

## Another Champagne Challenge

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Losing your virginity has always been a big deal. It is the kind of milestone that births coming-of-age novels, pop songs, and magazine tips. It is the kind of crucial moment that spawns full advertising campaigns and religious doctrine. It is the kind of re-defining character trait that, within these advertising campaigns and religious doctrine, can get you revered or killed, respectively. Losing your virginity, it seems, is still synonymous with loss of purity, innocence – childhood, and doing so “too soon” or “too young” is regarded as a tragedy. Even in the very terminology – “loss” – we place children in a state of preservation; once you have sex, once you lose your virginity, you lose your purity, your -innocence, and your childhood. You can never go back. Therefore, under the guise of white hats and legal doctrine, authority figures seek to protect children from sex. Sometimes, this is warranted: non-consensual sex in any form is a hideous violation of human dignity and should be treated as such. However, establishing an “age of consent,” even with good intentions of protecting against pedophilic sexual predators, is nearly impossible, and attempting to do so justly requires a nuanced understanding of adolescent sexuality and criminal law.

We establish a legal age of consent to protect our children. Although this sounds like it should be emblazoned on a red, white and blue slogan (Protect Our Children!), sexual activity a fundamental marker in the transition between childhood and adulthood in many societies. The concern, therefore, is that sexual activity too early will erase childhood and cause perhaps the biggest parental fear: Growing Up Too Fast, which is supposedly wrought with all kinds of negative consequences. Thus parents, lawmakers, and others with authority over children believe it is their job to ensure a safe, slow passage to adulthood. Teenagers and adolescents, on

the other hand, seem to believe it is their job to thwart this process. Therefore, regulating adolescents' behavior becomes problematic because "teens want to be independent but often lack the abilities and experience necessary for mature decision making. As a result, compared to adults, they are more likely to engage in numerous risky behaviors such as reckless driving, unprotected sex, and drug use (Arnett, 1992)" (Koon-Magin, Ruback 2013:1918). It therefore becomes clear that, in adult's eyes at least, teenagers do not necessarily know what is best for them.

However, neither is it necessarily the government's job to define what is best for adolescent sexuality. Laws governing statutory rape, while meant to "protect young people from sexual activity that may be coercive or harmful, even if its not forcible (Cocca, 2004)," may overstep traditional government boundaries (Koon-Magin, Ruback 2013:1918). To what extent should lawmakers trespass into a child's bedroom? To what extent should an adolescent's first foray into sexual activity be dictated by government leaders? When the United Kingdom was writing its laws on statutory rape, "The House of Lords was deeply divided about whether the law should be invoked to criminalize sexual activities that many perceived as a purely 'moral' matter to be addressed through public and/or religious 'education'" (Stevenson 2012:130). Celebrated British novelist Howard Jacobson argues for government intervention when proposing (only a bit satirically) that the United Kingdom raise the age of consent to thirty-five: "[We have to take the] parental role," he says, "We do those we are charged with bringing up no service by pretending to be no older and wiser than they are" (Jacobson 2013). But are "we," the general population as represented through democratic government, charged with bringing up an entire generation of young people?

Even if we concede that the government has a role in delineating appropriateness of sexual encounters, age of consent must be chosen carefully given its connotations within larger society. By saying “this is the age a child is ‘allowed’ to have sex,” a government is entering a moral battlefield populated by religious zealots, moral philosophies, and emotional arguments. These “attitudes toward and moral judgments of sexual activity are relevant because people tend to assume that the law is consistent with what they believe is reasonable” (Koon-Magin, Ruback 2013:1920). Therefore, laws establishing an age of consent must at least try to reflect general attitudes toward and moral judgments of sexual activity in order to adequately represent the population they govern. Yet this presents us with a predicament: balancing desires of those like Mr. Jacobson, who believes, “you’re a total goner as a moral being” if you’re not taught that “sex is trouble, a pleasure and a plague, no sooner done than regretted, and no sooner regretted than missed – in short, perplexing and unfathomable” (2013), with those of fellow Brit and human rights campaigner Peter Tatchell. He says, “it is the human right of children to have sexual relationships and if there is no harm caused to children by sex, then there should be no crime” (Stevenson 2012:133).

If sexual relationships are a human right, perhaps we should not have an age of consent at all. However, to eradicate age of consent laws would require the populating agreeing such laws are not necessary to protect children from unwanted, predatory sexual advances. This necessitates two fundamental agreements: 1) that children are active social beings with agency and understanding of healthy sexual consent and 2) that intergenerational relationships do not carry inherently negative psychological or sociological consequences (or at least no more so than sexual relationships between people of the same age). First, it has been widely accepted for years that “in order to make an informed decision, an individual must be mature both cognitively

and psychosocially” (Koon-Magin, Ruback 2013:1919). However, it is nearly impossible to define when an individual is technically “mature” both cognitively and psychosocially. Any neurobiologist can tell you that technically, the brain isn’t fully developed until a child is twenty-five. Should this be the age of consent? If we’re already up there, should we just go with Jacobson’s suggestion and accept thirty-five at the age at which youth are “ready” for sexual activity? It seems strange that we are so adamant about regulating childhood participation in such an intimate act when there are a “number of social policy areas where children are presented as actively capable, as child criminal ‘Hoodies,’ or in manipulating classroom situations against ‘helpless’ adult teachers” (Yuill 2010:161). Still, researchers generally agree that a child of two cannot understand sex and consent. But then, where is the line? Eight? Ten? Referencing a statutory rape case in the UK, Stevenson asks, “Do 12-year-old girls possess full capacity to consent to sexual activities by adult men given their age and understanding irrespective of how ‘sexually experienced’ they may be?” (Stevenson 2012:137). The answer lies in a grey area.

Regardless of the “magic number” established at the age of consent, let’s face it: adolescents will not obey rules they think are unfounded. We need look no farther than a prom after-party or frat house to see beer being guzzled by those who have yet to turn the coveted twenty-one years of age. And the majority of British adolescents do not obey the age of consent laws, which currently dictate they are not supposed to have sex before the age of sixteen. Although technically the law is supposed to protect youth from predators, other goals have been stated, such as prevention of teenage pregnancy and, more bluntly, preventing underage sex as a whole. However, it has failed “miserably,” according to criminal law scholar Kimberly Stevenson, who notes, “recent research from the National Survey of Sexual Attitudes and

Lifestyles 2010 [states] that the average age of first sexual contact in the UK is 14 and that 40 percent of all teenagers have had sex by the age of 15” (Stevenson 2012:132). When presented with this research, “His Lordship [Judge Moses LJ was] quoted as saying that, after all, ‘it is what young people do, but they are not allowed to do it until they are 16’” (Stevenson 2012:135). However, doing what they are not allowed to do has a price: ““*The Times*’ sex counselor, Suzy Godson, [once] advised a concerned mother who had found condoms in her 14-year-old daughter’s bedroom that ‘technically, a 15-year-old boy who has consensual sex with a 14-year-old girl has committed a crime that carries a two-year prison sentence’” (Stevenson 2012:132).

Therefore, we have encountered an example of ineffective statutory rape law that unfairly criminalizes youth for engaging in behaviors becoming more and more commonplace. The general population is aware of these discrepancies. “When asked directly whether they thought that statutory rape laws had a deterrent effect, respondents were highly skeptical. In fact, the average rating was 2.51, measured on a scale from 1 (“Absolutely Not”) to 7 (“Yes, Definitely”). On the same scale of responses, respondents also did not support the idea that adolescent sexual activity should be a crime” (Koon-Magin, Ruback 2013:1921-1922). Still, adolescent sexual activity with other adolescents is traditionally regarded as much different (and much healthier) than adolescent sexual activity with an adult. Therefore, “severe punishments and onerous restrictions might be appropriate if sex with minors is as intrinsically harmful as advocates, therapists, the media, and politicians often assert” (Rind 2010:115).

However, research claiming solely negative consequences of inter-generational sexual activity is inconclusive at best. As Hubbard states, “the psychological, sociological consequences of this dangerous series of incompatibles have not been explored as fully as they should” (2010a:96). Bruce Rind takes it a step further, claiming “non-clinical empirical reviews

of age-gap sex involving minors show claims of intense, pervasive injuriousness to be highly exaggerated. Historical and cross-cultural reviews show that adult-adolescent sexual relations have been common and frequently socially integrated in other times and places, indicating that present-day Western conceptualizations are socially constructed to reflect current social and economic arrangements rather than expressions of a priori truths” (Rind 2010:113). Looking back, we can see that inter-generational sexual relationships have not always been frowned upon. Indeed, in Ancient Greece, young boys having sex with adult men was seen as not only normal, but a formative part of human experience and a stepping stone towards adulthood (Hubbard 2010b). Even in the United States, “before 1980, many researchers thought the behavior was immoral but the harm, in the absence of aggravating circumstances, was minimal, if not absent (Finkelhor, 1979);” furthermore, “[the series of] sensationalistic cases [that] stamped the belief... that adult-minor sex is uniquely destructive... have since been rejected by mainstream researchers” (Rind 2010:117).

In the mainstream, however, inter-generational sex is still largely frowned upon, and voices attempting to normalize it are shut down as advocates for pedophiles. However, “the debates on adult-child sex reveal disparate perspectives on childhood and adolescence. Those who are opposed regard the very idea as means to the end of meeting an adult’s sexual gratification... Maintaining such a stasis... relies on maintaining broader structures of power such as the confirmation of parental control over children, rendering them ‘chattel property’ (Brongersma 1990), coupled with the role of state agencies in pathologizing and demonizing those involved in adult-child relationships” (Yuill 2010:160). In other words, parents, researchers, and governments are only hearing what they want to hear. Although “to be sure, many people have had negative CSA encounters and been disturbed by them... these are the

[only] ones who tend to come to the attention of clinicians. What is important to note, however, is that many others, in response to episodes that fall under the standard definition of CSA, have not been bothered by their experiences at all, and some have even remembered and reacted positively to them” (Rind 2010:116). The dismissal of a positive inter-generational narrative silences dissenters and continues to dismiss the possibility of child sexual agency below the magic “age of consent.” In Richard Yuill’s section on “Analyzing a Non-Victimological Case-Study,” we are introduced to a man named Phillip, who not only “claims that he had control over his adult partner through the very process of [sexual] initiation,” but also “considers learning from his adult partner... as more important” (Yuill 2010:153). Yuill goes on to note that, “in contrast to CSA formulations, Philip eschews victim status in intergenerational relationships... He maintains that he was always able to distinguish consensual from coercive intergenerational experiences” (Yuill 2010:154).

However, when children say things adults do not want to hear, those in charge dismiss their claims because it is easy. Andrew Durham, a social worker, was quoted in the [*Times Higher Education Supplement* (THES)] saying Dr. Yuill’s thesis would ““play into the hands of abusers’ and that ‘victims of abuse sometimes report positive experiences, but this was often a result of manipulation by their abuser or a coping mechanism” (“Fury over PhD for Child-sex Research.” 2004). Phillip once again describes his experience calling into a radio show to try to discuss his positive experience with adult male lovers, only to be shut down by the show’s host, who “immediately cut in saying, kill the caller, and went on to say this is a perfect example (you can’t speak after they’ve cut you off) of how a child has grown up to believe that what he was doing was his own free will but really he was being manipulated by adults. And I [Phillip] couldn’t say a word. Nobody could hear me now. I was pissed off!” (Yuill 2010:156). Here, we

are confronted with a reality: as much as adolescents do not want to obey adults who impose rules and regulations without attempting to understand their realities, adults do not want to hear listen to realities that may be uncomfortable or different from their traditional belief systems.

Adults' discomfort with inter-generational sex stems from a reverence of childhood innocence that no longer exists. "Adults' exclusive hold on sexual privilege is today maintained through a pervasive ideology of childhood innocence... By fetishizing the purity and inviolability of their children, parents not only perpetuate their own exclusive control of young bodies upon whom they practice surveillance with voyeuristic and quasi-incestuous glee, but they counterproductively construct the very threat their imagination most dreads, inasmuch as the never accessible child becomes the *pièce de résistance* of the sexual pervert's most lurid fancies" (Hubbard 2010:96). Furthermore, in this case, the government has made it its role to act as an extended arm of parental control and wisdom. As Jacobson stated earlier, "[The government has to take the] parental role: to be on the other side of the argument, to make the case for harm in an age where the very idea of harm in the matter of sexuality (a word that is itself part of the problem) has grown dangerously unfashionable" (Jacobson 2013). Yet thus far, we have come to understand the idea of "harm" to be dangerously overstated. Although there are some cases of children feeling violated and abused after inter-generational sexual experiences, these cases are far outnumbered, not only by children reporting positive consequences of such interactions, but also by children who are simply illegally having sex younger than the age of consent. In fact, those suffering most from the age of consent may not be the child "victims" so much as their adult lovers, such as the aforementioned 15-year-old having sex with a 14-year-old in the UK. In the United States, "recently, a Texas man was sentence to 4060 years in prison for non-coercive, ongoing sexual relations with teenage girls,



and a Texas woman was sentenced to 23 years even though her 16-year-old male partner enthusiastically participated” (Rind 2010:114). When such acts are consensual, it seems the punishment may not fit the act.

These extremely harsh punishments for perhaps not-so-horrifying crimes have caused several government bodies to rethink traditional age of consent laws. The “legal conundrum of how to protect children from sexual exploitation through the enactment of the criminal law while simultaneously recognizing that young teens will inevitably and ‘consensually’ engage in sexual experimentation was highlighted during the drafting of the Sexual Offenses Act 2003” in the United Kingdom (Stevenson 2012:131). During these discussions, “Paul Goggins MP, the Bill’s sponsor at the Home Office, laid down a ‘champagne challenge’: the offer of a magnum of champagne to anyone who could write a clause that criminalized exploitative pedophilic activity by teens without criminalizing normal teen sex” (Stevenson 2012:132).

Today, these discussions continue in the UK. “[Professor John Ashton], president of the Faculty of Public Health, argued that because the current threshold of 16 is widely ignored, this sends out ‘confused’ signals to teenagers about when sex is permitted and prevents some seeking help. He said a new lower age of consent... could be more rigorously applied in order to ‘draw a line in the sand’ against sex at younger ages and help reduce teenage pregnancy.” (Bingham 2013). He continued to say ““Because we are so confused about this and we have kept the age of consent at 16, the 15-year-olds don’t have clear routes to getting some support. My own view is there is an argument for reducing it to 15... I would not personally argue for 14 but I think we should seriously be looking at 15 so that we can draw a line in the sand and really, as a society, actively discourage sexual involvement under 15. By doing that, you would be able to

legitimately organize services to meet the need” (Watt 2013). Below are listed the variety of responses Dr. Ashton received:

- “Liz Dux, of the law firm Slater & Gordon, who is representing 72 of [pedophile Jimmy Savile]’s victims, said: ‘Predatory adults would be given legitimacy to focus their attentions on even younger teenagers and there is a real risk that society would be sending out the message that sex between 14- [and] 15-year-olds is also acceptable” (Bingham 2013).
- “Peter Tatchell... advocated that the consent threshold should be reduced to 14 years on the grounds that this is the average age for first sexual activity... that it is incongruent with the age of criminal capacity (10 years), and that countries such as the Netherlands have much lower teenage pregnancy rates and higher ages of first sexual experience attributable to more effective sex education models” (Stevenson 2012:133).
- “Selwyn College Professor of Law, John Spencer, has also criticized the current provisions as ‘oppressive legislative overkill’ that criminalizes all young people under 16 for not just consensual sexual intercourse, but for other minor acts including ‘kissing and cuddling”” (Stevenson 2012:133).
- “Spencer and Tatchell appeared on the BBC Radio 4 Programme *Iconoclasts* calling for calm and reasoned debate about reducing the age of consent which apparently Spencer suggested should be 13 years” (Stevenson 2012:133).
- “Sociologist Matthew Waite has also proposed a more pragmatic resolution for young teens, to reduce the age of consent to 14 years for young people who are less than two years apart in age such as a 14-year-old and a 15-year-old” (Stevenson 2012:134).

The point, of course, is that *no one can agree*. No one can say that fourteen is more acceptable than fifteen is more acceptable than sixteen. Additionally, no one seems to have spoken to fourteen or fifteen or sixteen-year-olds about what *they* think.

The only way age of consent laws will be obeyed and respected is if these laws match the beliefs and morals of the population they are governing. In order to do this, it is not only suggested but necessary to reach a new and improved Champagne Challenge: to establish a much more nuanced age of consent that not only protects children from predatory adults (as even the most optimistic researchers admit is necessary), but also respects their agency, understanding and decision-making abilities. Thus, the United Kingdom and all countries looking to improve

statutory rape policies should consider widespread sex education programming, clauses to protect relationships of close ages, and perhaps a sliding scale whereupon a child's consensual choice to or to not to engage in sex is respected by both the older party and the courts. Changing laws surrounding adolescent sexuality is extremely difficult and requires the consideration of several grey areas and different understandings of sex and sexuality and unfortunately, even under the laws we have today, there is no way to guarantee that no child will ever feel pressured or abused. However, by revamping these laws and granting children agency to make decisions (as well as empowering them with the tools necessary, such as education), we also grant them greater control over their bodies and their personhood.

## References

Bingham, John. "Public Health Chief's Call to Lower the Age of Consent for Sex 'could Put Children in Danger'; Professor John Ashton's Call to Consider Lowering Age of Consent for Sex Could Lead to Children Being Put in Danger, Opponents Claim." *The Telegraph Online*, November 18, 2013.

"Fury over PhD for Child-sex Research." Times Higher Education (THE). December 2, 2004. Accessed December 10, 2015. <https://www.timeshighereducation.com/news/fury-over-phd-for-child-sex-research/192788.article>.

Hubbard, Thomas K. "Introduction to Special Issue on 'Boys' Sexuality and Age of Consent'" *Thymos: Journal of Boyhood Studies*, 2010, 95-98.

Hubbard, Thomas K. "Sexual Consent and the Adolescent Male, or What Can We Learn from the Greeks?" *Thymos: Journal of Boyhood Studies*, 2010, 126-48.

Jacobson, Howard. "Yes, We Do Need to Change the Age of Consent. To 35. Only Then Are People Ready to Have Sex." *The Independent*, November 23, 2013. Accessed December 9, 2015.

Koon-Magnin, Sarah, and R. Barry Ruback. "The Perceived Legitimacy of Statutory Rape Laws: The Effects of Victim Age, Perpetrator Age, and Age Span." *Journal of Applied Social Psychology* 43 (2013): 1918-930.

O'Donnell, Muireann, Rob Lowe, Hannah Brotherton, Hannah Davies, Anna Panou, and Paul Bennett. "Heterosexual Men's Ratings of Sexual Attractiveness of Pubescent Girls: Effects of Labeling the Target as Under or Over the Age of Sexual Consent." *Arch Sex Behav Archives of Sexual Behavior*, 2013, 267-71.

Rind, Bruce. "Social Response to Age-Gap Sex Involving Minors: Empirical, Historical, Cross-Cultural, and Cross-Species Considerations." *Thymos: Journal of Boyhood Studies*, 2010, 113-25.

Stevenson, Kim. "'It Is What 'Girls of Indifferent Character' Do . . . ' Complications concerning the Legal Age of Sexual Consent in the Light of R v C (2011)." *The Journal of Criminal Law*, 2012, 130-39.

Watt, Nicholas. "Labour and Coalition Reject Call to Lower Age of Consent." *The Guardian*, November 18, 2013.

Yuill, Richard. "Interrogating the Essential: Moral Baselines on Adult-Child Sex." *Thymos: Journal of Boyhood Studies*, 2010, 149-67.