

## Girls and Sex: Historical Reflections on the Age of Consent

Stefania Siedlecky

After 30 years in medical practice, Dr Siedlecky became Senior Adviser in Family Planning and Women's Health in the Commonwealth Department from 1974-1986. In retirement she is an Honorary Associate in Demography at Macquarie University. (Submitted June 2003)

So there has been a momentous decision in the NSW Parliament: to make the age of consent to sexual intercourse the same for gay and straight males as is already the case in other Australian States. And the sky has not fallen.

Those protesting against lowering the age for gay males have been concerned to protect boys from predatory men. Which takes us back to reflecting on the opposition around moves to raise the age of consent for girls where the emphasis was the opposite, to protect men from seduction by underage girls.

At the turn of the 20th century, the early feminists, emancipists and the Women's Christian Temperance Union were campaigning for the franchise and for women's rights which included raising the age of consent for girls. While the age at consent to marriage was 21 up until 1973, the age of consent to sexual intercourse has been a lot more controversial.

What many people may not know is that it was only in 1883, at the request of Sir Alfred Stephen, Arthur Renwick and William Charles Windeyer, that the NSW parliament raised the age of consent for girls from 12 to 14 years (Allen p.78). In 1885, the Criminal Law Amendment Bill was passed in Great Britain raising the age of consent for girls from 13 to 16.

In 1891, the matter was raised in the NSW Legislative Assembly with the introduction of the Vice Suppression Bill, which contained a clause to raise the age of consent for girls. A motion by Dr Richard Arthur in support of this clause was debated by the NSW Branch of the British Medical Association at its 102nd general meeting in 1892 and defeated by 'a large majority' (NSW Branch).

Dr Arthur felt that girls of this age were too young for pregnancy and that they needed protection not only from men but also from themselves, although he had noticed that girls 'who appeared fully developed were the most stupid and least likely to be trusted'. He got little support.

One doctor thought that girls matured earlier in this sub-tropical climate, and juries should consider cases on their merit; one felt that it was unnecessary, no good would come of it, and it could increase the crime of murder.

Another one quoted a case where a man was in gaol for 'having had connection' with an under-age girl, even when the girl was 'known throughout the district for being no good', and asked how much more danger of similar cases would there be if the age of consent were raised from 14; while another thought it would increase the incidence of blackmail.

In 1903, in the NSW Legislative Council, Sir Charles MacKellar, after consultation with reformers and feminists, tabled The

Crimes (Girls' Protection) Amendment Bill proposing that the age of consent be raised from 14 to 17 (Allen p.77). The bill also proposed that stepfathers be included with fathers and teachers in the category of committing carnal knowledge with a daughter or pupil, and that serious penalties be imposed for employing girls and young women under age 18 as prostitutes.

The Attorney-General, one B.R. Wise, who also opposed female suffrage, claimed it was more urgent to protect young boys from seduction by 'vicious' girls; the low rates of conviction in sexual assault cases 'proved that women would only be provided with more occasion for false charges against men'. He did not believe there were any large numbers of men going around seducing girls.

He said that 'the good sense and natural feeling of honour that there is amongst men not only restrains them as individuals, but the idea is repulsive and has a social stigma attached to it which prevents the commission of a crime of that kind' (Allen p.78).

His fellow member, the Honourable Nicholas Hawken, thought the bill would curtail by two years a woman's chance of acquiring a husband, and that as a result she might never marry 'but may have to live all her miserable existence in her rancid virginity'; the Bill would allow the blackmailing of respectable gentlemen, tricked into sexual relations with precocious, mature-looking young women.

The Bill was redrafted and came up for debate again in 1905. The proposed age of consent was lowered to 16 years in line with Britain. Again there was concern that it would lead to the blackmail of men.

A Labor member, Alfred Edden, was concerned that the Bill would make criminals of poor boys, quoting that 'the streets are invaded at all hours of the night by girls with petticoats up to their knees' and suggesting that girls be kept off the streets at night (Allen p.79).

The Bill was finally passed in 1910. It contained an exemption of 'immoral' girls. This allowed a girl's past sexual experience to be raised as a defence against charges of sexual assault, carnal knowledge and even rape. If the girl consented, she could be considered immoral. A case of carnal knowledge could be dismissed if the girl looked over 16 years of age, or where the man believed that the girl was immoral or promiscuous.

This ignored the fact that the whole purpose of fixing an age of consent was to put the responsibility on the man and to remove the defence that an underage girl could give consent for sex.

Other states have followed a similar path. In Queensland, the age of consent for girls was fixed at 12 years in 1865. In 1887 following the British reforms, the Criminal Law Amendment Bill was introduced to raise the age of consent for both sexes to 16 (Barber). It exempted cases where the man had the belief that the girl was 16 years of age or older.

It was passed in 1891 with the age of consent amended to 14 years. Another unsuccessful attempt to raise the age to 17, later amended to 16 years was made in 1909, and the law was finally passed in 1913, raising the age to 17 years. The prevailing concern was that boys would suffer.

Such punitive attitudes have lingered, reducing the likelihood that girls would press charges for sexual assault or even rape because of the painful experiences of facing cross-examination in court. These attitudes were even reflected in the judgement of our recent Governor-General who was prepared to excuse a bishop who, as a priest, had had a sexual relationship with a 14 year old schoolgirl in his flock, on the grounds that she was a willing participant or had initiated the activity.

There have been some odd ramifications from the decisions on the age of consent. When the oral contraceptives were introduced in the early sixties, there were many doctors, even in the Family Planning Associations, who were unwilling to prescribe the pill for unmarried women and for minors, at that time women under the age of 21, without their parents' consent.

There was what seems now to be an amusing debate in the correspondence pages of the Medical Journal of Australia 1971-73, which were summarised in a book I was involved in (Siedlecky and Wyndham pp.125-130). In 1971 the Queensland Branch of the Australian Medical Association decided to adopt the ruling of the AMA Federal Council that 'it was the inalienable right of any doctor to prescribe what he considers in the best interests of the patient'.

Many doctors supported the AMA ruling, but some did not.

Dr J. Dique wrote that 'This sort of thing makes doctors party to fornication or prostitution' while Dr Kenneth Grigg wrote: 'I have felt constrained on occasion to express the view to these young ladies that I did not do a six years medical course merely for the sake, *inter alia*, of providing the young bucks with a means of having their pleasure without responsibility.'

When the age of legal majority was lowered to 18, doctors again balked at prescribing the pill for unmarried women under 18 and particularly for young women under the age of consent. This meant that a girl could consent to sex at age 16, be confined if she fell preg-

nant, but still could not have access to oral contraceptives till she was 18.

It was argued that to prescribe the pill for a girl under the age of consent would make doctors liable to a charge of aiding and abetting a criminal act. An editorial in the MJA in 1973, pointed out that 'there still exists the threat to a doctor of committing a felony by prescribing contraception to a minor' and urged that the laws be clarified (Editorial).

This was refuted in a paper by Professor David Hambly, which was quoted by the Royal Commission on Human Relationships (Hambly). The Commission noted the variations between states and recommended that the age of consent be lowered to 15 years for both girls and boys with special rules regarding parents, guardians and teachers and others in loco parentis, and the age difference between the couple (RCHR). This recommendation was never formally adopted.

In 1978, the National Health and Medical Research Council approached the Australian Law Reform Commission for clarification on the provision of medical services to minors. The Western Australian Law Reform Commission was eventually given the task of carrying out a national inquiry (Siedlecky and Wyndham p.130).

It has been only since 1988, when they issued their final report (Law Reform Commission WA), that the concept of mature minor has been legally accepted in all states and a girl can consent to medical treatment down to the age of 14 or even earlier, without the consent of her parents, if the doctor considers she is capable of making the decision.

#### References:

- Allen, Judith A. 1990 Sex and Secrets: Crimes involving Australian women since 1880. Melbourne Oxford University Press.
- Barber, Ross. 1977. The Criminal Law Amendment Act of 1891 and the "Age of consent" Issue in Queensland. Australian and New Zealand Journal of Criminology Vol.10, no 2; pp.95-113
- Editorial. 1973 Medical Journal of Australia Vol.2: no 10; 8 September; p.473.
- Hambly D. 1976. Aspects of the law affecting the provision of family planning services to young people. Paper presented at the ACT Family Planning Association Seminar, 8.8.1976. Quoted in the Report of the Royal Commission on Human Relationships, Final report Vol 3; p.227
- Law Reform Commission of Western Australia 1988. Discussion Paper on Medical Treatment for Minors Project no.77
- New South Wales Branch of the British Medical Association 1892. Report. The Australian Medical Gazette, November; pp.415-416
- The Royal Commission on Human Relationships. 1977. Volume 1. Part VII no 33. Canberra AGPS; p.128
- Siedlecky, Stefania and Diana Wyndham 1990. Populate and Perish: Australian Women's Fight for Birth Control. Sydney, Allen and Unwin.

