

The age of consent: a warning from history

The work of Josephine Butler

Jennifer Davis



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CHRISTIAN INFLUENCE IN A SECULAR WORLD

First printed in December 2009

ISBN 978-1-901086-42-3

Published by The Christian Institute
Wilberforce House, 4 Park Road, Gosforth Business Park,
Newcastle upon Tyne, NE12 8DG

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Introduction

“We are all involved in the guilt of society, in the destruction of the innocents, in the denial of happiness to the young, of purity to children.”¹

Josephine Butler

It is almost unbelievable that the UK was once a haven for European sex tourists, home to a thriving trade in child prostitutes comparable to the notorious industries of modern-day Thailand or Cambodia.

Yet nineteenth century Christian campaigner Josephine Butler would often shrink apologetically from discussing the full horror of child prostitution as “too painful to dwell upon”. Josephine's work against the sex trade led to over 900 public meetings and 17,000 petitions attracting millions of signatures.² She asked, “shall the same country which paid its millions for the abolition of negro slavery now pay its millions for the establishment of white slavery within its own bosom?”³

Josephine's father was a close ally in William Wilberforce's campaign to end slavery, and in turn she devoted much of her life to bringing about legislative change to protect young girls from sexual exploitation.

That change came as the age of consent was raised to 16 in 1885, and it is still the same age today. With so many voices clamouring for

the law to be watered down, it is vital that we remember what motivated Josephine and her allies to campaign for it in the first place.

“Some pain keener than my own”

Born in Northumberland in 1828, Josephine married George Butler, an academic and school teacher, in 1852. The Butlers had four children, and moved around the country as George’s career took him to different schools and colleges.

But Josephine’s life was darkened irrevocably when her daughter Eva, aged five, was killed after falling from a banister at the top of the hall stairs.⁴

Josephine later wrote: “Never can I lose that memory, - the fall, the sudden cry, and then the silence!”⁵

After Eva’s death, Josephine records how she “became possessed with an irresistible desire to go forth and find some pain keener than my own – to meet with people more unhappy than myself (for I knew there were thousands of such)”.⁶

Her search led her to what many contemporaries said was a wholly inappropriate environment for a respectable woman to expose herself to: the plight of young girls caught up in prostitution.

Before Josephine's law

Until 1875, there was no specific law against having sex with a girl aged twelve or older. An ordinary girl above the age of twelve therefore had no automatic protection in law: she was considered old enough to consent to sexual activity, and if she was raped would have to prove before a court that she had not given her consent. Few girls would have been confident or articulate enough to have done so, and even if they were, their evidence against a seemingly respectable person may not have been believed.

“The law appears to proceed”, wrote Josephine, “upon the principle that those who require every possible protection shall have none at all.”⁷

She saw the effect of this herself when as the young wife of an Oxford academic she heard about a “bitter case of wrong inflicted on a very young girl”.⁸ The girl had reportedly been seduced by one of the dons and become pregnant. Josephine approached a senior figure at the University to ask him to intervene on the girl's behalf, but was told: “It could only do harm to open up in any way such a question as this; it was dangerous to arouse a sleeping lion.”⁹

Josephine left in “amazement and discouragement” at his apathy.¹⁰ But the incident made her realise that the inadequate legal provision for young girls, particularly poor girls, left them vulnerable to attack

from predatory men who could use them for sex with little to fear from the authorities.

And the situation was certainly not confined to isolated domestic incidents. The child prostitution industry was flourishing as brothels advertised young virgins like merchandise to their wealthy customers. These girls had often been ‘procured’ against their will, sometimes sold by their parents, and were virtually held as prisoners by the brothel keepers.

Yet for many years, Josephine’s campaign to help these girls was received with a disheartening lack of interest from the authorities. In 1871, she gave evidence to a Royal Commission of MPs, bishops and scientists, who had been appointed to look into the issue of prostitution. She told them of the slavery she had witnessed: “I have seen girls bought and sold. Procurors and procuresses do a thriving trade”.¹¹

She continued: “At present for the purposes of seduction, and seduction only, our laws declare every female child a woman at 12 years of age. I am ashamed to have to confess to such a shameful state of the law before you gentlemen, but a child is a woman, for that purpose alone, at 12 years of age. I know from my experience amongst this class of women [i.e. prostitutes], how many have become so from that cause”.¹²

She added: “On this Parliament could and should act, the age of consent must be raised”.¹³

The 1871 Commission’s report recommended that the age of consent be increased to 14. But after four years of delay, during which the Bill proposing the change was at one point talked out of parliament, the age was finally raised by just one year, to 13, in 1875. The failure of the law to protect children at this time is neatly expressed in a magistrate’s comment on a case of child abuse: “If it had been a dog, I could help you; but it is only a child”.¹⁴

The Double Standard

Alongside Josephine's campaign for a higher age of consent ran her other great battle against state-sanctioned prostitution.

Society outwardly condemned prostitutes but turned a blind eye to the men who paid for them. This double standard was embodied in the Contagious Diseases (CD) Acts which were enforced in many garrison towns and ports. These required women suspected of being prostitutes to submit regularly to a humiliating medical examination that confirmed they were free of disease. Many innocent women were taken in for examination by over-zealous police officers.

Describing a similar system in Geneva, Josephine wrote in disgust of women treated "like vessels for unclean use, thrown together to be cleansed, *in order* to be used again!"¹⁵

Meanwhile, the suggestion that the men who paid the prostitutes should also be examined was roundly rejected. The 1871 Royal Commission said "there is no comparison to be made between prostitutes and the men who consort with them. With the one sex the offence is committed as a matter of gain; with the other, it is an irregular indulgence of a natural impulse".¹⁶

The existence of prostitution among working class women was justified as a means of satiating the sexual appetites of men without endangering the social equilibrium or corrupting women of higher social status.

"The complete suppression of the brothels," wrote a London magistrate, Sir James Ingham, "would lead to the more frequent seduction of modest women, the multiplication of kept mistresses and other evils".¹⁷

As far as Josephine was concerned, however, the sex industry was brutalising women and girls, many of whom had been coerced. She abhorred this practice, but treated the women involved as human beings, opening her home to care for many women suffering from the effects of their trade. She later established homes devoted to taking in

destitute women – both those in danger of falling into prostitution, and those who already had.¹⁸ Her personal work with prostitutes became decidedly political when she was appointed President of the Ladies' National Association for the Repeal of the Contagious Diseases Acts (LNA).¹⁹

Child prostitution

But Josephine saw the CD Acts as just one part of a greater evil. As she campaigned against them, she frequently came across young women who had become prostitutes against their will, having been lured to the brothels and often raped at a painfully young age. Indeed, she saw a link between the attitudes reflected in the Acts and the toleration of this practice.

She quoted the French author of 'Prostitution in Paris and in London from 1869 -1870', Charles Lecour, who wrote that where prostitution was legal, men "cease to be satisfied with the human merchandise prepared and guaranteed for them by the State, and go out of their way to seek excitement and novelty; hence the violence practised on children".²⁰

The demand for younger and younger girls was apparently driven by the state sanction of prostitution; meanwhile, there was no legal protection for any child above the age of thirteen from being used for sex. Josephine was determined to address this situation.

But the interest of the press and the public had not yet been stirred up. The welfare of the women and children entangled, often involuntarily, in the criminality and violence of prostitution was not widely acknowledged. These were the victims of what Josephine and her colleagues called "a conspiracy of silence".²¹ The campaigners realised that no change would be achieved until evidence could be produced of what was happening. Their subsequent investigations into the 'white slave trade' produced horrifying revelations.

Exposing the trade

In 1880 Josephine was provided with evidence that Britain had become a centre out of which an international trade in child prostitution was operating.²²

A story reaching her from Brussels proved that traffickers were procuring young girls in Britain and taking them to brothels in Belgium. There, the minimum age at which girls could work as prostitutes was 21. But the lax legal situation in Britain meant that much younger girls could be tempted away from, or sold by, their families and easily transferred to the continent. The procurers would falsify the ages of the girls and sell them on to the Belgian brothels for huge sums that the girls would have to pay back through their clients' fees. There, lost and bewildered, they would be raped and often beaten into resignation to their new lives.

Two men, Alfred Dyer and George Gillet, had travelled to Brussels to investigate the report of an Englishman who had visited a brothel there. He was offered a terrified young English prostitute called Ellen Newland who begged for the Englishman's help. She had been lured to Belgium by a man who had promised to marry her, but had found herself forced into prostitution.

The Englishman did nothing at the time, fearing personal exposure,

but when he returned to England he passed on his information to Alfred.

Alfred and George interviewed Ellen's former employer in England and "received satisfactory replies to my enquiries regarding her character".²³ Convinced that Ellen had not entered the brothel willingly, they secured her escape, and having collected evidence that her experience was not unique, Dyer informed the press of the situation.²⁴

The media campaign

In January 1880, the *Daily News*, the *Standard* and the *Daily Chronicle* all ran the story of the trade in English girls being trafficked to Belgian brothels.²⁵

By this time Josephine was commanding large audiences as she travelled around the country to address members of the LNA. She used these meetings to publicise what had been learnt of the existence of the white slave trade.

In May 1880 she wrote to the editor of the repeal movement's newspaper, the *Shield*, about the English girls aged between twelve and fifteen who were held in Belgian brothels, "hidden away in padded cells, to prevent their cries being heard".²⁶

"In certain of the infamous houses in Brussels", Josephine wrote, "there are immured little children, English girls from ten to fourteen years of age, who have been stolen, kidnapped, betrayed, carried off from English country villages by every artifice, and sold to these human shambles. The presence of these children is unknown to the ordinary visitors; it is secretly known only to the wealthy men who are able to pay large sums of money for the sacrifice of these innocents".²⁷

The letter provoked swift denials from the Belgian authorities, but Josephine was able to produce evidence to back up the claims she had made, including a signed statement from a Brussels gentleman who had been offered a twelve year-old English girl who "...flew to him in

an agony of crying and weeping, and asked his help to get away. She said she was *never* allowed out of that room – never – never”.²⁸

Her accusations were quickly circulated, most notably in the Belgian newspaper the *National*, which sold over 80,000 copies that week.²⁹ The furore surrounding Josephine’s claims was considerable; the authorities were apparently furious, and she was threatened at one point with prosecution for libel.

The authorities respond

In 1881, as Josephine was defending her allegations, a practising barrister called Mr Snagge who had been dispatched to Belgium to investigate the issue on behalf of the Foreign Office was compiling his report.

He had collected evidence that young girls were being “induced by misrepresentation and false pretences to leave England”³⁰ and being trafficked to Belgium to be forced into prostitution. His report describes, in brutally pragmatic detail, how the girls were “advertised to brothel keepers as *colis* (parcels) together with descriptions of physical features, real age, plus the age which could credibly be given to a client seeking a child, colouring and so on”.³¹

On 27 May 1881, Josephine presented a ‘Memorial’ – a petition signed by a thousand women, including Florence Nightingale – to the Foreign Secretary, Lord Granville, requesting an inquiry into the situation. She warned him in a separate letter, “I shall be in London for three days, & will wait, if necessary, those three days *outside* your door, until your Lordship shall find it convenient to choose either to hear our petition or to order my removal!”³²

The vigil proved unnecessary. Lord Granville responded just a few days later by establishing a committee of the House of Lords on 30 May to examine the law protecting girls from being forced into prostitution abroad.³³ Mr Snagge was one of the first witnesses to be examined.

Another witness was Mr Jeffes, the Consul at Brussels at the time. Illustrating the prevailing attitude of denial faced by the campaigners, he said: “I myself believe it is impossible for a virtuous girl to be admitted into one of these houses. I do not believe it for a moment.”³⁴

Nonetheless, the committee heard from a number of those involved in Josephine’s campaign, citing cases and reading statements from girls who had suffered horrifically in the ‘white slave trade’.

Moreover, evidence was mounting that it was the legal situation in Britain that made it the ideal climate for the trade to prosper. The Director of the Criminal Investigation Department, Howard Vincent, told the Lords that juvenile prostitution prevailed in “no city in Europe to so large an extent” as it did in London, and, crucially, said that this was because “*there is no provision in the law for the protection of girls over thirteen unless they are abducted.*” (emphasis added)³⁵

A false start

The Committee reported in late summer 1882 concluding that juvenile prostitution “from an incredibly early age is increasing to an appalling extent in England and especially in London” and recommending that the age of consent should be raised to 16.³⁶

This, along with severe penalties for any man having unlawful intercourse with a girl under 13, provisions against procuring girls and the admittance of evidence from very young children in court, was included in a Criminal Law Amendment Bill, which passed its Lords stages.³⁷

However, when it reached the Commons, it was ‘shelved’. Journalist W. T. Stead wrote: “No one in Parliament seemed to care about it”.³⁸ It was not taken up again until 1885.

The Secret Commission

However, by this time Parliament’s apathetic response to the Bill was out of step with public opinion. Although people in Britain had failed

to respond with the indignation that Josephine's 1881 allegations had roused in the rest of Europe, they had now awoken, horrified, to the trade in children that was flourishing in its cities.³⁹

Josephine had joined forces with Bramwell and Florence Booth of the Salvation Army, and newspaper editor W. T. Stead, to form 'The Secret Commission of the *Pall Mall Gazette*.'

Having been easily persuaded to support the cause, Stead decided that a renewed media campaign was needed to pile pressure onto the authorities. He needed proof that a young girl could be procured, sold on and taken abroad to enforced prostitution.

He enlisted the reluctant help of Rebecca Jarrett, a convert to Christianity who had been helped by the Salvation Army. Rebecca, a recovering alcoholic, had been pimped by her own mother from the age of twelve, and had led a traumatic existence both as a prostitute herself and as a procurer of young girls for the trade.

Now Stead wanted her to re-enact a scene from her past life. She was put in touch with the Armstrong family by an old drinking companion, who was paid £4 for serving as 'procurer'. Mrs Armstrong, a mother of six children being raised in a slum, then agreed to sell her 13-year-old daughter Eliza for £1. She spent the money on drink.

Eliza was taken to Paris, unharmed, and Stead had his proof that under British law a 13-year-old girl could be procured and trafficked to the Continent for just £5.

Both Stead and Rebecca faced repercussions for this stunt later on, when the Armstrongs claimed they hadn't known what Eliza was being sold into. Josephine Butler had little knowledge of the whole episode until it was publicised. But it proved to be invaluable in inflaming public opinion against the exploitation of young girls.

A dramatised account of the event was printed in Stead's *Gazette*. It was called 'The Maiden Tribute of Modern Babylon', a dramatic account of a little girl who was knowingly sold by her parents to traffickers who took her to a brothel overseas.

The story was so popular that copies were being sold for twelve times their cover price⁴⁰, and the revelations led to demonstrations across the country.⁴¹

The campaign was given another lift when the trial of a notorious high class brothel keeper called Mrs Jeffries was snapped up by the papers. During the trial, one of Mrs Jeffries' former servants testified about a little girl who had been introduced to the house as one of her mistress's many 'nieces'. The girl looked poor but was soon dressed up in the same way as the other girls. The next morning, the little girl was found in her room crying that a man had hurt her badly in the night, and Mrs Jeffries had given her money. The servant resigned immediately.

The trial resulted in a pathetically small penalty for Mrs Jeffries, who had friends in high places. She had arrived at the court in her carriage, put forward a guilty plea to avoid disclosing any sensitive evidence about her clients, and driven away again with a mere £200 fine – rumoured to be just a quarter of what one of her wealthy clients paid her in a year.⁴²

But the mainstream press, formerly apathetic towards the cause of child prostitutes, leapt on the case. Notable names from the upper classes had been mentioned, and Mrs Jeffries' attorneys had been linked with a continental vice ring. People were furious that she had been let off so lightly.⁴³

Stead maintained momentum by printing further evidence, including a conversation with an MP who offered to supply virgins at £25 each, telling him "it is nonsense to say it is rape; it is merely the delivery as per contract of her asset virginity in return for cash down".⁴⁴

Mrs Jeffries' case had already revealed that perpetrators lurked high in the upper social classes, and it was rumoured that the King of Belgium took advantage of England's low age of consent to purchase young girls. The *Gazette* even alluded to "Princes of the Blood, and

prominent public men” who were implicated.⁴⁵

The Criminal Law Amendment Bill was resurrected. As it passed its Second Reading, Josephine said: “I never saw anything like the excitement in the streets & in the House of Commons ...How wonderfully the protection of girls Bill passed last night on top of this wave of popular anger!”⁴⁶ The Bill sailed through its Remaining Stages in the summer of 1885.

What Josephine Butler's campaign achieved

As a result of the Criminal Law Amendment Act (1885):

- the age of consent was raised from 13 to 16;
- it became a criminal offence to procure girls for prostitution by threats, fraud or administering drugs;
- householders were punished for permitting under-age sex on their premises;
- it became a criminal offence to abduct a girl under 18 for the purposes of carnal knowledge;
- it became a criminal offence to detain a girl without her consent for the purposes of carnal knowledge;
- magistrates gained powers to issue search warrants to find missing females;
- courts gained the power to remove a girl from her legal guardians if they condoned her seduction;
- provision was made for summary proceedings to be taken against brothels.

Chipping away at Josephine's law

Josephine and her fellow campaigners saw that the age of consent law was a vital protection needed to shield children from harm, and for more than a hundred years it has done just that.

Sadly, however, this is increasingly being forgotten, and many people now seem to think the law is simply a draconian measure that threatens to criminalise young people. But evidence from our own time reinforces the need for a statutory recognition that sexual activity with or between children is unacceptable.

Proximity of age provisions: lessons from home

The most simple argument for an age of consent law is to protect children from the sexual advances of adults. But there are some who say that children don't need protecting from one another, and 'proximity of age' defences have been proposed to accommodate teenagers two or three years apart who engage in sexual activity.

But the Home Office says that adolescents under 18 commit over a third of all sex offences, and many of their victims will be 16 or under.⁴⁷ Even if the law only decriminalises sex between 13, 14 or 15-year-olds, it is not difficult to envisage a situation where a mature 15-year-old forces himself on his 13-year-old girlfriend, who is then expected to explain to a court that she had not given her consent.

These calls also overlook the physical and emotional harm that early sexual activity can have. Josephine Butler said that the law in the 1870s declared “every female child a woman at 12 years of age”.⁴⁸ The flipside of watering down the age of consent law is that we begin to blur the line between childhood and adulthood, and prematurely hand young people over to the adult world of sex with all its attendant responsibilities and risks.

Widespread research in America recently showed that girls who engage in sexual activity during adolescence are often left with feelings of regret and low self-esteem. This effect was directly ascribed to early sex in isolation from other factors.⁴⁹

A 2008 report from the Mental Health Foundation and Girlguiding UK concluded that the mental health of young girls is being threatened by pressure to engage in premature sexual activity.⁵⁰

Dr Andrew McCulloch, the Chief Executive of the Mental Health Foundation, commented: “Somewhere, somehow, our society has taken a wrong turn in our approach to children and young people.

“Young women face particular pressures. This report provides evidence of the impact of real and perceived pressures around sexual behaviour, physical appearance and material values.

“We are forcing our young people to grow up too quickly and not giving them the spaces and experiences they require to be safe and confident. We are creating a generation under stress.

“This is our responsibility as adults and adult society to put right.”

Dr McCulloch’s argument boils down to the same thing as Josephine Butler’s: let children be children.

Sex tourism and child trafficking: warnings from abroad

Modern warnings from abroad confirm what history, in the form of Josephine Butler’s campaign, has already shown: that if the sexual exploitation of young people is legal, it happens. And if the law in one

country is more lenient than the law in another, so-called sex tourists will use the discrepancy to their advantage.

Canada and Russia have both raised their age of consent laws in recent years from 14 to 16 as it became obvious they were becoming havens for sex tourists seeking to exploit young people without fear of prosecution.⁵¹

Groups campaigning against the sexual exploitation of children say that a low age of consent creates an “environment of risk”.⁵²

Periodically, the media provides a glimpse of the trade in child prostitutes brought to the UK from other countries, and, quite rightly, this has led to movement from policy-makers. But we should remember that until our current age of consent law was brought in, Britain was itself the supply centre for an international industry in child exploitation.

Conclusion

Josephine Butler spent years battling to raise the age of consent to 16. She was appalled that society could simply abandon children of twelve to the adult world of sexual relationships.

Yet there are increasing calls for the protection she achieved to be watered down. Some of the most shocking – to allow full sexual intercourse between children as young as 13 – have been put forward by those who are employed to promote children’s welfare. These attempts are at best naïve, and must be resisted.

History teaches that the law needs to be robust and coherent. Our hard-won age of consent makes it clear that sexual activity is not for children, and to introduce the slightest element of doubt on that point would be a dangerous and retrograde step.

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The age of consent: a warning from history

The work of Josephine Butler

Since 1885, the age of consent in Britain has been fixed at 16. It was raised from twelve largely as a result of the campaigning of nineteenth century Christian Josephine Butler.

Josephine was appalled at a legal system which handed children as young as twelve over to the adult world of sex. Motivated by harrowing cases of child prostitution taking place in British cities, she devoted much of her life to bringing about the law we have today.

Amid increasing calls to weaken the protection Josephine fought for, her story is a timely reminder of the reason why the age of consent must be defended.

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CHRISTIAN INFLUENCE IN A SECULAR WORLD

ISBN 978-190108642-3



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