighteen years in the District of Columbia, for example, the WCTU supported a bill that prescribed far more lenient penalties for defendants under the age of eighteen years than for adult offenders. 299 In addition, the bill gave judges great discretion in prescribing penalties (with minimum and maximum penalties of one and ten years, respectively) so as to allow possible consideration of the youth of the offender. Boys never were the real issue to women reformers: Throughout the

296. Id.


299. See H.R. 3203, 54th Cong. (1896) (providing "that when the male offending is under the age of eighteen, the imprisonment shall not exceed five years for the first offense, nor more than ten years for the second and subsequent offense, which imprisonment may, in the discretion of the court, be in a reform school or other penal institution."); cf. H.R. 3101-3435, 54th Cong. (1896). By contrast, in the original House bills, the comparable maximum penalty proposed for an adult offender was 15 years for the first offense and 30 years for the second or subsequent offense. See id.

300. See id.
campaign their primary goal was plainly to discourage adult men from seeking sex with young girls.

Some legislators opposed age-of-consent bills because the reformed laws would not equally protect boys and girls from early sexual experience.\textsuperscript{301} Some supporters of the age-of-consent reform heard such arguments as an effort to avoid the key issue of sexual consequences for girls. The \textit{Union Signal} in 1886 announced, for example, that the WCTU would support a law protecting boys if opponents proposed one. “But at present,” the newspaper continued in a mocking tone, “this does not seem of such immediate importance. When old women of eighty, and married and unmarried women of middle age, \textit{in good society and of fine social standing}, go about ruining boys of ten and twelve and sixteen, it will be time to sound the alarm for boys as we are now sounding it for girls.”\textsuperscript{302} Not only did the WCTU appear to believe that adult women were unlikely to prey sexually upon boys, they also believed that boys were less likely to be harmed by early sexual exposure.\textsuperscript{303} The WCTU saw early sexual experience as having disparate consequences for girls and boys, given the pervasive double standard:

\begin{quote}
[A]lmost all girls are brought up in ignorance of the wiles of men, while almost all boys are fully equipped with knowledge, and in the majority of cases, commit the sin with their eyes wide open. It is also well known that, while the social penalty for boys and men is almost nothing, that for girls and women it is damning. Also, that the sorrow from and the effects of sin [pregnancy, presumably] fall almost entirely upon the women, while, except in the sight of God, and under the righteousness of equal penalties, the man goes scot free.\textsuperscript{304}
\end{quote}

Although the WCTU did not see young boys as particularly in need of protection, they did not oppose legislation for their protection on principle. In the renewed state-by-state campaigns of the mid-1890s, reformers were more amenable to consideration for underage males both as victims and defendants. \textit{The Arena} commented in 1895 that “if the age-of-protection bills . . . shielded youth rather than sex they would be more satisfactory.”\textsuperscript{305} Anna Garlin Spencer, writing in

\begin{footnotes}
\footnotetext{301}{The model bills used by the WCTU in the various states were drafted to protect only girls because they were designed to amend the existing rape laws which, having been codified from the common law, were themselves gender-specific. \textit{See supra} note 39. Rape laws were expanded to protect men and boys only during the modern rape reform movement.}
\footnotetext{302}{\textit{The Age of Consent, supra} note 74, at 2 (emphasis in original).}
\footnotetext{303}{This blanket assumption that boys are not at risk from sexual abuse and exploitation ignored not only the fact that adult men and women do seek out boys as sexual partners, but also that boys are victims of incest and frequently used as child prostitutes or in pornography.}
\footnotetext{304}{\textit{The Age of Consent, supra} note 74, at 2.}
\footnotetext{305}{\textit{Gardener, Part III, supra} note 55, at 208.}
\end{footnotes}
Forum magazine, observed that "[o]ne point of concern for childhood was omitted from the first consideration which led to the crusade against the low age of consent, and that point was the need of protecting little boys and half-grown boys against debauchment."\textsuperscript{306}

\section*{G. Protective Sex Laws Limit Personal Liberty}

Few women or men in the nineteenth century directly challenged nineteenth-century age-of-consent reform as an intrusion on personal sexual liberty.\textsuperscript{307} In 1898, however, Lillian Harmon, free love advocate and daughter of Moses Harmon, editor of the free-love periodical \textit{Lucifer the Light Bearer}, spoke to a British reform group in opposition to protective sexual regulation generally.\textsuperscript{308} On the basis of biography, we may speculate that Harmon intended to include statutory rape laws in her criticism: At the age of sixteen, she had been imprisoned for her non-state, non-church marriage to Edwin C. Walker, aged thirty-seven.\textsuperscript{309} In her speech, Harmon argued against legal "protection" from certain sexual relations and in favor of the liberty to make sexual "mistakes," including the mistakes of youth:

I consider uniformity in mode of sexual relations as undesirable and impracticable as enforced uniformity in anything else. For myself, I want the right to profit by my mistakes. If I inadvertently place my hand in the fire, I shall take the liberty to withdraw it; and why should I be unwilling for others to enjoy the same liberty? If I should be able to bring the entire world to live exactly as I live at present, what would that avail me in ten years, when, as I hope, I shall have a broader knowledge of life, and my life therefore probably changed?\textsuperscript{310}

Free lovers like Harmon were concerned about many of the same issues of sexual abuse and injustice as social purity reformers. Yet they believed that the state had no role to play in enforcing sexual rights and wrongs, subscribing instead to a libertarian ideal of social change.\textsuperscript{311} Sexual norms would change when social norms changed, said Harmon. This argument is what today we would call a free-

\begin{itemize}
\item \textsuperscript{306} Spencer, \textit{supra} note 298, at 417.
\item \textsuperscript{307} Although claims to a prerogative to "sow wild oats," or to have sex with prostitutes, unchaste and nonwhite girls and women are indirect assertions of male rights of sexual liberty. \textit{See supra} notes 134-37 and accompanying text.
\item \textsuperscript{309} \textit{See} HAL D. SEARS, \textit{THE SEX RADICALS: FREE LOVE IN HIGH VICTORIAN AMERICA} 81 (1977). The charge against both Harmon and Walker was "unlawfully and feloniously living together as man and wife without being married according to statute." \textit{See id.} at 86. On the controversy surrounding Harmon's marriage, \textit{see} \textit{id.} at 81-106.
\item \textsuperscript{310} Harmon, \textit{supra} note 308, at 123.
\item \textsuperscript{311} On the ideas of the free love movement, see SEARS, \textit{supra} note 309, at 3-27.
\end{itemize}
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market analysis: Harmon asserted that if a lifelong monogamous union between one man and one woman was the "condition for greatest happiness," all individuals would choose it without the legal constraints on nonmarital sexual relationships.312

VIII. ROUND TWO IN THE STATES AND THE DISTRICT OF COLUMBIA

After the first wave of state and national successes in the late 1880s and early 1890s, interest in the age-of-consent reform waned somewhat among the WCTU membership.313 During this lull, several state legislatures attempted to revise downward the age of consent. As early as 1889, the Kansas State Senate passed a bill to lower the age of consent from eighteen years (achieved in 1887) to twelve years, a rollback that was stopped in the House by prompt WCTU mobilization of public and press attention.314 In 1889 and again in 1891-92, the New York State Senate considered lowering the age of consent to ten years,315 two years later, Maryland reformers fought a well-organized campaign to lower the age in that state.316

Among the strategies used to renew age-of-consent activism among the WCTU ranks317 and in the general public was effective use of the media. In 1895, Frances Willard cooperated in the publication of a multi-part series on age-of-consent reform published in The Arena. In addition to essays by Willard and other purity reformers, the series included a detailed state-by-state account of current law regarding age of consent, as well as participants’ dramatic blow-by-blow accounts of key moments in past legislative battles.318 The series succeeded in getting the blood running again through the WCTU ranks. In her annual address to the 1895 WCTU national convention, Willard

312. Harmon, supra note 308, at 122.
313. This trend may be inferred from the fewer number of articles published on the subject in the Union Signal and from the noticeably less ambitious reports of state-by-state legislative activity from both Purity and Legislation departments in national WCTU Annual Reports from 1891-94. The annual report of the national Department of Legislation and Petitions in 1893 begins, for example, on a note of apology: "It is a pity to begin the reports of the magnificent work accomplished by our noble white-ribboners, with a department which must appear to the poorest advantages of all." SECOND BIENNIAL CONVENTION, supra note 119, at 416.
314. Two thousand women in Topeka, hundreds more in smaller towns, "and the press generally," combined to denounce the action of the Senate, according to the president of the Kansas WCTU. Since Our Last Issue, UNION SIGNAL, Feb. 28, 1889, at 1; see also Notes From the Field: Kansas Greetings, supra note 217, at 11 (giving account of event).
315. See Another Vicious "Age of Consent" Bill, PHILANTHROPIST, Mar. 1891, at 4; An Infamous Bill, PHILANTHROPIST, May 1890, at 4; Men as Legislators, PHILANTHROPIST, July 1890, at 4; Scheme to Lower the "Age of Consent," PHILANTHROPIST, Jan. 1889, at 5.
316. See PIVAR, supra note 17, at 144-45.
317. Aaron Macy Powell of the American Purity Alliance joined forces with Dr. Mary Wood-Allen, new national WCTU Superintendent for Social Purity, for a renewed campaign at both state and federal levels. See PIVAR, supra note 17, at 144-45.
318. See sources cited supra note 55.
praised the *Arena* series: "Perhaps no single force has been so potent in procuring an arrest of thought in the minds of men and women that is sure to lead to a better understanding of the age of consent and of the protection that law ought to afford to the person, as well as the purse, in modern civilization."319

Activity in the District of Columbia again intensified in 1896 when an ultimately failed effort to revise the age of consent upwards to eighteen (from sixteen) years began. The petition pressure on the Congress resumed. In a Senate report, the Committee on the District of Columbia noted:

The bill has been asked for by more numerous petitions than have been sent for any other pending District measure, in which petitions the churches, white and colored, with Archbishop Keane, the colleges, and societies have joined, and numerous petitions for such a bill have come from the churches and societies all over the land. No opposing petitions have been presented.320

In the 54th Congress, two bills—one in the House and one in the Senate—were introduced to raise the statutory age in the District to eighteen years.321 The Senate reported the bill with a substitute, H.R. 9515, which would have made sex with a young woman between sixteen and eighteen years a misdemeanor offense.322 Although the committee acknowledged that "the whole national movement on the subject tends" towards raising the age of consent to eighteen years, they determined to limit the criminal penalty because sex with a girl of this age was "not rape" but simply "aggravated fornication, as where an innocent girl of 16 or 17 has been ruined by some corrupt man."323 The committee was concerned, moreover, with the fate of the "man or boy [who] has been 'more sinned against than sinning.'"324 In such a case, they noted, "the guiltier girl can hardly take advantage of this law, as the court, in its discretion, there being no minimum penalty, while giving the woman six months' imprisonment [the penalty already established at law for fornication]."

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319. President's Annual Address, in TWENTY-SECOND ANNUAL MEETING, *supra* note 233, at 30. It is interesting to note that the words Willard uses to praise Gardner's journalism are identical to those she used to praise The Maiden Tribute of Modern Babylon some 10 years earlier, when she wrote about "an arrest of thought" caused by "the terrible disclosures in England." Plan of Work for 1886, *supra* note 123, at 12 (showing letter to membership signed by Frances E. Willard and Mrs. Dr. J.H. Kellogg).
320. S. REP. NO. 54-1500 (1897).
322. See S. REP. NO. 54-1500 (1897).
323. Id.
324. Id.
surprisingly, the bill, shredded by compromise, died for lack of continued support from the WCTU.

In 1898, a misdemeanor bill identical to that favorably reported in the previous session was introduced and passed the Senate.\(^{325}\) The bill then was referred to the House,\(^ {326}\) but the House Committee on the Judiciary indefinitely postponed the bill, recommending in its place a substitute, H.R. 1136,\(^ {327}\) making seduction a crime in the District of Columbia, which passed.\(^ {328}\) Significantly, the seduction bill contained a requirement that the victim be “of previous chaste character.”\(^ {329}\) This chastity condition defeated the reformers’ goal of establishing legal protection that focused on the conduct of the defendant rather than that of the girl. The WCTU consistently opposed such “previous chastity” provisions when they were proposed by legislators throughout the country. Reformers argued that if protecting a girl from her own immature judgment was the point of the legislation, any invocation of her past errors “begs the basic question.”\(^ {330}\) They argued further that “bad” girls as well as “good” girls deserved legal protection, and that a chastity requirement would mean that once a girl had erred, she was “henceforth legitimate prey.”\(^ {331}\) Citing a concern familiar to modern supporters of rape-shield laws, the nineteenth-century reformers also argued that a chastity requirement “would suggest to the offender, to add to the wrong he had inflicted on his victim, by also ruining her previous reputation.”\(^ {332}\) Where the defense can make the victim’s reputation and prior conduct the focus of the trial, the victim’s credibility traditionally has been undermined.\(^ {333}\)

By 1900, eleven states and territories—Arizona, Colorado, Delaware, Idaho, Kansas, Missouri, Nebraska, New York, Utah, Washington, and Wyoming—had set eighteen years as the age of consent. Among these were the states and territories that had adopted some form of limited or full woman suffrage. In Colorado, the bill to

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325. See S. 2880, 55th Cong. (1897); id. at 3081 (1898).
326. See 31 CONG. REC. 3140 (1898).
327. See H.R. REP. NO. 55-829 (1898).
328. 31 CONG. REC. 5446 (1898) (House); 32 CONG. REC. 2366 (1899) (Senate); 32 CONG. REC. 2933 (1899) (signed into law). If the Congress assumed that criminalizing seduction was the functional equivalent of raising the age of consent in the law of rape, they erred. A seduction law imposes liability only when the girl’s or young woman’s consent to sex is gained by intentional misrepresentation. This covers only a limited number of cases that could be embraced by a higher age of consent.
331. Id. at 16.
332. Id. at 9.
raise the age of consent had been sponsored by a woman legislator as her first official act in office.334

IX. LEGISLATIVE GAIN AND POLITICAL LOSS

It was the disappointing outcome of the renewed campaign in the District of Columbia rather than the impressive record of state victories that signalled what was to become a trend of much longer duration in the making and enforcement of statutory rape laws. After the fervor of the 1885-1900 campaigns had cooled, legislators, prosecutors, police, and courts crippled the tougher statutory rape laws that reformers had gained. Although the reform effort had mobilized massive lobbying power to enact new laws, they failed to sustain effective legislative and enforcement monitoring. Some states, either by statute or common law rule, introduced requirements that the young victim demonstrate her previous chastity in order to claim protection under the law. Other states denied protection to "promiscuous" girls.335 A California court justified this shift in the burden of care from adult to child as follows: "A girl who belongs to a group whose members indulge in sexual intercourse at an early age is likely to rapidly acquire an insight into the rewards and penalties of sexual indulgence."336 Some jurisdictions also recognized a "mistake of age" defense, which further strengthened the position of defendants.337

Even where legislatures did not weaken the reformed statute, tough and fair enforcement of statutory rape by prosecutors, police, or courts proved the exception rather than the rule. Throughout most of the twentieth century, statutory rape laws have been only sporadically

334. For a first-person account from Colorado state legislator Carrie Clyde Holly, see Gardner, Part II, supra note 55, at 3-16. Susan B. Anthony and the International Council of Women, then meeting in Atlanta, Georgia, sent Representative Holly a telegram congratulating her that the first act of a woman in her first legislature was for the protection of girls. See id. at 11.

335. See Lyons, supra note 10, at 616. Today only three states retain a requirement of "prior chastity" for the complainant. TEX. PENAL CODE ANN. § 22.011 (West 1992); MISS. CODE ANN. § 97-3-67 (1992); TENN. CODE ANN. § 39-13-506 (1991). Many such requirements were removed as part of the rape reforms of the past generation, on the rationale that supported rape-shield statutes more generally.


337. The debate over whether such a defense should be recognized has continued into the 20th century. Currently, the law of a majority of states refuses to recognize a reasonable mistake as to age as a defense to a charge of statutory rape. See Bruce R. Grace, Ignorance of the Law as Excuse, 86 COLUM. L. REV. 1392, 1416 n.15 (1986); Richard Singer, The Resurgence of Mens Rea II: Honest But Unreasonable Mistake of Fact in Self Defense, 28 B.C. L. REV. 459, 470 (1987). But see Hernandez, 393 P.2d at 677-78 (recognizing mistake of fact in statutory rape). The Model Penal Code (MPC) provided that an honest but unreasonable mistake of fact would negate criminal liability. See MODEL PENAL CODE § 204 (1980). Regarding statutory rape, the MPC gives a defense of reasonableness if the girl's age is above 10, but not if her age is lower. See id. at § 213.6(1).
enforced, in patterns marked by biased prosecutorial decisions about “good” and “bad” cases and with decisions to prosecute particular defendants often politically motivated.\textsuperscript{338} Parents, police, or prosecutors frequently initiate statutory rape complaints, removing from girls and young women the power to determine when a particular sexual exchange has been harmful to their well-being.\textsuperscript{339}

Although patterns of enforcement departed dramatically from reformers’ initial intentions, higher statutory ages of consent did create some increased protection against sexual coercion and abuse for girls and young women. The evidence is limited and conflicting, but in all studies a significant portion of cases prosecuted under toughened statutory rape laws proved to involve either forcible rapes or incestuous sexual assaults. In a study of all statutory rape cases tried in Ingham County, Michigan, from 1850 to 1950, comprising a sample of 326 cases, fully one half of the cases (168) involved incest.\textsuperscript{340} Of the remaining half, eight involved stranger assailants, forty-seven involved acquaintance rapes, and less than one-third (106) involved consensual sex.\textsuperscript{341} In a study of Alameda and Los Angeles County statutory rape cases, Odem found a much smaller percentage of incest and forcible rape cases. Most young women (seventy-two to seventy-seven percent) had willingly engaged in sex.\textsuperscript{342} Only twenty-three to twenty-eight percent of cases involved forcible assault, and among these were the incestuous sexual assault cases.\textsuperscript{343} In the California study, forty-three percent of the forcible rape cases involved assaults by male relatives (fathers, stepfathers, uncles, and brothers). Another twenty-seven percent involved assaults by neighbors or close family friends. Seventeen percent of victims were raped in their place of employment, and all but one of these was employed as a domestic servant.\textsuperscript{344} Despite disparities in the local

\textsuperscript{338} See generally Lisa Frohmann, Discrediting Victims’ Allegations of Sexual Assault: Prosecutorial Accounts of Case Rejections, 38 SOC. PROBS. 213 (1991) (conducting empirical examination of factors prosecutors use to sort rape cases for prosecution or dismissal).


\textsuperscript{341} See id.

\textsuperscript{342} See ODEM, supra note 19, at 39.

\textsuperscript{343} See id.

\textsuperscript{344} See id. at 58.
studies, all jurisdictions used statutory rape laws to prosecute all forms of sexual activity with an underage girl or young woman, from violent rapes to fully consensual love affairs. Further, the studies highlight the degree to which age-of-consent reforms made for easier prosecutions of incest, a setting in which the victim is especially unlikely to manifest the “utmost resistance” traditionally required by the law of forcible rape.

A final and disturbing chapter of the age-of-consent campaign, however, is the shift in the politics of the reform movement itself. Political activism on what came to be known as “the girl problem” began to shift in the early decades of the twentieth century as the Progressive Era dawned. Activism became more conservative, nativist, and racist, and lost its feminist bite.345 More so than the reform activists of the 1870s and 1880s, Progressive reformers felt compelled to acknowledge and interrogate working-class female adolescents’ rebellion against Victorian morality,” writes Ruth Alexander.346 Beginning in about 1900, states began to punish girls for underage sexual activity in the name of “protection,” creating juvenile “status offenses” that judged girls delinquent for “precocious sexuality.”347 Ironically, in the twentieth century it turned out to be mostly girls rather than men who were placed in state custody in order to prevent underage sex.348

In the Progressive Era, reform-minded women joined in the establishment and administration of the new juvenile courts, reformatory institutions, and maternity homes to which these delinquent girls were consigned.349 From these positions of authority, they assumed a posture of direct authority over the girls they earlier had sought to defend, punishing their young charges for failure to conform to a code of sexual morality based on middle-class values of female sexual restraint. Having failed ultimately to seize power over men and in the public sphere through legal reform, middle-class women in the early twentieth century came to lay the heaviest hand on poor and immigrant women who were the supposed beneficiaries of their

345. See ALEXANDER, supra note 138, at 107; ODEM, supra note 19, at 3-4.
346. ALEXANDER, supra note 138, at 34-35.
347. See generally ALEXANDER, supra note 138; Mary E. Odem & Steven Schlossman, Guardians of Virtue: The Juvenile Court and Female Delinquency in Early 20th-Century Los Angeles, 37 CRIME & DELINQ. 186 (1991); Schlossman & Wallach, supra note 25. For an example of the Progressive-Era view of the “girl problem,” see ROBERT A. WOODS & ALBERT J. KENNEDY, YOUNG WORKING GIRLS: A SUMMARY OF EVIDENCE FROM TWO THOUSAND SOCIAL WORKERS (1913).
348. This is despite the general principle of criminal law that the victim should not be held liable for the criminal offense. See MODEL PENAL CODE § 2.06(a) commentary at 35 (1980).
concern. As Christine Stansell puts it, reformer women made the “language of virtue and vice into a code of class.”

By bringing sexual exploitation increasingly within the jurisdiction of the state, reformers sought to remove women and girls from the private sphere dominated by men. By confining “errant” girls and women in institutions of state power that were in female hands and controlled by female values—especially girls’ reformatories and women’s prisons—women reformers sought to displace male power both in private and public spheres. And therein lies the peculiar paradox of early feminist sexual politics.

In these same years, middle-class women were beginning to abandon those same ideals of sexual restraint and coming to embrace a more recognizably modern understanding of sexual liberation. If nineteenth-century sex reformers insisted that men should conform to the sexual constraints imposed upon women, twentieth-century sex reformers began with the premise that women should be free to behave with the sexual liberty that men traditionally had enjoyed.

In the twentieth century, feminism thus moved away from its earlier position that women should set the pace in sexual activity. In the modern era, men became the sexual model against which women measured themselves. For their part, men were encouraged to embrace rather than resist their aggressive sexual impulses, and women who resisted sex were caricatured as “prudes” or “frigid.”

As Christina Simmons puts it, “The much vaunted new morality gestured in the direction of equality for women but effectively sustained the cultural power of men, focusing that power in the arena of sexuality.” Thus was the stage set for the almost visceral modern distaste of any sexual politics premised on protection or restraint.

In our own times, some modern feminists have opposed strong statutory rape laws on the ground that such laws restrain the sexual freedom of girls, and thus represent a repressive and puritanical control of female sexuality. The generation of women who

350. STANSELL, supra note 136, at 66.
351. See Simmons, supra note 134, at 164, 169-70.
352. Id. at 165-72.
353. Id. at 172.
354. See, e.g., Rita Eidson, Comment, The Constitutionality of Statutory Rape Laws, 27 U.C.L.A. L. REV. 757, 761 (1980) (“[G]ender classifications in statutory rape laws are based on pernicious sex-role stereotypes, rather than physical differences between males and females.”); see also CONSTANCE A. NATHANSON, DANGEROUS PASSAGES: THE SOCIAL CONTROL OF SEXUALITY IN WOMEN’S ADOLESCENCE (1991). Others have argued that it is a form of resistance to mainstream norms of femininity for adolescent girls to relate sexually to adult men. See, e.g., Terry Leahy, Taking Up a Position: Discourses of Femininity and Adolescence in the Context of Man/Girl Relationships, 8 GENDER & SOC’Y 48 (1994). Likewise, some within the gay male community argue that the sexuality of gay boys is suppressed by age-of-consent laws. See,
renewed American feminism in the 1960s and 1970s were principally concerned with gaining the freedom to have sex, and their sexual politics focused on barriers to the expression of female desire. They fought, for example, to gain control over reproduction and to undermine the normative status of marriage and heterosexuality as the only legitimate sexual outlets for adult women.355 For many influential thinkers of this second wave of feminism, female sexual repression was the very root of patriarchy. They argued that women's liberation would bring sexual liberation and, implicitly, that sexual liberation in turn would undermine patriarchy.356 To those whose feminism was formed in this struggle for sexual freedom, the politics of early age-of-consent reformers—their rhetoric of sexual danger, their idealization of restraint over expression, and their acceptance of marriage and heterosexuality—seemed indistinguishable from the repressive patriarchal values they were seeking to overthrow.357
Modern feminist critiques of protective sex laws that have grown out of this liberationist stance tend to draw on intrinsically positive images of sexual liberty. Among sexual liberals the argument is grounded in nature. Like arguments from classical economic theory that the “invisible hand of the market” can achieve a just allocation of scarce resources without government intervention, the parallel argument is that if the artificial restraints of law and custom could be lifted, the powerful force of eroticism would ensure that human sexual affairs find a proper balance. Among self-styled “sex radicals” the argument is more cultural and political: An exploratory sexual life that transgresses the social and legal norms of patriarchy is itself a form of political resistance to the oppression of women and sexual minorities.

The emergence of a strong deregulatory voice in the sexual politics of modern feminists does not, however, account for all or most of feminism today. There persists a position that resists the libertarian mandate and continues to demand protective legislation in the form of stronger prohibitions of rape, incest, and other sexual assaults, new causes of action for sexual harassment and injury from pornography, and legal recognition of other forms of sexual injury and sexualized harm. Modern advocates of protective sex laws argue that the current distribution of sexual harms is not simply the product of the rough-and-tumble of a free sexual market, but rather disproportionately and unfairly falls on women, and is the constitutive condition of femaleness in our gender system. Echoing sex reformers of a century ago, they assert that this unequal allocation of sexual consequences is evidence of women’s continued second-class status.

358. See, e.g., Camille Paglia, Sexual Personae: Art and Decadence from Nefertitti to Emily Dickinson 13 (1991) (“Sexuality . . . cannot be ‘fixed’ by codes of social or moral convenience, whether from the political left or right. For nature’s fascism is greater than that of any society. There is a daemonic instability in sexual relations that we may have to accept.”). See also the essentialist invocations of sexuality in Camille Paglia, Sex, Art and American Culture 53 (1992); Naomi Wolf, Fire with Fire: The New Female Power and How It Will Change the 21st Century 187 (1993).

359. Many sex radicals are also feminists who strongly oppose protective sex laws such as regulation of pornography and challenge political condemnation of sexual sadomasochism. See, e.g., Pleasure and Danger, supra note 26; Powers of Desire, supra note 118.

360. For discussion of the modern conflict between advocates of libertarian and regulatory strategies for enhancing women’s sexual integrity—all in the name of feminism—see Kathryn Abrams, Sex Wars Redux: Agency and Coercion in Feminist Legal Theory, 95 COLUM. L. REV. 304 (1995); Ann Ferguson, Sex War: The Debate Between Radical and Libertarian Feminists, 10 SIGNS 106 (1984).

361. See, e.g., Catharine MacKinnon, Feminism Unmodified: Discourses on Life and Law 46, 49 (1987) (“As the organized appropriation of the work of some for the use of others defines the class, workers, the organized expropriation of the sexuality of some for the use of others defines the sex, woman.”); Catharine MacKinnon, Toward a Feminist Theory of the State 126, 127 (1989) (“A theory of sexuality becomes feminist methodologically . . . to the extent it treats sexuality as a social construct of male power: defined by men, forced on women, and constitutive of the meaning of gender.”).
citizenship in that it continues the state's traditionally greater regard for men's interests over those of women.\textsuperscript{362}

But following the shift in prevailing sexual ideology, the drafters of the Model Penal Code in the 1950s recommended that the age of sexual consent once again be reduced to ten years.\textsuperscript{363} In support of this proposal Morris Ploscowe wrote:

One would not complain about the law of statutory rape being too harsh if the early rules of the English law were still in force. . . . For under these rules, the age at which a girl could legally consent to an act of sexual intercourse and shield a man from a charge of rape was ten or twelve years, depending upon which authority was followed.\textsuperscript{364}

Although the proposal was never adopted by any state, Ploscowe's suggestion graphically depicts the turn of the wheel in the definition of "progressive" or "reform" sexual politics in the new century.

X. CONCLUSION

At the level of legal reform, the age-of-consent campaign was enviably successful, spearheading a movement that eventually changed the law in every state and the District of Columbia. At the level of feminist sexual politics—that is, success in transforming sexuality as a site of women's oppression—it was at best only a modest success. In hindsight, we can see that the reach of these early rape reformers exceeded their grasp; the dimension of the issues they engaged and the depth of the opposition they stirred eventually exceeded both their social vision and political power. Some of these shortcomings might have been evident at the outset of the movement; others resulted from the reformers' political inexperience or the backlash generated by their initial successes in redistributing sexual power. Still others reflect the inherent limits as well as strengths of the position from which this group of middle-class, white women parlayed their sexual respectability, social privilege, and allegiance to prevailing gender norms into a launching pad for resistance.

First, by settling on statutory rape law as the reform vehicle, the extent of change that possibly could have been achieved was

\textsuperscript{362} See generally BEVERLY BALOS & MARY LOUISE FELLOWS, LAW AND VIOLENCE AGAINST WOMEN: CASES AND MATERIALS ON SYSTEMS OF OPPRESSION (1994) (discussing failure of lawmakers and law enforcers to resist violence against women).

\textsuperscript{363} See MODEL PENAL CODE § 213.1(d) (1980) (defining rape as including sexual intercourse with female under 10 years). The MPC provisions regarding forcible rape also were hostile to victims, imposing corroboration and prompt complaint requirements, removing liability where the attacker was the victim's friend or husband, or the victim could be shown to have been sexually promiscuous. See Bienen, supra note 333, at 52-54.

\textsuperscript{364} MORRIS PLOSCOWE, SEX AND THE LAW 178 (1951).
necessarily limited, no matter how successful the campaign. Reformers persuaded lawmakers to strengthen dramatically protections against rape and sexual abuse for girls and young women. They left adult women, however, to wait until almost a century later to enjoy similar gains.

Second, the subsequent history of statutory rape law revision and enforcement suggests that the early reformers had grasped state power only in a transitory way. Although they persuaded lawmakers to enact new laws, they did not control how and against whom these laws were enforced, nor could they prevent legislative perversion of their original intentions. The hostility towards the female victim that has grown up around every protective sex law, from forcible rape to incest to sexual harassment, quickly infected statutory rape as well. The regulation of sexuality by the legal system involves more than defining the boundaries of prohibited and permitted sexual acts and prosecuting those who step over the lines. Sex crime statutes may define ideals of conduct and relationships, but the process of criminal prosecution allows prosecutors, police, and judges to make discretionary decisions based on the background and character of those accused of not meeting that sexual ideal.

In general, age-of-consent reformers were naive about the transformative potential of legal reform. This naiveté is perhaps understandable, a reflection of the political inexperience of a group whose members had long been excluded from the political process by formal disenfranchisement. As well, the reform campaign began in an era in which progressives were extraordinarily optimistic about the benevolent aspects of governmental power. Lucy Bland argues that British women's increasing involvement in government in the latter nineteenth century (through limited suffrage and participation in organized philanthropy, municipal betterment projects, lobbying and social reform movements) made them optimistic about the possibilities of statist solutions, especially if women were to be included in the various lawmaking and law-enforcing bodies of the government. 365 Surely this insight applies to American women reformers of the era as well.

On the other hand, the naiveté about law enforcement displayed by this predominantly white and middle-class movement can be unfavorably contrasted with the wary skepticism about resort to law among their counterparts in the African-American community. Black clubwomen proved reluctant to enter into the age-of-consent reform

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campaign, partly because of their harsh experiences as women of color with discriminatory law enforcement, especially with respect to rape law. As a result of its racism, the social purity movement lost the benefit of the political insight of this more experienced group of women.

Still, the effects of even wholly symbolic legal reform victories can too easily be discounted. Age-of-consent reformers recognized the purely symbolic power of law reform: "Law is in itself a powerful educator for good or ill. The inevitable effect of the present statutes of most of the States, as of Congress, pertaining to young girls is to lessen to a minimum the sense of moral and legal responsibility on the part of men."

Recognizing this very insight, modern feminists have invested enormous energy, for example, in the effort to overturn the marital exemption in rape law. Although only a small percentage of forcible rapes involve wives and husbands, the message conveyed by the marital exemption is that some women have no rights to sexual self-possession. Feminists rightly regard such a legal rule as an expression of women's unequal citizenship and the diminished personhood of wives. Although political struggle to extirpate the exemption may, in the end, have limited practical effects on rape enforcement, it has had meaningful political impact as a symbol of women's equality under law.

So, too, after almost one hundred years, tough statutory rape laws plainly have not ended child sexual abuse, incest, child prostitution and pornography, teenage pregnancy, and the sexual misuse of adult authority over the young. Yet, critically, such laws do express the moral expectation that adults will accept responsibility to protect the young from sexual violence, abuse, and overreaching, even at the expense of their own sexual liberty.
