‘a Deadly Menace To All Young Womankind’: Seduction And Protective Legislation In America, 1850-1923

Elissa Michelle Isenberg
Syracuse University, lissa.dragoni@gmail.com

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Abstract

“A Deadly Menace to All Young Womankind”: Seduction and Protective Legislation in America, 1850-1923 looks at sexual harassment before it was an actionable offense. Although female domestic servants have endured unwanted sexual attention for most of American history, the entry of women into wage labor in factories and offices during the late nineteenth century dramatically increased the number of girls and women that were subjected to what we today call harassment. Careful examination of American newspaper archives, court records, and reformers’ personal papers have uncovered cases of unsolicited sexual advances toward women, and have demonstrated that sexual harassment was considered a serious issue of the time long before it became legally recognized in the 1970s. The dissertation contends that awareness of this problem helped provoke special protective legislation for women. If lawmakers seemed to ignore the sexual and emotional dangers of women in the workplace, it is because they couched their concerns about unrestricted female labor in the language of protecting women’s maternal obligations to society. Despite implications that women’s reproductive health and their ability to work were the primary reasons for protective legislation, much of Progressive-era labor law actually alluded to sexual predation.
‘A Deadly Menace to All Young Womankind’:
Seduction and Protective Legislation in America, 1850-1923

Elissa M. Isenberg
B.A. University of California, Santa Barbara, 2011
M.A. Syracuse University, 2014
M.Phil. Syracuse University, 2014

DISSERTATION
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Doctor of Philosophy in History

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I have many people to thank for helping me complete this program. First, Professor Nelson Lichtenstein at The University of California, Santa Barbara who inspired me during my third year of college with his passion for labor history. It was his enthusiasm that encouraged me to apply to PhD programs, and his guidance that helped me through the application process.

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I have celebrated many of life’s special moments with my closest friends, Maria and Liz. We have seen each other through weddings, new homes, Taylor Swift concerts, and growing families. We have memories to last us for many years to come, and I am so fortunate to have built such strong bonds with them.

And finally, I met my husband Mark on this journey. Who would have known that I would meet the most important person in my life on my 22nd birthday? There is no one who knows me better, and no one who has motivated me more. We have stood together through life’s highest
moments, and supported each other through life’s lowest ones. Four apartments, three dogs, and nearly a decade later we have built a life together of which I am so proud. We are comforted by our memories of our first dog, Athena, who passed in September. And we are kept busy with our current canine ‘children’, Ollie and Freya, who help remind us to find levity in everything (like playing fetch outside in February). I cherish our morning and evening dog walks, and laugh about how our conversations on these walks have defined the different phases of our lives: Comps prep walks, summer research planning walks, wedding planning walks, job interview prep walks. I would not have completed this program without Mark’s patience, humor, support, and enthusiasm. I am thankful that he read every word of my work and allowed me to take my time finishing this graduate program. This work is dedicated to him.
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Introduction

In early 1907 the New York Herald published the first installment of *Fluffy Ruffles*, a weekly comic strip that chronicled the life of a wealthy woman – named Fluffy Ruffles – who lost her fortune. Realizing that she needed to work, Fluffy Ruffles sought employment in various industries. But by the end of every issue, Fully Ruffles had lost her job because her beauty drew unwanted male attention. In the first issue, Fluffy answers an advertisement for a family seeking a governess but is quickly dismissed when the child’s father begins lingering during playtime and lessons.1 In another example, Fluffy becomes a postmistress but has to resign after two days because men dawdle for hours in the post office to flirt with her.2

Though a light-hearted comic strip at first glance, *Fluffy Ruffles* can be seen as a cultural artifact that created a bridge between fiction and non-fiction. The scenarios that Fluffy found herself in were rooted in reality, and represented genuine concerns about women in the workplace. One such concern was excessive adoration. Fluffy could not keep a job for more than several days, as it seemed that wherever she worked, her beauty caused a stir. She was ogled, embarrassed, and made into a physical spectacle despite her best efforts to be industrious. A second concern was the threat to the capitalist system, as women in the workplace posed a disruption to business. Fluffy’s beauty disrupted the natural flow of daily life by distracting men who otherwise should have been working. The implication was that men could not control themselves in the presence of a beautiful woman. Whether Fluffy sought employment in traditional female fields, such as teaching and

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1 “Fluffy Ruffles,” *The Omaha Sunday Bee*, February 3, 1907. Reprinted from the New York Herald. Sunny Stalter-Pace’s article on *Fluffy Ruffles* examines the struggles of modern women who hope to advance in the workplace, but fail because of implicit gender bias. She connects this to Fluffy’s struggles during the Progressive Era in which her beauty clashed with her ability to maintain employment. For more on this, see: Sunny Stalter-Pace, ‘The Precarity of *Fluffy Ruffles*: Reading a Progressive Era Comic Strip in the Age of #MeToo,” *Feminist Modernist Studies*, Vol. 2, No 3, (2019), 314-322.

childcare, or more traditionally male domains, such as athletic coaching and chauffeuring, she failed in every scenario because of unwanted and excessive male attention.

*Fluffy Ruffles* highlights the fact that sexual harassment in the workplace existed long before it was legally recognized. Although female domestic servants had endured unwanted sexual attention for most of American history, the entry of women into wage labor in factories and offices during the nineteenth century dramatically increased the number of girls and women that were subjected to what we today call harassment. An 1896 newspaper article quotes T.B. McGuire of District Assembly 49 of the Knights of Labor saying that there were 60,000 working girls in New York City, and that these girls were “urged daily to desert their paths of virtue.” McGuire claimed he had witnessed male coworkers flirting with young female workers suggesting they “submit themselves” to the men in exchange for material goods like new hats, coats, or fancy vacations. According to McGuire, almost all male employers “seduced women in their employ.”

McGuire’s statements reveal that more than a century before sexual harassment was a legal category, the workplace was a space a sexual coercion. Awareness of this problem actually helped provoke special protective legislation for women. If sexual harassment in the workplace was common enough to be featured in a popular comic strip, it was on the minds of lawmakers, too. But if lawmakers seemed to ignore the sexual and emotional dangers of women in the workplace, it is because they couched their concerns about unrestricted female labor in the language of protecting women’s maternal obligations to society. Despite implications that women’s reproductive health

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4 By 1908, “75 percent of Sunday newspapers were publishing comics, and *Fluffy’s* home was the Sunday edition of the *New York Herald*, a publication that had been no slouch in regard to comics.” Katherine Frances Nagles, “From the *New York Herald* to the Italian Screen: Fluffy Ruffles, La Donna Americana,” *Feminist Media Histories*, Vol. 3, No. 2 (Spring 2017): 176.
and their ability to work were the primary reasons for protective legislation, much of Progressive-era
labor law alluded to sexual predation.

American reformers first proposed special protective legislation for women in the 1850’s, but had little success obtaining such statutes until the turn of the twentieth century. As early as the 1880’s, Frances Willard of the Women’s Christian Temperance Union (WCTU) argued that women needed to advocate for the implementation of legally enforceable social and industrial protections as “men alone will never gain the courage thus to legislate against other men.” The WCTU became one of the foremost proponents of specialized legislation for women, both in terms of labor law and raising the age of consent. Willard suggested that legal protection was more significant to contemporary women than the traditional protection of a chivalrous father or husband because women’s roles in society, and thus their agency, were rapidly changing. Women were becoming increasingly independent, both financially and socially, and were relying less on traditional standards of propriety to guide their day to day lives. The crucial moment for protective legislation arrived in 1908, when in Muller v. Oregon the Supreme Court upheld an Oregon law limiting the maximum hours of work, per day, for female employees. The decision held that the protection of women workers was constitutional because women were more physically delicate than their male counterparts and exclusively responsible for childbirth, and thus the propagation of society itself.

The prevalence of working women and concerns for their moral well-being prompted discussions about Victorian Era sexual virtue and the ways in which social mores about sexuality were shifting. Nineteenth century sexuality was defined largely by separate spheres ideology, in which women were deemed “naturally modest,” while men, by contrast, were portrayed as “sexual brutes, obsessed with sex and disposed to use their legal and social authority to exploit” naïve,

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5 “Minutes of the National Woman’s Christian Temperance Union at the Eleventh Annual Meeting” (St. Louis, Missouri, October 1884) 74.
innocent women. Women’s moral superiority in the home empowered them to resist men’s sexual advances, leading to the emergence of sexual restraint as a symbol of power for women in the Victorian period. Out of this Victorian ideal emerged legal penalties for breach of promise, seduction, and rape in several states. But these legal categories were inherently restrictive: Seduction statues, for example, protected only previously chaste, unmarried women under the legal age of consent (sixteen in many states). Reformers sought to remedy these restrictive laws by raising the age of consent to eighteen. In addition to raising the age of consent, reformers aimed to protect the virtue of “courtship” practices in which a young girl could “observe her lover and judge his qualities as a future husband” without becoming sexually involved. Reformers challenged the sexual double standard in which men could find instant gratification with sexually permissive women, but only the most modest women were worthy of courtship, and ultimately marriage.

This dissertation acknowledges and responds to historical scholarship on gender, sexuality, and legal theory about the breakdown of domesticity with rising numbers of women entering the public sphere. As early as the mid-nineteenth century, women who ventured into the workplace faced an increase in sexual availability and danger. Patricia Cline Cohen’s The Murder of Helen Jewett traces the life of Helen Jewett, a young woman from rural Maine who grew up to become an upscale New York City prostitute in the 1830’s. Jewett’s murder illustrates a key shift in American society, one in which crime became sensationalized and used for pure entertainment. Though moral

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8 Opponents advocated for lowering – or even abolishing – the age of consent. They reasoned that if young women were unable to control their sexuality, they should at least be sexually active within the sanctity of marriage. For more on this, see my later discussion of Judge Joseph Lumpkin’s opinion in Askew v. Dupree.

reformers agonized over female prostitution, the rise of the mass press led to public interest in crimes, especially those associated with prostitution and female promiscuity. Cohen argues that the mid-nineteenth century boasted a modernizing, secular city lifestyle that rejected the traditional American values of family, religion, and agriculture-based economies. This, in turn, attracted young women who longed for the freedom of urban city life. Mary Odem’s Delinquent Daughters continues the discussion of women’s sexual vulnerability in an increasing consumer society. Women working outside of family surveillance at the turn of the twentieth century was linked to many social problems such as venereal disease and out of wedlock pregnancy. As a result, Odem argues that the product of heightened anxiety about the sexuality of young, single women was a series of “legal codes and institutions designed to control the movement and behavior of young women and girls.”

The late nineteenth century and early twentieth century world of commercialized leisure undermined paternal control over girls’ behavior outside of the home.

My work hones Cohen’s and Odem’s discussions of women in the public sphere by focusing more specifically on the industrial workplace than on America’s more generally burgeoning leisure society. Their discussions of youth culture and innocence have become especially relevant to my study of female workers – the most vulnerable of whom were often the youngest. My sources reveal that girls who barely had gone through puberty worked alongside older men for long hours, which many believed resulted in a “general loss of moral restraints and moral degeneration which results from over-fatigue.” A 1919 document discussing child labor in Virginia revealed that 66 percent of children working in canneries were under fourteen years of age, and 26 percent were under twelve years of age. In support of this evidence, a Woman in Industry Service brief from the same year

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11 “The Case for Shorter Work Day,” Supreme Court of the United States (October Term, 1915) 404.
identified a girl, referred to only as Margaret, who left school to work full time during seventh grade, and at her current age of sixteen was not enrolled in any continuation classes.\textsuperscript{12} Examples such as these illustrate that girls under the legal working age were employed and likely exposed to the moral dangers of factory work. I have built on Cohen’s and Odem’s discussions of increasing social distractions by suggesting that young girls were unable to grapple with the mature and often corrupt nature of factory conditions, frequently submitting to pressures from male superiors.

Mary Bularzik’s article “Sexual Harassment at the Workplace” similarly wrestles with the issue of unwanted sexual attention toward young women at work. Bularzik views sexual harassment as a form of violence used to control women’s access to certain jobs and to limit success and economic mobility, as women’s fear of losing employment thwarted protest or legal action against their pursuers. Her work looks specifically at white, urban, working class women in the North, asserting that sexual harassment can be traced back to the Lowell Mills of the 1830’s. Bularzik suggests that women had two types of reactions to sexual harassment in the workplace – individual and collective – and that group responses proved more effective in protecting against unsolicited sexual advances.\textsuperscript{13} Women who viewed harassment as an individual problem believed these events were isolated and that a woman’s poor conduct and luck played into her treatment at work. Yet those who viewed harassment as a collective problem were more successful in garnering community responses such as union organization and advocacy for protective legislation. I take Bularzik’s claims a step further, arguing that collective acknowledgement of workplace harassment was not just one reason for heightened awareness about protective legislation, but was absolutely vital to its

\textsuperscript{12} U.S. Department of Labor, Woman in Industry Service Bulletin on Home Visits, March 11, 1919, RG 86, Box 2, Folder 2, Women’s Bureau within U.S. Department of Labor Records, National Archives and Records Administration, College Park, MD.

enactment. Though lawyers, reformers, and judges may have been surreptitiously aware of sexual abuse within the workplace, it was not until 1908’s Muller decision that the federal government fully acknowledged the negative effects of long hours on the female body, psyche, and morals.

In addition to acknowledging the existence of sexual harassment in the workplace, the dissertation examines the legal ramifications of sexual harassment. Legal experts Jane Larson and Constance Backhouse discuss the legal actions taken against male seducers. Larson addresses the concept of sexual assault in her work on what she calls “sexual fraud” – an act of “intentional, harmful misrepresentation made for the purpose of gaining another’s consent to sexual relations.”14 She explains that sexual fraud leads to nonconsensual sex by taking away the victim’s ability to make a meaningful sexual decision.15 Sexual fraud was especially harmful to working class families, who faced real financial hardship when unmarried daughters became pregnant and were no longer fit for employment. Constance Backhouse similarly grapples with issues of seduction and sexual harassment in the workplace. Though her work focuses primarily on the history of sexual harassment in the Canadian workplace, much of her evidence closely parallels the experiences of American workers. Evidence of immoral workplaces, girls “working in scanty clothing on account of the heat,” and flirtation between foremen and female workers indicates that sexual harassment irrefutably existed in the industrial workplace. Backhouse’s work uncovers evidence of women withholding information about sexual harassment for fear of company retaliation, indicating that female workers would rather sacrifice their emotional well-being, and possibly even their virtue, than sacrifice employment.16


My project builds on Larson’s and Backhouse’s work by tying together legal and social history. I emphasize the connections between formal, top-down protective legislation and more localized, bottom-up examples of sexual harassment. These connections distinguish this project from others which have tended to focus on solely the legal or social side of seduction. My research has shown that the greater issue for reformers was protecting women’s virtue – a more amorphous concept than protecting their reproductive organs. Campaigns to guard virtue blurred the lines between women’s morality and their bodies.\(^\text{17}\)

Discussions about female virtue often overlapped with debates about marriage, as a woman’s virginity was seen as one of her most valuable assets. Christina Simmons’ *Making Marriage Modern* contributes to the conversation about female agency and changing expectations of marriage. Simmons’ work explores an inherent shift in marriage ideology throughout the nineteenth and twentieth centuries: What had once been an institution built around economic and political advancement grew into a personal choice made for love and personal fulfillment.\(^\text{18}\) This shift coincided with women’s emergence into the public sphere at the end of the nineteenth century. But marrying for love worried reformers and religious leaders because it highlighted the idea of marriage as a personal choice. If two people could willingly enter into a marriage, they also could willingly end it. The relative ease of divorce was deeply troubling because divorcées challenged Victorian era

\(^{17}\) Larson and Backhouse have provided necessary background for understanding legal jargon and the tort of seduction that aided in my understanding of both the *Muller* Brandeis Brief compiled by Josephine Goldmark, and the more general works of Louis Brandeis and his associate, Felix Frankfurter.

virtue, unlike widows who had more socially acceptable options in terms of remarriage. Simmons’ work challenges what she calls the “repression to liberation” theory: That women were on an upward trajectory toward liberation from 1800 to 1900. Simmons instead argues that women did not overcome social repression by the turn of the twentieth century, and that even in modern marriages women often bear the brunt of childcare and home upkeep. This dissertation agrees with Simmons’ summation of women from 1800-1900, but extends her argument chronologically. It looks beyond 1900 and argues that it took until 1923 for women to be liberated from Victorian-era gender expectations, despite the political victories associated with the Nineteenth Amendment in 1920. Although many reformers lamented the end of protective legislation for women workers with the 1923 Adkins decision, it did signify a positive shift away from nineteenth century paternalism.

William Kuby engages with early twentieth century marriage law in his book, Conjugal Misconduct, which examines historically controversial aspects of marriage such as divorce. At the end of the nineteenth century there were four divorces per thousand marriages in America, yet by 1924 one in seven marriages resulted in divorce, “approximately fifteen or sixteen times the divorce rate of 1870.” Kuby argues that marriage, an institution which had once been the cornerstone of American life, began to crumble by the 1920’s and was a sign of the corruption of American society. Conservative and religious thinkers feared that expanded rights for women were to blame for what Kuby refers to as the “marriage crisis.” James Gibbons, a Catholic Bishop, voiced his


20 Simmons, Making Marriage Modern, 10, 11.


22 Kuby, Conjugal Misconduct, 9.
concern that “women under present conditions are too prone to go to divorce courts, and political
equality might make them more so.” Simmons and Kuby contribute to the historiography on
American gender and sexuality by helping to contextualize traditional views about personal choice in
marriage, and explore the general discomfort surrounding women’s increased agency in the early
twentieth century. This project builds upon their research by showing that both courts and
reformers shared this discomfort and made decisions aimed to protect Victorian-era morals and
female virtue. This remained true until the 1923 *Adkins v. Children’s Hospital* decision which
rescinded women’s federal protective legislation, in part because they had received the right to vote.
Despite social and economic gains throughout the early twentieth century, it was not until this
landmark decision that the Court considered women – once labeled ‘wards of the state’ because of
their ability to bear children – politically equal to men.

Finally, Julie Berebitksy and Ana Avendaño are some of the most recent scholars to address
the historical origins of sexual harassment in the workplace. Berebitsky’s *Sex and the Office*, a study of
women’s sexual availability in the workplace, argues that in examining different reactions to what we
today would call sexual harassment, historians uncover the differences in the ways in which women
understood and reacted to unwanted sexual advances. Berebitsky historicizes the general
understanding of unwelcome sexual attention in the workplace by comparing the stories of two
women – a nineteenth century typewriter and Anita Hill – who both experienced what is now
publicly regarded as sexual harassment. Though circumstantially similar in their treatment, the
degrees to which these women were able to challenge the patriarchy of the workplace differed

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My dissertation reveals that sexual harassment in the workplace was legally acknowledged and addressed prior to Anita’s Hill’s public declaration of it in the 1990’s. It argues that the protective legislation enacted in the early twentieth century was lawmakers’ clandestine way of addressing the issue without publicly acknowledging the sexual risks associated with working outside the home.

Both Patricia Cohen and Julie Berebitsky recognize the nineteenth-century shift in seduction law. While Victorian-era women were perceived as virtuous, by the late nineteenth century women were deemed inherently sexual creatures who lacked control over their errant desires. This is particularly seen in the sensationalism surrounding Helen Jewett’s murder. Rather than embracing Jewett as the unassuming victim of a heinous crime, newspapers ultimately blamed her, implying that her murderer was lured by her attractive life of sin. My project shifts this concept once more to show that by the time of the Muller decision (1908) women were, as they had been in the past, seen as the victims of potential workplace dangers. Although the Court’s ruling asserted America’s deeply rooted paternalism and stripped women of their ability to contract their own labor, its imposed limitations were perceived as a positive action toward protecting women’s virtue.

Ana Avendaño’s 2018 article “Sexual Harassment in the Workplace: Where Were the Unions?” examines the origins of workplace harassment, and specifically addresses the unwillingness of male labor unions to protect women. Avendaño’s article looks closely at Jenson v. Eveleth Taconite Co., the first class-action lawsuit about sexual harassment at work. The case involved a group of women employed at the Eveleth Taconite Mine in Minnesota who complained of being “groped, grabbed, pressured for sex, and subjected to pornography” during the workday. The women

initially approached their union representative, who told them that he “did not know how to file a
sexual harassment grievance,” and could do nothing to help them.27 His inaction prompted them to
file a class action law suit.28 While the centerpiece of Avendaño’s article is a court case from the
1990’s, her article is historical in nature. It examines the AFL’s long history of excluding female
workers, even in periods – such as during World War I – in which women contributed significantly
to the industrial workforce.29 My work supports Avendaño’s argument that male dominated labor
unions were not historically friendly to female labor. When working women felt an absence of state
protection, particularly in the aftermath of Adkins, many turned to union representation for security.
But the mainstream labor movement remained concerned primarily with the well-being of male
workers well into the 1940’s. When unions like the AFL failed to protect women, many formed
their own – such as the Women’s Trade Union League (WTUL), which promised to put the needs
of working women first and foremost.30 Despite their efforts, female trade unions were not as
deeply rooted as their male counterparts and did not enjoy the same privileges as male workers. My
work explores the constant push and pull between male and female unions, as women demanded
equal treatment and equal ability to contract freely with employers, while male unions continued to
espouse the belief that a woman’s place was in the home.

27 Avendaño, “Sexual Harassment in the Workplace,” 249.

28 The women were successful based on the “reasonable woman” precedent established in Ellison v. Brady
(1991). This precedent established certain behaviors that any “reasonable woman” would consider “sufficiently severe
or pervasive to create an abusive working environment.” For more on this, see Ellison v. Brady, 924 F.2d 872, 878 (9th
Cir. 1991).


30 For a more detailed discussion about the relationship between labor unions and women workers, see
Kathryn Kish Sklar, U.S. History as Women’s History: New Feminist Essays (Chapel Hill: University of North Carolina
Historians Crystal Feimster, Daniele McGuire, and Estelle Freedman have done elaborate research on racial sexual violence and have contributed to historians’ understanding of how race fits into the history of sexuality. Danielle McGuire’s *At the Dark End of the Street* weaves racialized sexual violence into the narrative of the Civil Rights Movement, and gives groundbreaking insight into what it was like to be black and the victim of sexual violence in mid-twentieth century America. Crystal Feimster’s *Southern Horrors* similarly tackles racialized sexual violence through the stories of two very different women: Rebecca Felton, a wealthy white woman, and Ida B. Wells, the daughter of slaves. Although on the surface these women had very little in common, they ultimately had the same goal: To ensure the safety for women, expand women’s rights, and abolish lynching in the South. And finally, Estelle Freedman’s *Redefining Rape* looks at the changing definitions of the word ‘rape’ throughout American history, and argues that understanding and defining this change over time is critical to our understanding of American citizenship.

Despite these pivotal studies about race and sexual violence, my source base has revealed that labor laws and age of consent legislation were written for middle class white women, largely ignoring black women and even, to an extent, poor white women. Because many reformers, like Frances Willard of the WCTU, were middle class white women, they inadvertently aimed to protect women like themselves. As a result, African American women’s clubs, like the National Association of Colored Women (NACW) were left to fend for themselves in protecting the black female youth. NACW members initially aligned with suffragist organizations, but eventually distanced themselves from suffrage leaders like Susan B. Anthony who they felt prioritized the white population. African American leaders argued that protective legislation was written with one type of victim in mind: White, middle-class women.31 While race has been largely absent from my source base, there has

been substantial mention of nationality and ethnicity. For example, an 1871 newspaper article in the *Brooklyn Daily Union* detailed the assault of a “stupid looking Irish girl,” suggesting that her beauty (or lack thereof) was somehow tied to her ethnicity. Moreover, Chapter Three addresses the concern that Leo Frank’s Jewish heritage could impact an Atlanta jury’s decision in his murder trial. While racial difference undoubtedly existed in the Progressive-era workplace, the sources referenced in this dissertation suggest that class, ethnicity, and nationality contributed more to discrimination.

My research has also raised questions about the subjectivity of age in labor laws. Under the umbrella of protective legislation was the fight to raise the age of consent to eighteen nationwide, despite the fact that most women could work before that age. Reformers argued that eighteen was when mental and emotional maturity caught up with physical maturity. A twelve-year-old could be physically mature, but physicians and reformers were clear that menstruation did not necessarily coincide with the emotional and mental maturity of womanhood, which often took until around eighteen to fully develop. But opponents of age of consent laws, such as Judge Joseph Lumpkin of Georgia, argued that a woman should be allowed to marry at any age to protect her honor. Lumpkin’s opinion in *Askew v. Dupree* (1860) proclaimed that entering into marriage at the age when “sexual passions are usually developed” – fourteen for boys, and twelve for girls – would help to “guard against the manifold evils resulting from illicit intercourse.” Lumpur believed that people

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33 This dissertation examines women in the industrial and clerical workplace, not women working as domestic servants. Because much industrial labor was performed in the Northern and Northwestern United States, the women working were overwhelmingly white.

34 For more on children and sexuality, see Stephen Robertson’s *Crimes Against Children: Sexual Violence and Legal Culture in New York City, 1880-1960*.

of any age, whether twelve or eighteen, should be able to wed without parental consent. If teenagers were going to engage in sexual activity, Lumpkin reasoned it was better if it occurred within wedlock. Opponents of age of consent laws, like Lumpkin, worried about young, sexually active girls who did not have the protection of marriage. These girls faced social ridicule, lacked economic security and future marriage prospects, and lost social standing in their communities. They also jeopardized their family’s reputation and their own morality. Lumpkin’s opinion protected the moral character of girls who were sexually active and highlighted a problem with age of consent laws: While these laws aimed to protect women, they were also taking consensual relationships among young people and labeling them as criminal offenses, thus ignoring the reality that young people were engaged in sexual activity.

It is clear that many scholars have addressed the physical, emotional, and sexual dangers of the industrial workplace. My dissertation contributes to this historiography by making an explicit connection between protective legislation and sexual harassment, arguing that reformers and lawyers were well aware of its occurrence in the workplace. Although the Court’s decision in *Muller* focused primarily on physical risks (i.e. danger to a woman’s womb), legislators were not oblivious to the underlying sexual dangers of the unrestricted workplace. Through analysis of a wide-ranging base of local, regional, and even national newspaper articles which reveal employer/employee incidents, the dissertation reveals numerous accounts of abuse of female workers. These occurrences would have been impossible to ignore because harassment was reported so frequently. Lawmakers chose to alleviate concerns about the sexual and emotional dangers of working women by expressing their fears in the language of protecting women’s maternal obligations to society. Ultimately, the virtue of the American workplace was maintained by diverting fears about sexual predation away from public attention. This connection has meaningfully impacted the social and legal histories of sexual harassment.
My contributions to the existing historiography overturn several myths about the Gilded Age and the Progressive Era workplace. First, the myth of existence: That sexual harassment simply did not exist in this period. An extensive examination of newspaper articles reveals that seduction, breach of promise, and general unwanted sexual attention were real and pervasive issues in the workplace, and that young female workers often were unaware of how to prevent such behavior. Second, the myth of legal indifference: That no sexual harassment laws were enacted before the late twentieth century. This is not true, as much of Progressive-era labor law did allude to sexual danger. Protective legislation and age of consent laws were paternalistic methods of protecting the virtue of women and of the American workplace, suggesting that the risks associated with the workplace were not merely physical. Finally, the dissertation challenges the myth of ignorance: That hysteria over the health risks of women entering the workplace was based solely on perceived threats to women’s reproductive health and their ability to work. My work shows that, in actuality, the lawyers and legislators who crafted protective legislation laws were educated, experienced, and very much aware of the sexual dangers that pervaded the industrial workplace. To assume their ignorance of these issues wrongly suggests that they were oblivious to the danger that harassment posed to young women in the workplace.

This project is largely linear in its organization and constructs a chronological narrative of protective legislation for women workers. Chapter One spans the years 1850-1880, and looks at the origins of American women working outside of the home. It highlights two early examples of workplace sexual harassment, both in 1864, one in a Massachusetts arsenal and one in the United States Treasury Department. This chapter argues that workplace abuse led to discussions about public policy toward women and work, and influenced reform at both the local and state levels. Chapter Two picks up in 1885 and culminates with the 1908 Muller v. Oregon decision, in which the Supreme Court upheld the constitutionality of federal protective legislation for women workers.
The chapter examines social factors and legal precedents leading to the landmark *Muller* decision. It also looks at reactions to the decision: While some saw *Muller* as a victory for women who were unable to contract their own labor with employers, others perceived it as a step backward for those who had spent decades trying to pursue work outside of the home. Chapter Three examines two of the most sensational cases of early sexual harassment, and takes an in-depth look into the seduction and murder trials of Chester Gillette (1908) and Leo Frank (1913). The chapter highlights the fact that federal legislation, the escalating suffrage movement, and increased female agency in the public sphere did not necessarily protect women’s virtue in the ways many had hoped.

Chapter Four takes a broader, more thematic approach to protective legislation. The chapter examines America’s age of consent campaign, and argues that this legislation was a defense of a white, middle class lifestyle amidst female social liberation. Debates over raising the age of consent expressed reformers’ underlying fears of losing control of middle class womanhood and virtue, at the expense of objectifying women as property instead of people. Finally, Chapter Five returns to the chronological narrative and spans from 1915 to 1923 when the Supreme Court’s made its landmark ruling in *Adkins v. Children’s Hospital*. The chapter argues that a combination of wartime work, unionization, the Nineteenth Amendment, and the "new woman" of the 1920’s led many to believe that women were newly independent agents, and subsequently less deserving of state-imposed protections than previously had been assumed. Ultimately, it was a changing attitude toward the post-war woman that explains the shift away from federal protective legislation for women in the workplace from 1908 (*Muller*) to 1923 (*Adkins*).

Through the use of newspapers, trial transcripts, and reform literature, this dissertation has shown that sexual harassment existed in the workplace long before it was a legally recognized category, and that its existence was both documented and acknowledged. It has shown that lawmakers and reformers alluded to the dangers associated with the workplace, not only in their
explicit efforts to protect female reproductive organs, but also in their more implicit efforts to protect the female psyche and morality. This project has taken on renewed relevance in light of the recent #metoo movement, and has grown from a project rooted solely in history to one that connects clearly to the world we live in today. The women who faced sexual harassment in this dissertation did not have the public or institutional support that many victims of sexual harassment possess today, nor did they have the ability to bring their accuser to court without the assistance of a father or husband. Reformers and activists used their voices to support women could not use their own in the fight against workplace harassment and abuse. Without their efforts, women could not have arrived at this current moment in the fight for mutual respect and equality.
Chapter 1: Workplace Harassment Without Remedy, 1850-1880

By the 1860s, a number of social forces led to an increase in what we today call sexual harassment. Observers were aware of it and saw it as coercive and unjust, not just immoral because it was non-marital sex. Women were perceived as the victims of sexual harassment, but they lacked the proper language to discuss it or legal tools to fix it. Religious moral judgments, class bias, and racial prejudice crept into national discussions about women’s safety in the workplace. As a consequence, victims had no real remedies, especially if they failed to conform to certain middle class ideals of race, class, intelligence, and chastity. Workplace abuse led to discussions about public policy toward women and work, and influenced reform at both the local and state levels.

The market and industrial revolutions of the nineteenth century changed how women participated in the public sphere, prompting many to move to cities to work for wages. Between 1820 and 1860 the urbanization of American cities developed quickly, both creating new opportunities and new dangers for women. Young women in New England particularly were intrigued by new industrial opportunities, and felt the impact of early industrialization more than their counterparts in other regions of the country. As the nineteenth century progressed, many women themselves celebrated greater agency in an increasingly urbanized world, while reformers and more conservative thinkers feared young women’s participation in a “new realm of commercialized leisure that further undermined familial control.”¹ Women who previously would have spent their evenings at home now were free to spend their evenings in public. This social and economic independence fostered mixed-sex friendships and encouraged dating practices that challenged traditional Victorian-era courtships. Women working outside the home participated in a

¹ Odem, Delinquent Daughters, 3.
vibrant and expansive youth culture instead of partaking in local (and supervised) community activities after work.²

Growing numbers of women in blue and white collar workplaces blurred distinctions between men and women’s work, creating a generational clash: Women themselves felt more empowered than their mothers and grandmothers, yet much of society feared women were overstepping societal boundaries. Reformers worried about women in public without a male liaison. These initial working women challenged Victorian gender norms, and contributed to reformers’ fears that they could fall into the traps of “prostitution and vice, venereal disease, family breakdown, or out of wedlock pregnancy.”³ Public anxiety about young women’s morals prompted social activists to press for both state and federal regulation of women in the public sphere, and ultimately laid the groundwork for national legislation that would protect the health, safety, and morality of female workers.⁴ The increase of women in wage labor led to more consensual sex, but also new forms of harassment. Women like Fanny Hyde and Marry Murray entered the workplace only to endure sexual harassment for which the legal system offered no easy remedy.

For many young women, work in a nineteenth century mill town was the “first, and often irreversible step away from the rural agricultural life of their parents.”⁵ Mill communities offered employment to girls who previously would have had few opportunities to escape the patriarchal restrictions of farm life. The early mill workforce was quite homogenous. It was 80% female, more

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² Odem, Delinquent Daughters, 3.

³ Odem, Delinquent Daughters, 3.

⁴ Odem, Delinquent Daughters, 3.

than 95% American born, and 80% between the ages of fifteen and thirty. Moreover, the vast majority of women working in mill towns were unmarried and without children. Women who ventured to mill towns enjoyed new economic and social freedoms, such as new fashions, ‘radical’ ideas, and new friendships, primarily with other women.

Although work in mill towns began in the antebellum period, the Civil War brought with it many new jobs for women. Women were employed as munitions workers during the war, a move that frustrated many moral reformers. Women’s transition from the private into the public sphere fueled concern that the workplace was dangerous and unsuitable for young women. Even as women began to prove they were capable of co-existing with men in the workplace, many people refused to accept women’s agency and decision-making abilities as their own.

This paternalism was written into law. When a father lost a young daughter in factory accidents such as fires or building collapses, he often was found guilty of negligence before a jury. Alexander McBride managed an arsenal in Pennsylvania and was found guilty of his daughter’s death from a fire at the arsenal. McBride worried about his daughter’s safety in the workplace, and hired her at his arsenal so he could supervise her. His private suffering over the loss of his daughter was further complicated by the social backlash he received from his community. The untimely and unnatural deaths of girls “upset notions of respectability as fathers failed to provide for or protect their families,” further signifying the deeply entrenched paternalism of the period.

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7 Dublin, *Women at Work*, 57.


Furthermore, reformers debated whether munitions work during the Civil War interfered with women’s traditional role at home. The outerwear that female workers wore at the workplace suggested to many that “the home would remain a distinctly feminine space.”\textsuperscript{11} They imagined women workers did not interact with men except male foremen. And they assumed that factory owners rigorously screened male overseers, hiring only those men with the “most sterling requisites of character in intelligence, sound morality, and as active, useful, exemplary citizens.”\textsuperscript{12} Gendered protections such as constant supervision and separate entrances helped allay fears that women were becoming too masculine.\textsuperscript{13}

Despite notions of a female workforce, obtaining employment was actually difficult for many women – especially in major urban centers like Chicago.\textsuperscript{14} Some found live-in domestic work, though the “restricted independence and personal subservience” of the job deterred most wage earning women.\textsuperscript{15} Those who were more successful worked in the garment industry as dressmakers, seamstresses, or laundresses in both small shops and large factories. Retail and clerical work attracted women who were educated and from less impoverished backgrounds, as these jobs required proper grammar and middle class dress on a daily basis.

To avoid poverty, some women worked – at least part time – as prostitutes. Despite the obvious disadvantages such as venereal disease and physical abuse, women could earn living wages

\textsuperscript{11} Giesberg, \textit{Army at Home}, 76.

\textsuperscript{12} Giesberg, \textit{Army at Home}, 76; William Scoresby, \textit{American Factories and Their Female Operatives, With and Appeal on Behalf of the British Factory Population}, (Summer 1844). RG 102, Box 1, National Archives and Records Administration, College Park, MD.

\textsuperscript{13} Giesberg, \textit{Army at Home}, 76.


\textsuperscript{15} Meyerowitz, \textit{Women Adrift}, 28.
through selling themselves for sex. By the 1890’s, even women who worked in professions that did not necessarily advertise sex – such as in the theater or as masseuses – earned extra money by providing sexual services to wealthy patrons. Whether they worked in a respectable profession or not, the increase of women entering the public sphere undermined long standing notions of paternalism leading to an increase in sexual availability and thus an apparent increase in the harassment women faced in the workplace.

As women became a more permanent fixture in wage labor, social reformers became increasingly concerned about young female workers.\(^16\) Public anxiety about female morality “greatly intensified and spread to all regions of the country” as industry and urbanization expanded.\(^17\) Reform groups – many of them religiously affiliated – arose in an attempt to control women’s emerging independence.\(^18\) The Young Women’s Christian Association (YWCA), for example, had serious qualms about women working in the public sphere and focused their attention on ideas of Christian morality and values of ‘true womanhood.’ Early YWCA members paid particular attention to women who had moved to Chicago to find work, hoping to create a strong “moral and religious” presence for those without family nearby. The YWCA hoped that if women had a steady home to return to after work – one that mimicked the rural, Christian family life they were accustomed to – that they might resist the temptations of city night life.\(^19\) Sexual immorality, and thus a loss of female virtue weighed heavily on the minds of YWCA leaders. Leander Stone, a founding YWCA member, earnestly feared that if the YWCA failed to provide adequate and moral housing for

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\(^{16}\) Odem, *Delinquent Daughters*, 1.

\(^{17}\) Odem, *Delinquent Daughters*, 1

\(^{18}\) Odem, *Delinquent Daughters*, 1

working girls, that they would be left to starve or “what, God forbid, is worse than death, sacrifice their honor to secure food and warmth.”

Female boarding houses such as those provided by the YWCA simultaneously encouraged increased independence, and instituted new types of paternalistic rules. The moral care and oversight of boarding-house keepers helped to extend virtue and “favorable influences” to the women who lived there, and tight regulations acted as patriarchal limitations on the ways in which women could take advantage of their newfound freedoms. Some of these regulations included mandatory church attendance, a ten o’clock curfew, and keeping only “good company.” Though employers did not necessarily regulate the morality of their workers, they reaped the benefits of YWCA boarding houses. Employers supported the YWCA because the institution provided structured living, which they believed contributed to a well-disciplined workforce. Rules regulating sleeping, eating, church presence, and strict morality “maintained the separation between men and women, confirming women’s attachments to their homes.”

But women slowly began pushing societal boundaries. As they befriended other working women, some circumvented boarding houses and instead rented beds in private homes or shared bedrooms with female co-workers. This not only freed them from the restrictions imposed by groups like the YWCA, but also allowed boarders to save money on housing and to redirect their spending toward public amusement. In 1910 the cheapest rooms available in New York City cost

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21 Scoresby, *American Factories and Their Female Operatives*.


24 Kessler-Harris, *Out to Work*, 79.
about $1/week, and the average price of a movie ticket was less than twenty-five cents. So splitting rent with a friend easily funded an extra night out to the local cinema. Reformers, especially those with Christian roots, feared that women living beyond the structure of systematized housing were destined to lead lives of vice and poverty.25

Another organization to emerge in the post-bellum period was the Working Women’s Protective Union, which served as a resource to protect women from “unscrupulous employers” by providing aid to those who felt they had been mistreated in the workplace.26 The group built subsidized boarding houses that were made easily accessible to women who could not afford to live on their own.27 These boarding houses differed from those funded by the YWCA in that they did not have a strong religious affiliation, which was enticing to women without a religious background.28 A third group, The Working Girls’ Society (The Society), was founded by Grace Hoadley Dodge in 1885. Dodge hoped to create a safe space where working girls could “have a good, useful time in the evening,” and devoted her life to helping those with fewer opportunities than herself.29 She feared that working girls were easily corruptible and weak-willed, and as a result, sought to provide them with an “alternate family” that would help them to navigate the social agency and economic independence that accompanied gainful employment.30

25 Kessler-Harris, Out to Work, 78. Movie price data retrieved and adjusted from National Association of Theatre Owners records.
26 Kessler-Harris, Out to Work, 92.
27 Kessler-Harris, Out to Work, 92.
28 Kessler-Harris, Out to Work, 92.
29 Quoted in Kessler-Harris, Out to Work, 93.
30 Kessler-Harris, Out to Work, 93.
Sensational reports of sexual advances by male employers affirmed Dodge’s anxieties. The department store was one space of sexual coercion. Newspapers reported that, “certain members, buyers, managers, and floor walkers took advantage of girls working under them who needed jobs very badly.” One department store employee spoke of his personal knowledge of girls who were forced to either “submit to buyers” or lose their position. Such stories contradicted presumed hierarchies within female work, which presented factory girls as “immoral,” and department store clerks a “nice class of girls.”

Young women with more disposable income also could spend their money on “fads, modish attire, and a distinctive personal style” that differentiated them from their peers and helped to create an identity that was unique. Moreover, they could buy non-essential items such as gum, candy, and makeup to help fit in with the rest of the working crowd. Department store employees became especially focused on fashion and beauty trends, as they worked in a mixed-sex environment where romance was on the mind of many young employees. New male/female interactions fomented social anxiety about the sexuality of young female workers. Reformers feared that young girls would become privy to “risqué jokes, swearing, and sexual advice” that they were not mature enough to partake in.

31 Quoted in Kessler-Harris, Out to Work, 103.

32 Kessler-Harris, Out to Work, 103.

33 Quoted in Kessler-Harris, Out to Work, 135.


35 Peiss, Cheap Amusements, 49.

36 Peiss, Cheap Amusements, 50.
Of graver concern though, was the vulnerability of young girls in relation to their male superiors. Jokes and conversation meant to be friendly, funny, or flirtatious could devolve quickly into harassment that often made women workers feel uncomfortable. Many men saw the workplace as a place where rules of propriety did not apply, as it was beyond the paternalistic realm of the home and family. One cigar-maker recalled that many men he knew were true gentlemen on the streets, but “in the shops will whoop and give expressions to ‘cat calls’” to female co-workers.\(^{37}\) This was problematic in a period in which women spent more hours of their day working than not.

The problem was worsened by the unregulated hours of female labor. Maximum hour legislation was slow to develop, and did not make any real progress until the landmark *Muller v. Oregon* decision in 1908. The New York State Bureau of Labor Statistics found that in 1885 the hours of female labor ranged from “eight to seventeen hours per day.”\(^{38}\) The length of the workday was determined by each employer individually, which helps to explain the wide variation in hours. Although national legislation was not enacted until 1908, states began enforcing maximum hour legislation as early as the 1870’s when Massachusetts became the first state to pass laws limiting women’s hours in 1874.\(^{39}\) New York followed suit in 1886 when it passed legislation mandating that women under age twenty-one work a maximum of ten hours per day or sixty hours per week.\(^{40}\)

One of the strongest proponents of both maximum hour and minimum wage legislation was the National Consumers’ League, though their rationale for legally protecting working women “stemmed from a patriarchal ideology”: If women were to perform well as wives and mothers, they

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\(^{37}\) Quoted in Peiss, *Cheap Amusements*, 51.

\(^{38}\) Peiss, *Cheap Amusements*, 41.


\(^{40}\) McCammon, “Politics,” 220.
required safe and proper conditions in the workplace. Florence Kelley’s statement that “men do not bear the children, are free from the burdens of maternity and are not susceptible in the same measure as women to the poisons characteristic of certain industries” further espoused the Consumers’ League’s paternalistic rhetoric.

The NCL’s conservatism was taken further by Anthony Comstock, an ardent opponent of abortion and birth control, who believed that sexual expression should be kept out of the public sphere and confined to married couples. Moreover, he believed that sexuality had a “reproductive function” and nothing more. Comstock feared that sexual content was flooding American society, and as a result drafted and proposed to Congress the Comstock Law. The law primarily was a response to “increased contraceptive usage” among young couples, many of which were unmarried. According to survey data, premarital pregnancies rose 23% between 1880 and 1910, and the majority of this increase came from working-class women. Although middle class women also left the home to find work during this period, they often felt more social pressure to preserve their virtue than their working class counterparts. Comstock was angered by statistics suggesting that the rise in premarital pregnancies meant that the rate of premarital sex was even higher, and continued to be tough on obscenity until his death in 1915.

Comstock was not the first to advocate for anti-obscenity laws. The New York City Young Men’s Christian Association (YMCA) voiced its discontent with young men’s morals as early as

41 McCammon, “Politics,” 221-222.

42 Quoted in McCammon, “Politics,” 222.


44 Freedman, Intimate Matters, 81-82.

45 Freedman, Intimate Matters, 199-200.
1866, claiming that the end of the Civil War had contributed to a “decline of paternalistic supervision over the morals of young workers.” By the 1870’s as co-mingling between the sexes became more commonplace, Comstock and the YMCA joined forces to shield urban youth from visiting saloons, theaters, and brothels with the hope that they could both control and protect the morality of America’s youth. Comstock believed that men who read “vile newspapers” with pornographic images would end up becoming “seducers, thieves, and murderers,” and urged the YMCA to join him in his formal crusade against obscenity. In 1872 Comstock solidified his ties with the YMCA when he pressed for anti-obscenity legislation at both the state and federal levels.

Before any real legal action was taken, Comstock founded the New York Society for the Suppression of Vice in an attempt to further regulate obscene material. However, his real success came when Congress unanimously passed the Comstock Law (1873), which forbade the mailing of “obscene, lewd, lascivious, and indecent writing or advertisements, including articles that aided contraception or abortion.” Comstock was satisfied, but hoped to push legislation even further by eliminating obscene behavior in the workplace, too. He knew that men often catcalled women they worked with, “made a peculiar noise with their lips, which is supposed to be an endearing salutation,” and circulated pornography during business hours. He found these behaviors to be not only inappropriate, but also outright unlawful. Comstock worked tirelessly to enforce anti-

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46 Freedman, Intimate Matters, 195-196.
47 Freedman, Intimate Matters, 195-196.
48 Freedman, Intimate Matters, 196.
49 Freedman, Intimate Matters, 196.
50 Quoted in Peiss, Cheap Amusements, 51.
obscenity legislation, and continued his campaign to punish those who brought offensive materials into the workplace.

The coalition Comstock built with the YMCA was not indicative of wider public opinion about his anti-obscenity campaign. Many liberal groups opposed the Comstock Law – the strongest opposition came from advocates of Free Love. Contrary to popular belief, Free Love did not necessarily refer to sex with many partners. Instead, Free Love advocates espoused the belief that “love, rather than marriage, should be the precondition for sexual relations.”\(^ {51}\) One of the earliest advocates of Free Love was Frances Wright, who criticized major institutions such as “religion, slavery, and marriage,” and advocated strongly for gender and racial equality.\(^ {52}\) She celebrated African Americans and their culture, and believed in interracial marriages. Wright believed that sex was an integral part of life, but that social mores stigmatized it and made it taboo.\(^ {53}\) She adopted her stance on sexual freedom at the same time that America’s burgeoning middle class began advocating for “female purity,” and as a result, Wright’s ideas were considered a threat to feminine virtue.\(^ {54}\) Nonetheless, her radical ideology initiated a “century long free love attack on sexual silences” that challenged societal constraints on female sexuality and traditional notions of love and marriage.\(^ {55}\)

By 1860, the Free Love movement had become a prominent subset of American society. The movement emphasized “moral responsibility” and love over sexual obligation to a spouse.\(^ {56}\)


\(^ {52}\) Freedman, *Intimate Matters*, 150.


Unsurprisingly, Free Love’s sexual radicalism “did not conform to a marital, reproductive framework” and was increasingly regulated by the government.” In 1874, Free Love advocate Dr. Edward Bliss Foote was arrested for publishing ‘obscene’ material in a medical advice book. Though Foote redacted the specified material from future publications, he continued to speak freely about contraception and pushed back against anti-obscenity laws. Foote’s arrest reflected a greater societal concern that young working women threatened traditional ideals of purity until marriage and “reproductive sex” within marriage.

Despite their differences, Free Love and anti-obscenity advocates actually had similar social goals. Although they took a liberal approach to sex, Free Lovers condemned prostitution and advocated for greater gender equality. The primary difference between Free Lovers and “social purity” advocates like Comstock was that “Free Lovers wanted to abolish the institution of marriage rather than reform it.” Sex, Free Lovers argued, was about more than procreation: It was about pleasure, commitment, and respect and, while reproduction was a potential goal of sex, it was not its sole purpose. Free Lovers believed that men and women should choose their sexual partners freely and on the basis of mutual attraction, not based on an economic exchange between a woman’s father and her potential suitor.

By the mid 1870’s, although public anxiety about women’s sexuality was still widespread, the growing female suffrage movement brought gender equality to the forefront of social reform

57 Odem, Delinquent Daughters, 2.
58 Freedman, Intimate Matters, pp. 197-198.
59 Odem, Delinquent Daughters, 2.
60 Freedman, Intimate Matters, 198.
61 Freedman, Intimate Matters, 198.
agendas. The ratification of the Fifteenth Amendment in 1870 granted black men voting rights by guaranteeing the right to vote regardless of “race, color, or previous condition of servitude.” While the decision marked a tangible victory for racial equality, proponents of female suffrage were split over the decision. Some were unhappy that the amendment did not guarantee voting rights to women. Susan B. Anthony and Elizabeth Cady Stanton were vocal opponents of the amendment, and thought it set a dangerous precedent that men still were superior to women. Others, on the other hand, believed that racial equality was more pressing than gender equality. Frederick Douglass distinguished the plight of white women from black men when he stated that until women “are dragged from their houses and hung upon lamp posts” they could not claim the same urgent need to vote as black men. The issue of gender equality had come into question before with the ratification of the Fourteenth Amendment in 1868. The amendment granted citizenship to all naturalized American citizens, which included black men. Two years later when the Fifteenth Amendment granted black males the right to vote, groups such as the National Woman Suffrage Association voiced their disdain for a second male-centric amendment, and argued that a new amendment should be drafted to provide women with full citizenship – including voting rights. Others argued that a new amendment was unnecessary, as the Fourteenth Amendment’s Equal Protection Clause should inherently guarantee universal suffrage. Despite minor victories along the way, ardent opposition to female suffrage during the 1872 presidential election made it clear that the battle for full gender equality still was one to be fought.


Although gender equality was the crux of female opposition to the Fifteenth Amendment, its ratification also created tension between racial equality advocates and women’s rights activists. Frederick Douglass distanced himself from his alliance with prominent gender equality advocates after they took a strong position against the Fifteenth Amendment. This separation hindered the coalition they had been forming since the antebellum period to bring equality to all of society’s disenfranchised groups. But Douglass soon became disillusioned when white supremacists found loopholes within the language of the amendment to prohibit black men from voting. New qualifications such as literacy tests and poll taxes were instated to insure the continued domination of white men, primarily in the American South. In order to make a noticeable difference for underrepresented subsets of American society, gender and racial equality advocates would have to maintain their joint efforts for equality.  

Statistics indicate that instances of divorce rose during the late nineteenth century, and many reformers blamed women’s increased agency for its rising numbers. By the 1880’s, a common justification for divorce was a husband who failed to provide adequately for his family. As women became increasingly present in the workforce, divorce cases spiked because women no longer were dependent on a sole income. Instead of living in fear of destitution, women had increased opportunities to make their own living wage as a single woman.  

While women celebrated their newfound independence, social reformers feared that women’s increased economic agency challenged the sanctity of the family and core Victorian values.

The burgeoning leisure culture of the late nineteenth century also contributed to higher divorce rates. As men and women earned more money and had more disposable income, they spent

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their spare time in places of public recreation such as Nickelodeons and amusement parks. Men and women comingle and dated – a stark change from Victorian courtship methods, in which male relatives supervised time spent together. But some men remained interested in public recreation after marriage, and even brought bad habits home with them in the form of drinking and/or gambling.\(^{67}\) Common complaints included a husband who “squandered his money and deprived his family of basic needs,” or one who became “violent or irresponsible as a result of his moral lapses.”\(^{68}\) Bringing these vices into the private sphere posed a perceived threat to the sanctity of the home, and was ground for divorce. Alcoholism was a major factor in physically abusive relationships, and while protective labor laws were created and ratified for women in the workplace, they did not extend to the home. Toward the end of the nineteenth century, divorce became more accessible to women who were mistreated by their husbands. Women’s increased agency in the public sphere coincided with their growing participation in the female suffrage movement, which empowered more women to leave abusive husbands to protect both themselves and their children.

The increased vulnerability of women led the Women’s Christian Temperance Union (WCTU) to advocate for protective legislation for women workers. The WCTU was a moral reform group founded in 1873 that pushed most notably for a national Age of Consent, but also for maximum hour and minimum wage laws. The group’s stance on many significant issues was reflected in its monthly journal, The Union Signal. In its first six years of publication, there were ten articles about ‘purity,’ six about the ‘morality’ of young women, eighteen about protective legislation

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\(^{67}\) May, *Great Expectations*, 30.

\(^{68}\) May, *Great Expectations*, 30.
for women, and twenty-two articles more broadly about women working. Moreover, Annual Meeting Minutes routinely covered topics such as purity, curfew, protective legislation, industrial education, and Christian citizenship, which suggest that the WCTU had real anxiety about women entering the public sphere.

In an attempt to alleviate concerns about naïve – and often adolescent – women entering the workforce, the WCTU proposed the creation of the Female Employment Bureau (the Bureau). This was a system in which female employment agencies were provided for young girls moving to urban centers. WCTU leaders and volunteers managed these agencies in an attempt to prevent girls from finding employment or housing in environments overrun with temptation. The group also persuaded local employers to comply with Bureau oversight by promising well-behaved and virtuous workers in exchange for information on how many intemperate women each employer retained. The goal was to create an informative and secure authoritative body for women “employed in any place susceptible to temptations, as it is much easier to form good habits than to reform bad ones.” The WCTU implemented effective ideas and achieved real success in their mission to protect the sanctity of female virtue.

The WCTU’s anxieties about women in the workplace were not necessarily unfounded. At the end of the Civil War, a generation of men who had served in the war re-entered the industrial workforce. Many veterans not only felt entitled to high paying and high-ranking positions, but also

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69 Union Signal Database, created at Frances Willard House and Museum, Evanston, Illinois. This database was compiled during a research trip to the Frances Willard House by tracking key words used in editions of *The Union Signal* from 6/11/1885 to 4/10/1913.

70 Minutes of the National WCTU with Addresses, Reports, and Constitutions. National Meeting at Chicago, Illinois, November 3, 1886 (Chicago: Woman’s Temperance Publishing Association).

71 Minutes of the National WCTU with Addresses, Reports, and Constitutions. National Meeting at Detroit, Michigan, October 31-November 3, 1883; (Cleveland, Ohio, Home Publishing Company) 1883, xiii.
to do as they pleased with their female subordinates. By the 1860’s stories of sexual misconduct began coming out of munitions factories. For instance, in 1864 there was an investigation into women’s work and the management of the Watertown Arsenal in Massachusetts. The investigation focused on Civil War General Thomas Jackson Rodman, a decorated officer who entered the service after graduating from West Point in 1841.72 In late 1861, Rodman was appointed to manage the Watertown Arsenal where he began immediately employing women to assemble cartridges. Like women in other fields, the women who worked at Watertown banded together and formed close-knit bonds. But unlike others, these women grew disillusioned with their work environment and began petitioning Rodman “repeatedly about wages, employment practices, and safety violations” within the arsenal.73 Their complaints were taken seriously, and in 1863 Rodman replaced the current women’s overseer with fellow Civil War veteran, Major Frank Hilton. Hilton quickly became unpopular among the women he supervised because he micromanaged workplace activities and spoiled his favorite employees with “special attention and privileges.”74

Despite Rodman’s attempt to alleviate the women’s frustrations, they again complained about Hilton’s lack of professionalism in the workplace. In response to their grievances, third-party investigators were sent into the arsenal in 1864 to examine the situation. Although the purpose of the investigation initially was to examine and assuage social anxieties about women working in the war industry, its attention shifted quickly to exposing “prurient details of the promiscuous


73 Giesberg, Army at Home, 79.

74 Giesberg, Army at Home, 80. “Rules and Regulations for the Government of the Employees of the Magazines and Laboratories at Watertown Arsenal,” Investigation into the Mismanagement of the Watertown Arsenal, November 1864, RG 156: Records of the Office of the Chief of Ordnance, National Archives and Records Administration, College Park, MD.
A Congressional investigation followed, raising questions about the conduct of male supervisors in relation to their young, female employees. Several of the girls testified that certain women received special treatment in exchange for acting as “playmates to their male superiors,” while other women were forced to look at pornography throughout the workday. There was also an incident in which a fan was hidden in the women’s dressing room with hopes of making the women’s skirts fly upward. Men working at the arsenal were accused of “fooling with the girls” on company property, and even maintaining certain women on payroll during off seasons because they found them physically attractive, regardless of the women’s work ethic. Despite attempts to regulate working women through mandatory lodging in boarding houses and paternalistic regulations such as curfews, work at the Watertown Arsenal made them “simultaneously objects of male desire and male derision.” The precautions taken by reformers to protect women in the public sphere fell flat if those safeguards did not exist during the workday, which for many women was the majority of their day. As a result, the differences between male and female munitions workers became hazy in regard to where they worked and the lax guidelines that governed their work.

Sexual misconduct in the workplace went beyond the war production industry. Also in 1864, Congress launched an investigation into the United States Treasury Department to examine the “alleged immoralities of persons employed therein.” At the time, about three hundred girls worked for the Treasury Department and by 1861 word began to spread of misconduct in the

75 Giesberg, Army at Home, 84.
76 Giesberg, Army at Home, 84.
77 Giesberg, Army at Home, 84.
78 Giesberg, Army at Home, 84.
79 Giesberg, Army at Home, 84, 88.
workplace. Examples ranged widely from relatively innocent flirtation between male and female co-workers to more persuasive propositions and sexual advances. For example, Treasury Department employee Ada Thompson testified about two of her female colleagues who spent a night out drinking and dancing with two male supervisors. The men took the women out for dinner and drinks after work, and then back to the Central Hotel for the night. The next day the girls regaled Thompson with stories from the evening, including one in which the men staged a contest to determine which of the two girls had the longest legs. The men insisted that the girls “take off their clothes to have their legs measured, which the women did.”\footnote{U.S. Treasury Department, \textit{Investigation into the printing of national securities in the Treasury Department and the alleged immoralities of persons employed therein},” (Investigation of Note Printing: May 3, 1864) 408-409, https://congressional-proquest-com.libezproxy2.syr.edu/congressional/docview/t29.d30.hrg-1864-ict-0001?accountid=14214.} While undoubtedly a case of professional impropriety, the activities of the night seem to have been purely consensual. The women returned to work the next day, and were content with what had happened the prior evening. Thompson, however, felt that the attention her female co-workers received was not only unwarranted, but also inappropriate.

Thompson’s testimony continued with information about her direct supervisor, Mr. Clark. She claimed that she knew of female co-workers in possession of pornography given to them by Clark. Moreover, when new girls applied for positions within the Currency Bureau, Clark asked her to interview the girls with him in mind: If she thought that “the girls could be improperly used by Clark, they were employed.” Thompson explained that she gave this testimony by her own free will and saw it as her duty as an honorable and virtuous woman to “expose a system of the grossest immorality and impropriety practiced by Mr. Clark upon the female employees under his charge.”\footnote{U.S. Treasury Department, \textit{Investigation into the printing of national securities in the Treasury Department}, 408-409.}
Thompson’s reactions to her friends’ behavior indicate that value judgments about women came not only from men and social reformers, but also from their peers.

Other witnesses testified to coercion, specifically the termination of women who defied the supervisor. Mr. Clark came under attack again in Mano Lulley’s testimony on behalf of his daughter who was employed there. After moving to America, Lulley brought his daughter to work for the U.S. Treasury and was surprised when she was discharged without explanation. When Lulley asked about his daughter’s dismissal, he was told it was a financial decision based on low profits. But Lulley was not convinced. At this point, his daughter admitted that Clark had made a rather immoral proposition to her: If she would go to a certain hotel with him at night and “submit to his wishes, he would raise her salary to $75 per month.” When she refused, her employment was terminated. Lulley argued that his daughter had been “foully wronged by the bases a shameful propositions” made to her by Mr. Clark. Lulley’s testimony was corroborated by a “young, German Jewess” who similarly stated that Mr. Clark had proposed that if she “submit to his wishes,” she would receive double wages.

The investigation also revealed attempts to silence people who reported the inappropriate behaviors of male supervisors. For example, Spencer Brooks believed that he lost his job with the Currency Bureau after confronting a supervisor about inappropriate sexual behavior. Similarly, fourteen-year-old Clara Donalson was fired for “being too nosy” after she walked into a room and saw one of her female co-workers in the room alone with their male supervisor. And Catharine Dodson, a “mullato” girl who worked at a candy stand outside of the Treasury Department was

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82 U.S. Treasury Department, *Investigation into the printing of national securities in the Treasury Department*, 414.

83 U.S. Treasury Department, *Investigation into the printing of national securities in the Treasury Department*, 15.

84 U.S. Treasury Department, *Investigation into the printing of national securities in the Treasury Department*, 147.
offered one hundred dollars to ‘forget’ any impropriety she witnessed after-hours. She refused to take the money, and was subsequently offered five hundred dollars for the same purpose. She again refused the money, stating that she did not take payment for “dishonorable purposes.” When bosses feared exposure, they sought to quell the story rather than changing their behavior.

The investigations into the Watertown Arsenal and the Treasury Department were some of the earliest well-documented cases of workplace sexual harassment, and the attention they received began an open discussion about the safety of women at work. Unsurprisingly, the influx of women entering wage labor paralleled an increase in sexual harassment cases in the period. Newspapers nationwide recounted, sometimes daily, cases of unsolicited advances taken toward young working women. In 1888 the St. Paul Daily Globe reported that Henry Overing was jailed on charge of “bastardy” and charged with seducing a female employee of a woolen mill in Minnesota. And an 1884 article stated that constituents of Burlington, NJ felt a “strong sense of indignation” against Mr. Bunting, the owner of a shoe factory, who “abused his position as employer to seduce Miss Ella Ames, one of his employees.”

But women were not always perceived as victims in seduction cases. The media’s depiction of women who reported harassment seemed to relate directly to the success of their cases in court. For example, an 1871 article told of a “stupid looking Irish girl” who claimed to have been physically assaulted by her employer. After a brief hearing, her statement was dismissed and her

85 U.S. Treasury Department, Investigation into the printing of national securities in the Treasury Department, 15.


88 “Indecent Assault,” Brooklyn Daily Union, August 25, 1871; A 1994 study by Daniel Hamermesh and Jeff Biddle found that physically attractive workers earn 15-20 percent more than workers of below-average beauty. This suggests that modern American society still values – and rewards – physical beauty, as it did in the late nineteenth century. Also see “Why Beauty Matters” by Markus Mobius and Tanya Rosenblat.
employer faced no consequences. Other articles, instead, mentioned the attractiveness of the women involved. Some referred to women as “intelligent looking,” while others regarded certain ‘mullato’ women as “bright skinned,” or “almost white.” Women with more favorable descriptions fared better in court and in public opinion. The descriptive language used by journalists became indicative of a wider concern in sexual harassment cases: Physical beauty could help to garner sympathy for women who had been abused. It seemed that a societal obsession with beauty and the credibility of women who had been sexually harassed were inextricably intertwined. While certainly not tangible evidence, above-average beauty seemed to help, rather than hinder, a woman’s legal standing.

In addition to drawing attention to physical beauty, newspapers often accused women of blackmail. An 1869 article described a woman who claimed she was seduced under the promise of marriage by a wealthy New York man. After becoming pregnant with his child, she badgered him relentlessly about setting a wedding date. He became quickly frustrated with her, had her kidnapped and taken before a phony judge who sentenced her to prison for an alleged attempt on her seducer’s life. Upon her release, she filed a lawsuit against him that was dismissed because of the judge’s speculation that she was an “expert blackmailer.” The court’s unwillingness to take her account seriously foreshadowed problems with a legal system unwilling to acknowledge young women without male representatives in court.

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90 Vida Irene Thompson, Almost: A True Story, Records of the National Women’s Christian Temperance Union, Frances Willard House, Evanston, IL.

91 “A Female Blackmailer,” Cincinnati Daily Enquirer, December 11, 1869.
Charges of extortion also occurred frequently in domestic employment situations. In 1881 Mary Edgerton worked as a servant in the home of James S. Stevenson. When Edgerton charged her employer with rape, Stevenson reversed the charge, stating that she had made unwanted sexual advances toward him, but that he never had acted upon them. He charged her with attempted blackmail, and the case was never brought to trial. Similarly, fifteen year-old Tillie Clark claimed to have been assaulted by Solomon Lazarus while working in his home. Clark stated that she let Lazarus into the house late at night, and that he brought her upstairs, “locked the door,” and assaulted her. When brought to court, Lazarus denied ever seeing Clark that night and suggested that she was trying to blackmail his family. Again, the case was dismissed and Lazarus faced no punishment.92 In a final incident, domestic servant Mary Zeis charged her landlord and employer Charles Meyers with “indecent assault.”93 Meyers and his wife – who reportedly witnessed the assault – denied the accusations and claimed that Zeis was attempting to blackmail them. Though the Meyers’ made a compelling case for blackmail, Charles Meyers was held in jail on $500 bail because other women testified that Meyers similarly had abused his position as employer in the past. This decision demonstrated a personal victory for Zeis, and a collective victory for all female victims of sexual assault. Moreover, it laid the groundwork for a legal system that soon would embrace protective regulations for women workers nationwide.94

Such cases hardly transformed women’s legal rights, but the cases of two women within this period – Fanny Hyde and Marry Murray – were indicative of a turning point in national discussions


94 By the end of the Nineteenth century, Progressive reformers were working diligently to pass maximum hour and minimum wage laws. In 1908 Muller v. Oregon mandated national maximum hour legislation for all female wage laborers.
about federal protective legislation for women. The treatment Hyde and Murray received was shocking to many, and brought about public outrage at the mistreatment of women in the workplace. Hyde and Murray received nationwide media exposure, and the coverage surrounding them fed a national hunger for news about crime. This fostered sensationalism and turned both the victims and the perpetrators into virtual celebrities. The overwhelming media coverage has allowed access to almost every facet of their cases, and has made possible a thorough historical treatment of the circumstances leading up to their respective trials. The harassment that Hyde and Murray experienced deepened national concern for the safety of young women in public, and offers insight into the ways in which women were victimized – both by society and the law – before they achieved recognition as full citizens.

Fanny Hyde’s ordeal began on January 26, 1872 when George Watson, owner of a prominent hairnet factory in Manhattan, was discovered dead in a stairwell inside his factory. He was bleeding profusely from a bullet hole in the back of his head. One of his factory girls – Fanny Hyde – stood nearby, staring at Watson’s body with a look of confusion and horror. Immediately suspected of the murder, Hyde admitted to police to killing Watson, claiming she had shot him out of self-defense, and in retaliation for repeatedly forcing himself upon her in the months leading up to the incident. Fifteen-year-old Hyde had been raped in the workplace by her employer, and had turned to violence for her own protection.

Born Fanny Windley in Nottingham, England in 1853, Hyde moved to the United States with her family at age ten. When she was just four her mother died, and by age eight she was working outside the home. The family moved to the United States and she began immediately working in a factory, leaving little time for intellectual or moral education. Amidst her trial, Hyde’s

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defense attorneys argued that had her mother lived longer, she would have been better suited to avoid “the wiles and treachery of the seducer.”

At age fifteen (1868) Hyde began working for George Watson in his Manhattan hairnet factory. Hyde was described as a pretty girl – “blonde, with a slender figure, and blue eyes…as fair to look upon as any of her sex; everything that could be desired in one of her years was she.” Her refined features caught Watson’s attention and attracted his “libidinous heart and lustful desire,” making him determined to have his way with her. Watson quickly took notice of her, favoring her over other girls in the factory, and soon their friendship became sexual. After submitting to Watson, Hyde regretted her actions and struggled to “free herself from the coil which her heartless seducer had thrown around her.” In 1870, Hyde met a respectable young bookbinder, and promised herself to him with the hope of beginning a “pure and virtuous life.” She told Watson that their intimacy had to end and, though he initially complied, he soon continued making physical demands on her until he finally “threatened to discharger her unless his wishes were gratified.”

Hyde grew frustrated with Watson’s assaults. She subsequently bought a pistol, followed Watson to the interior factory staircase, and shot him. Watson fell backward, rolled down fifteen

96 Official report of the trial of Fanny Hyde, for the murder of Geo. W. Watson, including testimony, the arguments of counsel, and the charge of the court, reported verbatim (New York, J.R. McDivitt) 1872, 33-34.
97 “Another Brooklyn Horror,” Chicago Tribune, January 30, 1872. Page 5; Official report of the trial of Fanny Hyde, 33. The description of Hyde as a “pretty girl” speaks to the media’s obsession with physical beauty, and its correlation to female credibility.
98 Official report of the trial of Fanny Hyde, 33; Hyde’s lawyer claimed, “Among his (Watson’s) female employees, Fanny Hyde was the fairest. She was the one he determined to make his victim, and the cream, perhaps, of his harem.”
99 The Bench and Bar of King’s County, NY and the Bench and Bar of the City of Brooklyn, 1686-1884: With legal biographies. “People v. Fanny Hyde,” (Brooklyn: NY) 1872, 82-84
100 “People v. Fanny Hyde,” 82-84
stairs, and was killed instantly.\textsuperscript{102} There was little doubt about Hyde’s responsibility, as she “admitted very quickly and readily to killing him, first to her father, then to her husband, then to police.”\textsuperscript{103} At the time of his death, Watson was 45 years old with a wife and several children.\textsuperscript{104}

In Brooklyn, New York a grand jury indicted Hyde for first-degree murder. Her defense team included Samuel Morris, General L.B. Catlin, and Patrick Keady, while Winchester Britton, District Attorney of Kings County, led the charge for the people. Hyde’s attorneys offered two primary defenses: 1) Self-defense – that Watson had attacked Hyde in the stairway, and thus the firing of her pistol was an attempt to save her own life, and 2) Temporary insanity.\textsuperscript{105} Prosecutors maintained unflinchingly that the “killing was premeditated – done in cold blood.”\textsuperscript{106} The temporary insanity defense – that Hyde was not emotionally stable at the time she committed the crime – received much attention by the press, and was analyzed in depth. The defense team summoned multiple medical doctors to testify to how a woman might become insane: “Improper food, undue physical exercise, great emotional disturbances, grief, disappointed affection.” These reasons almost inextricably linked the terms insanity and hysteria, and suggested that despair ultimately could drive a woman to madness.\textsuperscript{107}

\textsuperscript{102} “Another Brooklyn Horror,” \textit{Chicago Tribune}, January 30, 1872, 5

\textsuperscript{103} “Another Brooklyn Horror,” \textit{Chicago Tribune}, January 30, 1872, 5. The sequence of people to whom Fanny Hyde admitted her guilt is intriguing. Despite her marriage, she went first to her father, suggesting that the paternal bond is somehow more significant than that of husband and wife.

\textsuperscript{104} \textit{Official report of the trial of Fanny Hyde}, 34.

\textsuperscript{105} \textit{Official report of the trial of Fanny Hyde}, 34.

\textsuperscript{106} \textit{Official report of the trial of Fanny Hyde}, 34.

\textsuperscript{107} \textit{Official report of the trial of Fanny Hyde}, 30-31.
By blaming hysteria, Hyde’s lawyers actively stripped her of any agency in an effort to save her from life in prison. Hyde may well have been traumatized and mentally ill. She had dropped from 125 to 95 pounds in weight and even exclaimed to family members that she wished she were dead. District Attorney Britton’s assessment of Hyde ironically granted her more agency. Britton claimed in his opening statement that Hyde agonized over her “condition of servitude to this man until her life became too heavy for her to bear.” Conscience was at work, he insisted, not insanity. The implication was that Hyde was not only physically able to harm Watson, but was intellectually capable enough to plot his murder.

Despite denying Hyde of her ability to reason, her lawyers were skilled at eliciting sympathy from the jury. The team, led by Samuel Morris, focused on the fact that Watson had taken Hyde’s virginity, “the gem which is the honor and glory of every woman.” Morris stressed that Watson had taken her sense of value and self-worth, and challenged the jury to ask themselves whether Hyde should meet the same fate as a vicious murderer. There was even more at stake, he claimed, than Hyde’s private sense of self-worth. An impure woman instantly became less marketable to a future husband, leading to potential financial ruin for her father’s family. Moreover, Morris emphasized just how young Hyde was during the ordeal (fifteen at the start) by criminalizing Watson’s desire to employ “young girls – children – before their judgments are formed, bringing about their ruin.” Adding to the emotional appeal of the case, Morris challenged the all-male jury to imagine their own daughter at the mercy of a man such as Watson. He asked, “How do you look upon them [your

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108 Official report of the trial of Fanny Hyde, 35, 55.

109 Official report of the trial of Fanny Hyde, 35.

110 Official report of the trial of Fanny Hyde, 37.

111 Official report of the trial of Fanny Hyde, 40.
daughters, gentlemen? As women with their minds and judgments formed, prepared to enter in a contest with a man of mature age? Oh, no! You regard them as children – they are children fifteen years of age.”

Morris emphasized that Watson had seduced and ruined an impressionable youth, consistently referring to Hyde as a “child” in order to achieve maximum sympathy. He dared the jury to “convict this child,” pressing each member to feel as responsible for ruining Hyde’s future as George Watson had been. Morris’s outrage and appeal to reason echoed the reform-minded agenda of many nineteenth-century activists who believed that the workplace was an unsafe space for young girls.

But some questioned Hyde’s story. As a result, her lawyers presented several witnesses to prove that her accusations of forced physical intimacy were true. Factory engineer Isaac P. Maples testified that while fixing the lock of a door inside the factory, he heard a door about five feet away unlock, and saw Hyde and Watson come out of the room together. No one else was in the room, and Hyde had “blushed some and colored a little.” Though Maples had not seen anything definitive, he found it unusual for Watson to be in a locked room with only one of his female employees. Hyde’s co-worker William Newton similarly testified that he sometimes saw Watson enter the girls’ boarding houses late at night after working hours, and that he often would buy gifts for some of the girls. He also stated that Watson regularly followed Hyde around the factory. But Newton’s most damning testimony was that he once witnessed the pair in a stairwell “with his [Watson’s] arm around her neck kissing her face.” Although Watson was a married man, he made his feelings for Fanny Hyde apparent to even the casual observer.

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112 Official report of the trial of Fanny Hyde, 100.

113 Official report of the trial of Fanny Hyde, 49.

114 Official report of the trial of Fanny Hyde, 46.
The most gripping testimony of the trial came from Hyde herself. Hyde, “much distressed in mind and weighed down in grief,” told the jury that she was a virtuous girl when she began working for Watson, and that within five months of employment Watson began his attempts at “improper intimacy.” Watson promised Hyde that once she was married his visits to her room at the boarding house would cease, even securing an oath to this on a Bible. And yet several months later, Watson “renewed his intimacy” with Hyde. She explained to a captivated jury that she frequently wept over her situation and was continually worried and anxious. A major revelation to emerge from her testimony was that she had become pregnant with Watson’s child, and that he provided her with prescription medications to abort the fetus. With this admission, the defense team brought in Dr. John Byrne to discuss the inherent dangers of performing abortions on young girls. Byrne claimed that terminating a pregnancy in someone under sixteen would “depress her physical powers” and wreak havoc on her nervous system, having more negative than positive effects on the developing body and mind. He continued that disrupting the normal menstrual cycle could affect some women to the “extent of hysterical paroxysms,” sometimes leading to impulsive and erratic behavior. Hyde’s lawyers used this testimony to advance their temporary insanity defense, claiming that the abortion pills she was given destabilized her hormones, causing her to behave in a manner atypical of herself.


116 Official report of the trial of Fanny Hyde, 64.

117 Official report of the trial of Fanny Hyde, 73.

118 Official report of the trial of Fanny Hyde, 72; Dr. John Byrne had been practicing medicine for twenty-four years and was the director of New York City’s St. Mary’s Women’s Hospital, and Clinical Professor of Uterine Diseases at the Long Island Medical College.

119 Official report of the trial of Fanny Hyde, 74. The contemporary view of menstrual cycles was that they often led to feelings of rage, or “impulsive insanity.” This “insanity” could be brought about by either sudden shock, or long and
On March 9, 1872, Hyde pleaded not guilty to murder charges; her trial began on March 25, and made headlines for weeks. However, after twenty-nine hours of deliberation the jury was unable to reach a verdict, ten were for acquittal and two believed Hyde was guilty of manslaughter in the fourth degree.\textsuperscript{120} Without a unanimous decision, the judge ordered a re-trial and Hyde was released on $2,500 bail. Nine months later she failed to show in court for her new trial – Hyde had fled New York City, and was arrested several days later on Capitol Hill in Washington, DC. She protested her arrest, claiming she was unaware of her mandatory court appearance.\textsuperscript{121} While awaiting her second trial, Hyde was sent to Raymond Street jail until she was, again, released on $2,500 bail. After making bail Hyde disappeared from the historical record, never seen or heard from again.

The jury’s inability to reach a unanimous decision in Fanny Hyde’s trial reveals an ambivalence toward victims. While many believed that young girls were inherently innocent, attitudes were beginning to change. As the turn of the century approached, people stopped viewing women as virtuous, but instead as promiscuous and uncontrollable. Advocates of this theory posed women as the more sexually deviant gender, claiming that men like George Watson could not help but be intrigued by an attractive life of sin.\textsuperscript{122}

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\item \textsuperscript{120} "Trial of Fanny Hyde," \textit{Buffalo Daily Courier}, April 21, 1872; "The Case of Fanny Hyde," \textit{Schoharie NY Union}, 1872.
\item \textsuperscript{121} "Arrest of Fanny Hyde," \textit{Hudson NY Evening Register}, March 24, 1873.
\end{itemize}
In 1879, another sexual harassment case hit the papers when Mary Murray filed a lawsuit against General Erastus B. Tyler, Baltimore’s postmaster. Tyler was a celebrated Civil War General from Maryland who successfully led his brigade into battles such as Antietam and Gettysburg before entering local politics in 1865. Murray sought $20,000 in damages for indecent assault while she was an employee of the Baltimore post office. She claimed that on several instances Tyler became too familiar with her, inviting her to his apartment, into his office, and even asking for “kisses” of appreciation after granting her a promotion. Moreover, Murray claimed that once her charges were made public, she was discharged from her position as Tyler’s clerk. When she inquired about her dismissal, she was told that if she had acceded to Tyler’s wishes, her story would have ended differently. After a highly publicized five-day trial, the jury deliberated for only three hours before rendering a verdict for the plaintiff – Murray received $5,000 in damages. Though the decision set a precedent for women who endured exploitation in the workplace, the Maryland Court of Appeals voided it upon a technical matter. Nonetheless, in a period when women were seen as unequal participants in the law, Murray’s victory at the local level was noteworthy.

In June 1877, Mary A. Murray, a poor, working girl in Baltimore, Maryland, had minimal life experience and few job prospects. That same month, she fortuitously reconnected with an old


125 “The Murray-Tyler Suit,” The Boston Sun, April 14, 1881.

acquaintance who worked as a bondsman for Erastus B. Tyler, a retired Civil War General and current Postmaster of Baltimore. He told Murray of a job opening at the Baltimore Post Office and after pursuing the lead, Murray began work as a postal clerk in the registered letter department. Murray’s desk sat opposite Postmaster Tyler’s private door, and as a result of her “prepossessing appearance and straightforward manner,” she soon became his private secretary. In July 1877, Tyler asked Murray for a specific letter from the large, walk-in safe within their office. Murray complied and walked into the safe before realizing that Tyler had followed her inside. He subsequently shut the door and “treated her indecently.” At this point, Murray burst into tears and proclaimed to Tyler that he had insulted her, asking that he stay away from her in the future. Tyler obeyed Murray’s request for several months, but in December of the same year he crossed her again when he “put his arm around her waist, and, forcibly drawing her head down, tried to compel her to kiss him.” Tyler proceeded to extend Murray an invitation to his private residence and offered her a private car ride through the park. When she refused, he asked if he might instead visit her at the boarding house provided for female Post Office employees. Again, she refused.

Growing increasingly frustrated with his insults, Murray complained of Tyler’s behavior to a friend who advised that she maintain her position, but suggested that she avoid direct contact with Tyler as much as possible. Murray agreed, and subsequently asked for a transfer within the Post Office. She was moved to the Ladies’ Delivery Department – a section of the Post Office that was

127 “The Murray-Tyler Suit – Interesting Legal Arguments, the Question of Non-Residence Discussed, English Common Law and Maryland Statues,” Baltimore Sun, April 9, 1881, 4.


129 “General Tyler Accused – His Alleged Treatment of a Young Woman in the Baltimore Post Office,” New York Sun, April 10, 1881, 1.

130 “General Tyler Accused” New York Sun, April 10, 1881, 1.
“cut off from the other rooms by a partition,” and had only a small stained glass delivery window in the front. Segregating herself from male employees seemed an easy remedy to the problems she faced – the physical act of partitioning herself off from male workers was a telling defense mechanism employed to protect herself from unwanted male attention. But after her transfer, Tyler allegedly visited the Ladies’ Department frequently, and quickly became intolerant of Murray’s evasiveness. His irritation peaked in a fit of rage during which he grabbed her wrist and pushed her forcibly to the corner of the room, out of view from the delivery window. After this incident Murray confided in her female co-workers about her plans to quit, but they advised her to “remain, if possible, as her place was all she had to depend on for her living.” Within the next year, it became clear that Murray was not the only female postal employee who had complained of Tyler’s brazen behavior. Authorities in Washington, D.C. began investigating Tyler on charges of indecent assault against other women working as clerks in his Post Office. Murray twice was summoned to testify, but she feared that the resulting publicity might negatively affect her employment status. It was not until she read slanderous statements about herself in a small newspaper controlled by Tyler, that she decided to testify against him.

Though Tyler was a well-known Civil War leader and a local public figure, the Post Office Department assigned Special Agents to investigate the nature of Murray’s allegations. Tyler’s “conduct and personal character” were heavily scrutinized during an investigation that lasted over

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131 The separation of the Ladies’ Delivery Department from the rest of the Post Office is interesting because it shows society’s reluctance to fully embrace women working in public. While women were employed in the same facility as men, they worked in a regulated, gender-segregated section that shielded them from unwanted attention.

132 “The Murray-Tyler Suit – Interesting Legal Arguments, the Question of Non-Residence Discussed, English Common Law and Maryland Statues,” Baltimore Sun, April 9, 1881, 4.

133 “The Murray-Tyler Suit,” Baltimore Sun, April 9, 1881, 4.

134 “The Murray-Tyler Suit,” Baltimore Sun, April 9, 1881, 4.
two months, resulting in a variety of charges including being “rude and discourteous” to postal employees, making “improper propositions to female clerks and ladies who have called to see him on business,” and lying under oath.135 The investigation was overseen by President Rutherford Hayes, and after careful examination of the evidence, Hayes announced his decision that “there was no sufficient reason for Tyler’s removal on account of his conduct, either official or personal.”136 Despite Murray’s willingness to cooperate with authorities and her compelling testimony against Tyler, she subsequently was removed from her position within the Post Office, while Tyler went unpunished for any of his alleged unlawful and inappropriate behavior. Moreover, Murray lacked a male representative to act as her liaison to the public sphere, and because of this, she lacked agency and credibility in the face of prominent male figures.

Unsatisfied with the outcome of Hayes’s investigation, Murray retained a lawyer and initiated a lawsuit against Tyler, alleging that the various assaults on her character had caused her both physical and emotional distress worth $20,000.137 Not only had he inflicted bodily harm but he also had devalued her worth as a potential wife, as the ideal Victorian woman was unsullied until marriage. The trial began on April 9, 1881 in the Circuit Court of Howard County, Maryland.138 After a five-day trial, the jury rendered a verdict in favor of Murray, and awarded her $5,000 in damages. Though only a fraction of what she hoped to receive, the case marked a real and significant victory for women pursuing similar claims during the Reconstruction Era. Courts rarely


138 Murray was represented by rising legal star Charles J. Bonaparte, who later would serve as United States Attorney General. “Suit for Damages Against Postmaster Tyler,” *Kingston New York Daily Freeman*, December 19, 1879.
believed female accusers, responding more frequently to their fathers, as seen in the earlier investigation by the Hayes Administration where Tyler’s reputation emerged unscathed – his political position untouched – while Murray’s testimony was completely overlooked.139 But in the context of a jury trial, a single, workingwoman had provided evidence compelling enough to warrant monetary damages from an employer well above her social standing. On the one hand, this outcome demonstrated recognition of the increasing independence of American women, and Murray’s rights as an individual. On the other hand, the jury may have sought to make an example of Tyler because he was a prominent public figure. If so, the decision would have had little to do with expanding gender equality and more to do with quelling public uproar. Nonetheless, the decision was seen as a victory for expanding women’s rights in America, a movement that would gain tremendous momentum during the next decade.140

But Murray’s victory was short-lived. The decision immediately was appealed on the basis of non-residence – the Maryland legal code stated that no man was liable to be sued in a county in which he did not reside.141 Murray’s attorneys contended that, while Tyler did not formally reside within Baltimore’s City limits, a “daily attendance at the Post Office, between the hours of 9am and 4pm constituted a ‘business residence,’ per se which rendered him liable to be sued in the city.”142 In reaction, Tyler’s counsel argued that entering Baltimore City each day solely for business purposes

139 It is intriguing that in Fanny Hyde’s case, the lack of a maternal figure was associated with less morality, whereas in Mary Murray’s case the lack of a paternal figure was associated with less credibility.


141 Maryland Legal Code, Section 87, Article 75 states that no man is liable to be sued in a county which he does not reside; “The Murray-Tyler Suit – Interesting Legal Arguments, the Question of Non-Residence Discussed, English Common Law and Maryland Statutes,” The Baltimore Sun, April 9, 1881, 4; In the Court of Appeals of Maryland October Term 1881, Erastus B. Tyler vs. Mary A. Murray, Appeal from the Circuit Court of Howard County on Removal from Baltimore City (Baltimore, MD: Boyle & Son), 1.

142 Erastus B. Tyler vs. Mary A. Murray, 3.
was not reason enough to strip Tyler of the protection afforded by the non-residence statute.\textsuperscript{143} After a lengthy debate about what constituted legal residence for the purposes of a civil suit, the Court of Appeals reversed the trial court, ruling that a “mere business residence” was insufficient in such cases. Consequently, Tyler no longer was obligated to pay Murray $5,000 in damages because he did not legally reside in Baltimore City where the verdict had been rendered.\textsuperscript{144}

This decision was situated within the shifting trajectory of social attitudes toward women – once the epitome of moral rectitude, many now questioned female loyalties to domesticity and felt that notions of true Victorian womanhood were being challenged. The outcome of the Hayes Administration’s investigation (which more or less ignored Murray’s damning evidence against Tyler) was echoed by the Maryland Court of Appeals, which based its decision on obscure legal doctrine rather than on the evidence Murray presented. In a period when women increasingly were blamed for attracting unwanted sexual attention, the justification for overturning the original decision on the basis of non-residence seemed an opportune facade for silencing a female victim of abuse. Mary Murray may have captured the sympathies of jurors at the local level, but changing notions of female sexuality – especially the feeling that late nineteenth-century women were somehow less virtuous than their Victorian Era counterparts – were more deeply entrenched at the state and national levels.

The outcomes of workplace harassment cases like those of Fanny Hyde and Mary Murray ignited campaigns to protect women workers from ill-intentioned employers. Hyde and Murray are worth discussing in depth because their cases are uniquely representative of the experiences of young working women who dealt with gender inequality, the lewd ambitions of employers, and lax

\textsuperscript{143} Erastus B. Tyler vs. Mary A. Murray, 3.

\textsuperscript{144} “The Murray-Tyler Suit – The Case to Go to the Court of Appeals,” \textit{Baltimore Sun}, April 19, 1881.
regulations concerning the protection of women. Their experiences reveal that women overtly were
objectified in the workplace, which often had physical consequences and resulted in emotional
distress or tragedy. Their cases also relate to broader questions of the history of women’s rights and
moral reform.

The market and industrial revolutions of the nineteenth century forever altered the role of
women in American society. From the limitations of domesticity, to mill towns, to munitions
factories, the movement of women into wage labor changed the trajectory of gender relations for
decades ahead. Reformers’ most pressing concerns toward the end of the nineteenth century shifted
from limiting women’s participation in the public sphere to protecting them once they had arrived.
This chapter has shown that the harassment cases surrounding Mary Murray and Fanny Hyde drew
national attention to the risks of women interacting freely with men in the public sphere, and
inspired Progressives to call for a reassessment of current laws which restricted, and often exploited,
women workers. Women’s increased presence in wage labor simultaneously made them more
susceptible to sexual harassment in the workplace, and intensified public anxiety about women
interacting outside the safety of the home. Active female participation in the workplace prompted
serious discussions about protective legislation for women in wage labor, and inspired women
themselves to advocate for expanded rights and gender equality in America’s urban centers.
Chapter 2: Wards of the State, 1885-1908

In 1908 the United States Supreme Court made a landmark decision in Muller v. Oregon upholding the constitutionality of federal protective legislation for women workers. The Court ruled that regulating the hours of female labor was constitutional because women’s physical stature and maternal functions justified government interference. The decision was celebrated by many, but was not without controversy. While some saw the decision as a victory for women who were unable to contract their own labor with employers, others perceived it as a step backward for those who had spent decades trying to pursue work outside of the home.

Many welcomed Muller after the disappointment of the Supreme Court’s decision in Lochner v. New York (1905), which mandated that regulating the number of hours that bakery employees could work violated the workers’ freedom of contract. The court argued that the Fourteenth Amendment prohibited states from interfering with a range of Constitutional and common law rights. The Lochner decision set the precedent that sex-based employment practices were unconstitutional, and reflected a laissez-faire Supreme Court that believed in guaranteeing personal liberties, even at the expense of public health and safety.\(^1\) Though the Lochner decision did not make any distinction between men and women, this egalitarianism neglected the real differences in the legal status and experience of women workers. The 1908 Muller decision put government-issued protective legislation for working women on the national policy agenda.\(^2\)

In the post-Civil War period, women began performing “inside” work, or factory work. These women were generally unmarried and young, ranging in age from 16 to 25 (although some


\(^2\) Bernstein, Rehabilitating Lochner, 5-6.
probably rounded up to secure employment and were actually younger). Although factory work had the potential to pay well, it sometimes put women at the mercy of unscrupulous employers. Foremen had extraordinary power over women in their shops, as the foreman decided who worked the most hours and received the most lucrative piecemeal work. Dr. William Sanger, a physician who worked with working-class women at a hospital for venereal disease, explained that working women were taught to respect their foremen at all times, regardless of their questionable morals. Even when the women were treated poorly, Sanger explained that “a smile bestowed upon her employer will aid her in the struggle for bread. If a kind entreaty will be the means of procuring her dinner…she will not expose herself to hunger.”

Sanger’s findings touched on the very fears that reformers had about women in the workplace, particularly the concern that “inside” work put women into close proximity with temptation. Temptation, then, could lead directly to pre/extramarital sex and its unintended consequences: Venereal disease and unwanted pregnancy.

The female factory worker of the late nineteenth century was strikingly different from the famed Lowell Mill girls. Factory workers had agency and “female self-assertion” as they began to dislodge themselves from the paternalistic rhetoric that had guided the mill work of previous decades. Work in mill towns offered some semblance of independence for women workers, but they still saw heavy protections placed on them such as curfews and dormitory-style living. Factory work allowed women to live by themselves or with friends if they desired, which gave them the independence to do as they pleased in the evenings after work. Men felt threatened by female factory workers because the idea defied traditional family values in which wives supported the family

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from home. For example, James Burn worked in the hatting industry and claimed that working women made poor wives because they lacked regard and deference to their husbands and essential household skills. But more so than men, it was social reformers who worried about women working outside of the home. Young factory girls living independently from their parents posed two problems: First, their independence challenged the tradition of women contributing to the family income, and instead allowed women to spend their wages on indulgences. Reformers worried that disposable income would allow women to partake in commercialized leisure, which often included mingling with the opposite sex. Second, between 1880 and 1910 “young women’s freedom from parental control over their erotic adventures” corresponded to a thirteen percent rise in premarital pregnancy. This rise suggests an increase in sexual activity among single workingwomen.

The influx of women in wage labor led reformers to think actively about sex-based limitations to female work. Reformer Elizabeth Faulkner Baker believed that women were a class as distinct as children, and thus deserved similar protections. Though Baker published her work on protective labor legislation for women in 1925, her research cites extensive evidence from the 1880’s and 1890’s. She argued that women needed protections not afforded to men because they were “separated by natural conditions from all other laborers.” In other words, they were responsible for childbirth. Moreover, she believed that men and women could not perform the same type of work without consequence. Certain kinds of work that men can perform without incident “would wreck

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5 Stansell, *City of Women*, 122.

6 Stansell, *City of Women*, 126.


the constitutions and destroy the health of women.”9 Women, the mothers and future mothers of society, needed protection to ensure the public health and welfare of society. Overwork and nightwork were sure ways to lead to physiological and mental exhaustion, which often contributed to lapses in moral judgment.10

As industrialization soared, so did reports of women being injured and/or mistreated in the workplace. Many of these incidents were physical workplace accidents, such as the accidents reported at Lawrence Manufacturing Company in Boston. Nineteen-year-old Emmeline Beaudry was injured when she fell against a machine while working and her “hair was caught and wound up around the spindle.”11 Her scalp was torn open on the back part of her head. In another example, Emma Labarge – age fourteen – slipped on the factory floor and sprained her right ankle. The incident report states that Labarge slipped while running and playing with a female co-worker, and that she had been warned several times that the factory floor was not a place to play. What is intriguing here is that fourteen year old Labarge – a child by today’s standards – was indeed engaging in very child-like activity, and yet was held to the same standards as her adult co-workers. This brings to light the juxtaposition of child-like girls being thrust into very adult settings too early.

In a particularly gruesome accident, Angie Eaton slipped and fell forcefully into a sitting position “upon an oil can she had placed on the window sill…the tube of the oil can penetrated her


11 Lawrence Manufacturing Company Accident Reports, Lowell Massachusetts (May 8, 1893), Series G. Labor and Manufacturing records, 1833-1955 Box GO, Baker Library Special Collections, Harvard Business School, Cambridge, MA.
private parts causing a considerable loss of blood.” Eaton was blamed for this accident; her incident report stated that the injury was “caused by her own carelessness as she should not have placed the oil can upon the window sill.” This was a common theme in Lawrence Manufacturing’s log of accidents. Most of the reports claimed negligence on the part of the female worker, and frequently used language such as “her own carelessness,” “it was her own fault,” and “due to her own negligence and stupidity.” The exception to this rule was when one woman, Bernadette Asseline, hired an attorney to collect money from the company after she was injured. She had been hit on the head and face “with great force” when a pulley over her head broke and fell, causing her pain and severe injury. In this particular instance, the section on negligence/blame was left blank. Women in this period lacked the proper language or legal tools to represent themselves in court without a male liaison acting on their behalf. The blank negligence section in Asseline’s file suggests that Lawrence Manufacturing Co. may have felt threatened by her male attorney and less likely to assign her blame for the accident. Asseline was awarded $600 in damages.

Although factory work took a physical toll on women’s bodies, there were other factors – such as female morality – that concerned reformers. An 1884 report titled “The Working Girls of Boston,” circulated by the Bureau of Statistics of Labor (The Bureau), went beyond the physical

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13 Lawrence Manufacturing Company Accident Reports, (May 8, 1893).

14 Lawrence Manufacturing Company Accident Reports, (May 8, 1893).

15 Letter from Jeremiah Crowley to the Lawrence Manufacturing Company (January 24, 1896), Series G. Labor and Manufacturing records, 1833-1955 Box GO, Baker Library Special Collections, Harvard Business School, Cambridge, MA; Lawrence Manufacturing Company Accident Reports, (May 8, 1893).

16 Lawrence Manufacturing Company Accident Reports, (Jan 8, 1896).
stress on women’s bodies, and examined the moral condition of working girls.\textsuperscript{17} The Bureau funded a report on Boston women to determine the “truth or falsity of damaging assertions and charges [brought against working women]” by inspecting the girls in their homes and places of work.\textsuperscript{18} The Bureau also hoped that the study would encourage wealthy benefactors and local charities to donate money to the moral encouragement of Boston’s working women, who often lived in poor conditions and without family support.\textsuperscript{19} The report claimed that long hours led to exhausted female workers who often walked home from work after dark. This idea was troublesome to reformers, as the weary woman was not as strong, nor as alert, as her well-rested counterpart.\textsuperscript{20} The report also argued that the workplace was not a place for honing femininity. Many women “spoke very frankly about ill treatment by their employers.”\textsuperscript{21} One discussed the vulgar language used by male workers in her presence, while another stated that men “curse and swear at the girls and treat them very shabbily.” Women also complained that foremen “subjected [them] to rough words and harsh treatment” for even the slightest mistake.\textsuperscript{22} The study revealed that Victorian era virtue and femininity were absent from the workplace, causing increasing anxiety among reformers and physicians.

The success of the Boston investigation inspired several decades of similar studies, such as one commissioned by New York governor John Dix in 1912. His report found many factories in

\begin{footnotesize}
\begin{enumerate}
\item Wright, \textit{The Working Girls of Boston}, 121
\item Wright, \textit{The Working Girls of Boston}, 118.
\item Wright, \textit{The Working Girls of Boston}, 72.
\item Wright, \textit{The Working Girls of Boston}, 119.
\item Wright, \textit{The Working Girls of Boston}, 119.
\end{enumerate}
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New York to be “dirty, only three [of those inspected] being in really good condition in regard to cleanliness.”

It also highlighted the “extreme youth” of many of the girls working in New York’s factories. Reformers and physicians such as Florence Kelley and Dr. Angeline Martine of Utica, New York, argued for more proactive legislation to limit both the number of hours worked by women, and the time of day in which those hours were obtained.

Poor treatment in the workplace fueled critics of female employment. Some believed that women made such meager wages, that it often was not even worth them leaving the home. Others feared that women who dressed well must earn extra money on the side to accommodate such a lavish lifestyle. The implication here was that they were prostitutes. While “The Working Girls of Boston” did find many aspects of female employment problematic, it denounced the idea that women were dabbling in prostitution. The report stated that the working girl who earns three or four dollars each week is itself proof that she is not resorting to prostitution, as “girls cannot work hard all day and be prostitutes, too.” This sentiment was echoed by the Boston Young Women’s Christian Association, which housed many working girls in its boarding houses and described its tenants as young women who “struggled to secure an honest livelihood…surrounded by good moral influences and leading virtuous lives.”

The YWCA imposed curfews and enforced weekly church attendance to preserve the morality of its tenants. One of the organization’s ‘special janitors’ who maintained a group of eight boarding rooms claimed to have extensive knowledge of the women housed by the YWCA. He reported that “there is not a more industrious, moral, or virtuous” class of girls in the entire Boston community, “the idea is preposterous that they walk the streets at night

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or are improperly influenced by their employers.”26 The Boston YMCA certainly believed that only women of the “strongest character” were associated with their organization.27

While investigations into YWCA housing provided valuable insight into the type of women who utilized the organization, it should be noted that the investigation focused almost exclusively on accounts from supervisors and those in ‘authority’ positions. The people operating, and presumably profiting from, the YWCA boarding houses stated unanimously that their tenants were moral and virtuous women. It is possible that the group relied on external funding that was based (at least partially) upon the morality of its tenants, or that job security for certain positions relied on positive publicity. Interviewing the girls who lived there, instead of their supervisors, may have provided a more unbiased – and a potentially different – version of living conditions and lifestyle choices.

William Sanger’s 1895 History of Prostitution was the impetus for many reports on working women, like those done in Boston and New York. Sanger, a physician who was alarmed by the increase in prostitution in New York City, was commissioned to research and report on what drove women to prostitution in nineteenth century New York. For his study he interviewed 2,000 female hospital patients with venereal disease, and hoped to explain why women might resort to prostitution.28 For example, a woman referred to only as “E.S.” was seduced in Rochester, NY, at age sixteen. She lived in Rochester for several years with her seducer before he deserted her without marrying her, leaving her to fend for herself. Her embarrassment and financial despair led to a “wretched existence” by age nineteen.29 Another Rochester woman, “E.C.”, was married at age

26 Wright, The Working Girls of Boston, 122-123.
29 Sanger, History of Prostitution, 454.
fourteen and was driven to prostitution because of her abusive husband. By age nineteen, she had become a “confirmed drunkard and lost all sense of shame.”

These examples helped contribute to middle class anxiety about what happened to women without gainful employment and stability at home. Perhaps most distressing was the finding that nearly twenty-five percent of prostitutes initially dabbled in it because it seemed like an “easy” way to make money, attributing at least some level of agency to the women. This was upsetting to reformers who had generally been quick to consider prostitutes as “victims of circumstance and destitution.”

Sanger’s work more specifically addressed the dangers of the workplace when he discussed a sixteen-year-old girl who was “seduced by her employer, a married man” and became too ashamed to return home to her parents. The girl later found out her seducer was diseased, and that she had no future but to become a prostitute. In an almost identical case, “A.B.” stated “my lover seduced and diseased me while I was working in a factory.” Sanger’s study led him to determine that ‘every’ factory in the country had some level of “insidious influence” on the women who worked within. Sanger’s work was distressing, and fed into reformers’ concerns that the industrial workplace was no place for respectable young women.

Fears about dangers within the American workforce ignited national discussions about gender and workplace reform. In traditional common law, women were grouped with children as a
class incapable of caring for themselves. 36 But by the turn of the nineteenth century, the legalistic way of thinking about women began to change. Women no longer needed protection because they were necessarily ‘incompetent,’ but now needed government oversight for protecting their health as potential child bearers. 37 One of the earliest cases to consider protective legislation for women was Commonwealth v. Hamilton Mfg. Co. (1876). The case considered a Massachusetts law restricting women and children’s hours to ten per day. Though children had long been protected, Commonwealth was one of the first to address the issue that women were worthy of workplace protections in ways that men were not. Legal scholar Nancy S. Erickson explains this first moment of gendered legislation by suggesting that lawmakers took the “petticoat route:” Legislators knew that passing protective legislation for women would prove easier than passing the same legislation for men. 38 The resulting laws would, in effect, limit work for both sexes without having to acknowledge directly that men also benefitted from protections. 39 Since men and women generally worked in tandem, if women were sent home after ten hours men also would effectively stop working. 40

Legally limiting women’s labor without limiting men’s was deemed acceptable for several key reasons. First, women’s maternal obligation to society was especially relevant after the idea of Social Darwinism became a household term in 1859. Social Darwinism suggested that the survival of the human race depended on protecting its child-bearers to ensure healthy and vigorous offspring. In


38 Erickson, “Muller v. Oregon Reconsidered,” 234.


40 Erickson, “Muller v. Oregon Reconsidered,” 234.
other words, women were fair game for government regulation for the sake of the nation’s children, and women’s bodies became essentially public property because of their reproductive abilities.\footnote{Erickson, “Muller v. Oregon Reconsidered,” 240.}

Second, the idea of freedom of contract was a very masculine ideal, and restricting a man’s ability to contract his own hours “was somehow degrading to his manhood.”\footnote{Erickson, “Muller v. Oregon Reconsidered,” 238.} Men were thought to have the intellectual and physical capacity (that women lacked) to contract with employers, independent of government regulation. This is seen in Godcharles v. Wigeman (1886) in which the Pennsylvania Supreme Court determined the ‘truck system’ to be unconstitutional because it violated male workers’ right to contract freely.\footnote{Laura Phillips Sawyer, “Contested Meanings of Freedom: Workingmen’s Wages, the Company Store System, and the Godcharles v. Wigeman Decision,” The Journal of the Gilded Age and Progressive Era, 12, Issue 3 (July 2013): 285-290.} The truck system allowed companies to pay employees in company scrip – currency valid only at the company store – instead of in cash. In 1884 Frank Wigeman of Milton, Pennsylvania, sued his employer, Godcharles and Company, for paying him in scrip. Godcharles was accused of violating an 1881 Pennsylvania law which prohibited companies from compensating employees in company scrip. The Court sided with Godcharles, invalidating the 1881 anti-truck law “as an unconstitutional limitation on workingmen’s freedom to make private employment contracts” with employers.\footnote{Sawyer, “Contested Meanings of Freedom,” 287} This decision reinforced the idea that men required fewer protections in the workplace than their female counterparts, as limiting their ability to contract freely was a check on their masculinity.

The next challenge to gendered protective legislation came in 1895 with Ritchie v. People in which the Illinois Supreme Court ruled that a statute limiting the hours in which women could work was unconstitutional. In 1894 a factory inspector accused factory owner William Ritchie of violating
a state law prohibiting the employment of female workers for more than eight hours daily. When the local court upheld this law, Ritchie took the case to the Illinois Supreme Court. At this level, the Court sided with Ritchie claiming that restricting a woman’s labor violated her right to contract, a fundamental right “that cannot be taken away without due process of law.” The Court further argued that unless the industry was unhealthful (and therefore a public health issue), women were entitled to the same right to contract as were their male counterparts. Manufacturers celebrated the decision, as it meant they could work women for longer hours per day (and pay them less than male workers). Employers were quick to point out that a decision in favor of protecting women would actually have hurt women in the long run. Fewer hours meant less money each week, “sometimes to the point of leaving a gap between the income needed to live and the income actually received.” But Progressive reformers were unsatisfied with the legislation, and feared that a lack of regulation would lead to overworked and exploited female employees. Ritchie remained in effect until the U.S. Supreme Court made its landmark decision in Muller v. Oregon (1908).

The direct legal precursor to Muller was the 1905 Lochner v. New York case in which the Supreme Court held that limiting the hours in which bakers could work violated an inherent right to contract, which was guaranteed by the Fourteenth Amendment. The Lochner decision did not divide workers by gender. It merely stated that restricting the number of hours in which workers could obtain wages was unconstitutional. The defense team argued that maximum hour laws were necessary and legal if “they targeted a health threat recognized either by common knowledge or in

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46 Ritchie v. People, 155 Ill. 98 (1895); Gillman, American Constitutionalism, 2.

47 Ritchie v. People, 155 Ill. 98 (1895); Gillman, American Constitutionalism, 3.

And many believed that because bakeries provided bread for entire communities, bakers did relate to public health. But the Court ultimately decided that regulating bakers’ hours did not pose a direct enough threat to public health.

Three years later, the decision was challenged in Muller v. Oregon. Even before the Muller decision, various states began passing restrictive workplace legislation for women. Florence Kelley was a long-time proponent of protective legislation, and enacted a statute in 1893 that limited the hours per week that women and children could work. Kelley was so invested in this, that she herself oversaw the inspections and enforcement of the legislation. She observed a series of state and federal labor decisions in the 1890’s in which requests to provide protections for female labor were either overruled or dismissed, and feared that “judges know nothing of the injury to health suffered by girls working until late at night or on all-night shifts.” Kelley believed that what was at stake for many female workers was not only their safety, but their childhood. Factories were becoming “continually more complex and more dangerous,” and each year the women entering the workforce seemed to become younger. Girls who had barely reached puberty were expected to leave the home for wage labor, and this was deeply troubling to Kelley.

The idea of freedom of contract was very controversial and was at the center of debates about workplace regulations for both men and women. Employers supported the concept of freedom of contract because their profits grew when anti-protective labor legislation was successful. But reformers who supported labor regulations disliked the idea, claiming that historically courts had

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49 Bernstein, Rehabilitating Lochner, 60.

50 Nancy Woloch, Muller v. Oregon: A Brief History with Documents (Boston: Bedford/St. Martin’s) 1996, 6.


52 Goldmark, Impatient Crusader, 150.
protected the weaker party (in this case women workers). Florence Kelley echoed this sentiment, stating that “the mass of unskilled working women who are unorganized are as defenseless as children.” By the time Muller made its way to the Supreme Court in 1908, Kelley’s initiative to regulate female labor had reached women in twenty states.

The Muller decision was largely based on the belief that women were responsible for continuing the growth of the human race. Supreme Court Justice Brewer who delivered the unanimous majority opinion stated, “the race needs her, her children need her; her friends need her, in a way that they do not need the other sex.” This quote is indicative of the gendered – and patriarchal – sentiment that prevailed across the country at the turn of the twentieth century. Women were simultaneously more and less valuable commodities than their male counterparts: They earned less in the workplace because of their supposed inferior mental and physical capacities, but also deserved specific protections because of their ability to birth children – the most vital component to any society. Justice Brewer’s views echoed Florence Kelley’s statement that, “so long as men cannot be mothers, so long legislation adequate for them can never be adequate for wage-earning women.” Essentially, to call for equality between genders where there was inherent inequality was “stupid and deadly” for women workers.

53 Woloch, Muller v. Oregon, 13.
55 Woloch, Muller v. Oregon, 6.
56 David Brewer, The Legitimate Exercise of the Police Power on the Protection of Healthy Women, Charities and the Commons, (Nov. 8, 1908) quoted in Bernstein, Rehabilitating Lochner, 62.
57 Bernstein, Rehabilitating Lochner, 100; Florence Kelley, Shall Women be Equal (National League of Women Voters, 1922), p. 41 quoted in Bernstein, Rehabilitating Lochner, 45-46.
Muller v. Oregon originated in 1905 when Curt Muller, the owner of a Portland laundry shop, violated Oregon’s maximum hours law. Muller required a female employee, Emma Gotcher, to work for more than ten hours in a single day. Ironically, the incident took place on September 4, which was Labor Day. Muller was fined but refused to pay, and instead brought the case to the Oregon District Court, where he was unsuccessful. Muller appealed the decision to the Supreme Court of Oregon, which sustained the previous court’s decision. Immensely frustrated, Muller appealed to the U.S. Supreme Court. His appeal asked the Court to overturn a 1903 law in which Oregon had adopted a ten-hour workday policy for women workers. The Court agreed to hear the case and oral arguments began in January 1905. This was not the first time the Supreme Court had heard a case regarding maximum hours legislation (recall that Lochner v. New York was also about maximum hours). The difference between Muller and Lochner though, was that the Lochner decision addressed only male workers. So when the Court took on Muller, they had to justify it by distinguishing between work in a bakery and work in a laundry. The Court decided that “there were unique and overriding reasons for regulating the hours of women workers” independent of their male counterparts. Most of these reasons had to do with women’s ability to bear children.

The National Consumers’ League (NCL) took a position against Curt Muller, and argued that protections for female laborers were absolutely necessary. Though they would eventually hire Louis D. Brandeis to represent them, they initially hoped to retain Joseph H. Choate. However, Choate was let go when his views failed to align with the NCL’s positions. He showed little

58 Goldmark, Impatient Crusader, 150.
sympathy for women workers, stating there was “no reason why a big husky Irishwoman should not work more than ten hours a day in a laundry if she and her employer so desired.”\textsuperscript{61} Shortly thereafter, Brandeis was hired. Although Brandeis was not their first choice in an attorney, he would end up playing a pivotal role in the NCL’s victory in \textit{Muller}.

Louis Brandeis was a Boston-based lawyer, and the son of Jewish immigrants. After graduating from Harvard Law School at the top of his class, he began a successful law firm in Boston. He embodied the ideals of the Progressive reformers who fought to improve society, and feared that women were unsafe in the unprotected public sphere. This included the workplace.\textsuperscript{62} Brandeis saw a fundamental difference between regulating the work of male bakers and female laundresses, and sought to prove that the Oregon statute was lawful. To prove this point, Brandeis envisioned a brief that would provide statistical data to link the negative effects of long hours to women’s health, and thus to the welfare of their families. His brief would have to harp on the biological differences between men and women, as well as women’s reproductive capabilities. He needed to justify that women workers required federally imposed protections that their male counterparts did not, and believed that factual evidence would make his case.\textsuperscript{63}

Brandeis enlisted the help of Josephine Goldmark to write the brief, which became known as the ‘Brandeis Brief.’ The brief was over one hundred pages and utilized sociological evidence to argue for protective legislation. Goldmark was a social activist who worked closely with Florence Kelley and the National Consumers’ League. Her views about women in the workplace closely paralleled Brandeis’s, which led to a productive working relationship. Goldmark did the majority of

\textsuperscript{61} Erickson, “Historical Background,” 158.

\textsuperscript{62} Woloch, \textit{Muller v. Oregon}, 26-27.

\textsuperscript{63} Woloch, \textit{Muller v. Oregon}, 28.
the research for the Brandeis Brief. She met with factory inspectors, social workers, and medical professionals to form her own opinions about the conditions of factory work.\footnote{Ginsburg, “Muller v. Oregon,” 362.} She eventually determined that overwork, and specifically nightwork, was dangerous on two levels: “Physical and moral…the moral dangers are so obvious that they need only be mentioned: The dangers of the streets at night, and association with all kinds of men employees for long hours.”\footnote{Josephine Goldmark, \textit{Labour Laws for Women in the United States}, (Women’s Industrial Council Adelphi, W.C.) 1907, 3-5.} Her research was thorough – it took nearly six weeks to complete, and filled nearly seventy-five pages of the Brandeis Brief.

Goldmark believed that hostility toward protective labor laws for women and children originated with the “unenlightened employer” who saw labor restrictions as undue government imposition in business and the economy.\footnote{Josephine Goldmark, \textit{Fatigue and Efficiency: A Study in Industry}, (New York: Charities Publication Committee) 1912, 5.} She was an ardent believer that physical work itself did not erode the female body, but overwork and fatigue did. She also believed that the female physique required regulations for “excessive speed and complexity, prolonged standing, and the absence of monthly rest” to coincide with the female menstrual cycle.\footnote{Goldmark, \textit{Fatigue and Efficiency}, 40.} Limitations on industrial work were inherently necessary to protect women’s bodies from unnatural stress. Although she supported gender specific legislation, Goldmark found it problematic that women were judged for their physical delicacy when they fulfilled such a vital (and physically challenging) societal role as childbirth. Restrictions – both proposed and enforced – on men’s work had never devalued their role as citizens. She argued that similar restrictions should likewise not work against the value of
women’s role as citizens. She contended that the special functions of the female body made women even *more* valuable to the State and made protection even more vital than the protection of male labor.\(^{68}\)

In addition to limiting the maximum hours of women workers, Goldmark was also a proponent of abolishing night work for women. Night work “militated against morals as well as against health” and also took women away from the positive influences of home life in the evenings.\(^{69}\) She specifically attacked the glass industry, claiming it was among the highest industry to employ women in overnight shifts. Careful inspection of these factories found that at the end of night shifts could be found “the worst coarseness and immoralities resulting from the close association at night of men and women, hardened by the hottest labor.”\(^{70}\) Goldmark believed that prohibiting overnight shifts for women was the only viable way to protect against unscrupulous male co-workers and other immoralities associated with night work.\(^{71}\)

One of the most rampant vices associated with night work was alcoholism. The desire to drink alcohol arose from “sheer physical exhaustion” as a way to provide a stimulant for overworked bodies and minds. By sending women home before they reached the pinnacle of exhaustion, alcoholism would be less of an issue. A shorter workday, Goldmark believed, would be a “powerful influence toward sobriety and self-control” in all aspects of life.\(^{72}\) Young women were repeatedly overworked in factories and mills, and often went directly from work to the local saloon, where they

\(^{68}\) Goldmark, *Fatigue and Efficiency*, 254.

\(^{69}\) Goldmark, *Fatigue and Efficiency*, 267.

\(^{70}\) Goldmark, *Fatigue and Efficiency*, 275.

\(^{71}\) Goldmark, *Fatigue and Efficiency*, 277.

\(^{72}\) Goldmark, *Fatigue and Efficiency*, 279, 280.
would drink excessively to soothe their sore and tired bodies. Failing to pass regulations for female workers left women “exposed to terribly deteriorating influences” and negatively impacted their sobriety and morality. Regulations especially would help women working in laundries, who were deemed particularly “intemperate” and a bit rough around the edges. The chemicals used in laundries induced excessive thirst among the workers, and many women turned to the “pernicious habit of quenching the thirst with beer.”

Brandeis and Goldmark used examples of alcoholism among female workers to argue that the Oregon maximum hour statute must be upheld. The health, safety, and general welfare of women was at stake. Brandeis believed that the right to ‘liberty,’ and thus freedom of contract, was only mandatory so long as the police power could guarantee the protection of the health and morals of female workers. If this could not be guaranteed, then the Oregon law must be upheld.

Goldmark’s research suggested that there was “reasonable ground that women in Oregon working more than ten hours in one day is dangerous to the public health, safety, morals, and welfare,” which Brandeis interpreted to mean that women’s bodies made them deserving of special protections. But these protections did not take away from their viability as citizens. He argued that women whose employment was jeopardized because of legislation actually came out on top because

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ultimately they could find more healthful and moral employment elsewhere.\(^78\) He further argued that losing their jobs in one field would provide an even greater incentive for women to find “more efficient” employment, and to feel more useful in society.\(^79\)

Women also deserved workplace protections because of their physiology. Part of Goldmark’s research included an interview with Dr. Ely Van der Warker, who claimed that the physicality of the female body was not meant to stand upright for more than eight hours at one time. He claimed that female anatomy contained a “sustaining column” from her feet, up through her legs, and into the “organs contained in the pelvis,” which could easily deteriorate without proper care.\(^80\) Van der Warker also stated that women were compliant, more obedient workers. But despite their docility, they also had a reputation for missing work “on account of slight indisposition” and becoming injured under minimal strain.\(^81\) Young women were more susceptible to disease because of their monthly menstrual cycle, which was thought to lower immunity to outside pathogens. Medical professionals believed that “the natural congestion of the pelvic organs” made it difficult for women to work during menstruation, and thus required that women receive special regulations to protect their bodies.\(^82\) Reformers feared that the effects of long hours on the body – especially during menstruation – related closely to moral laxity, too. Some believed that working too many hours and too many days each week without time for leisure or relaxation led to substance abuse,

\(^78\) Bernstein, *Rehabilitating Lochner*, 63.

\(^79\) Bernstein, *Rehabilitating Lochner*, 63.

\(^80\) Brandeis and Goldmark, *Women in Industry*, 19

\(^81\) Brandeis and Goldmark, *Women in Industry*, 22

especially of stimulants. Working more than ten hours each day was detrimental to the health of women, leaving the female body “jaded and worn, and craving stimulants, which opens the door to other indulgences” such as drugs and pre-marital sexual activity.

The irregularity of working hours was yet another concern for working women. Some women worked long, or even double, shifts in order to have three or four days off in a row. But reformers feared that these women would find themselves bored and idle during their time off. They instead suggested that instead of long shifts for women workers, that labor be spread out over shorter shifts over more days each week. Shorter shifts led to “self-control and good habits” which coincided with steady, regular employment.

Goldmark’s research into working women revealed that there was unanimous support for the ten hour workday among factory inspectors, physicians, and working women. Even ten hours was considered too long for many women to endure, but there was consistent agreement that “ten hours is the maximum number of working hours compatible with health and efficiency.” In reality, the ten hour work day amounted to about thirteen hours in total. The women were given an hour meal break for dinner, thirty minutes for breakfast, thirty minutes for a mid-day break, and also spent an average of thirty minutes commuting each way. So, for women to truly have a ten hour work day from door to door, the actual amount of work time would need to be drastically shortened. One of the physicians interviewed, Dr. Sargent, believed that “ten hours a day [is]

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83 Brandeis and Goldmark, *Women in Industry*, 44.
enough for strong men; too long for delicate women.” But Sargent thought that the bigger problem for women workers was their constant proximity to male co-workers. He especially worried about overnight shifts because he believed that men’s morality began to deteriorate between the hours of 7pm and 8am. He suggested, in turn, that “all females, married and single” work only during hours of full daylight. He further believed that restrictions on female labor should not be contained to factory work, but should extend to all industries that employed women and young girls. Long hours, he asserted, would result not only in physical degradation, but moral degradation as well.

The Brandeis Brief was influential and impactful. But Muller’s attorneys made convincing arguments, too. He and his attorney, William D. Fenton, argued that imposing federal protections solely on women could result in limiting women’s ability to work rather than protecting it. Fenton foreshadowed a future in which protective legislation backfired, prohibiting women from workplace advancement and even precluding them from certain professions. By 1914 the American Federation of Labor (AFL) began to do exactly what Fenton had warned of, and banned women from work deemed “men’s jobs such as streetcar conducting, printing, and bartending” and even publicly supported gendered pay differentials for equal work.

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88 Brandeis and Goldmark, Women in Industry, 92.

89 Brandeis and Goldmark, Women in Industry, 92.

90 Brandeis and Goldmark, Women in Industry, 96.


92 Hoff, Law, Gender, and Injustice, 200.

93 Hoff, Law, Gender, and Injustice, 200.
Muller and his attorneys couched their argument in an adamant defense of gender equality, contending that women were “full citizens, and as such entitled to all the privileges and immunities” afforded by the constitution. Muller asked the Court to reflect on its *Lochner* decision, in which gender was not a factor. He believed, at least ostensibly, that the state had no place acting as a guardian to women, and challenged the Brandeis Brief’s paternalistic rhetoric. He argued that the same freedom given to male workers should be given to female workers, as gender had nothing to do with a worker’s right to contract. Women, he asserted, deserved the right to “pursue any honorable vocation, any business not forbidden as immoral.” The male body was no more or less entitled to federally imposed protection than the female body.

Although Curt Muller appeared to be a champion of equal rights, hindsight suggests that his case was an attempt to circumvent the effects of government imposed regulation on his small business. It was to his benefit that women’s labor went unregulated, as his profits would rise if he paid less for labor. Muller’s attorneys argued that the maximum hour statute should be imposed solely in “vocations that may be said to be immoral or that might have relation to [women’s] public morals.” Curt Muller defended his laundry as a safe and moral place for female employment, and his lawyers argued that if women had to work outside of the home, Muller’s laundry was a “moral and healthful” place to do so. Muller’s team challenged Goldmark’s research and the testimony of physicians, stating that there was no evidence to suggest that women working for longer than ten

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95 Johnston, *Radical Middle Class*, 21.  
hours in one day in any way jeopardized female health, or the public good. Absolutely no question of morals or welfare was at stake. Instead, “it is purely and simply a limitation on the hours of service of an adult woman in a healthful employment.”98 They argued that it was not within the police power of the State to deprive an adult woman, whether married or unmarried, of employment at will. Moreover, they warned of a slippery slope in which the State began regulating the lives of the adult woman, and soon became her legal guardian.

Muller’s team pointed out that women who were not yet adults were “wards of the nation,” because they were children. The State had an intrinsic right to make and execute rules for the nation’s youth, as they were vulnerable and naïve. Adult women, on the other hand, had no reason to be regulated by the State, especially once they were married (married women were ‘protected’ by their husbands under coverture). The State also had the right to regulate employment deemed “unhealthful or dangerous to life and limb.” But in a workplace setting in which the women employees were solely adults, and the workplace posed no danger or moral hazard, the State did not have the right to step in.99

Moreover, the State’s power needed restrictions lest it become too far-reaching. If such legislation was constitutional on the sole basis of gender, “there is no limit beyond which the legislative power may not go.”100 Fenton assured the Court that women were increasingly entering wage labor and very much wanted to be free from the patriarchal hand of the State that restricted their freedom of contract. Moreover, Fenton painted a picture of a hard-working and career driven woman whose potential was limited by outdated social customs of paternalism. The State was thus

98 Muller v. Oregon Brief for Plaintiff, 13.
99 Muller v. Oregon Brief for Plaintiff, 22.
100 Muller v. Oregon Brief for Plaintiff, 34.
“destroying [women’s] freedom of individual contract and the right of individual action.”

He argued that decisions about protective legislation for women workers should be made on a case-by-case basis, not with blanket legislation. For example, a widow or single mother may be responsible for dependent children and thus should be able to “contract with Muller for the services forbidden.”

A married woman, on the other hand, with a viable male head of the household could reasonably have her hours limited because she did not bear the sole burden of providing for her household.

After contentious argument and six weeks of deliberation, the Court ruled unanimously in favor of maximum hour legislation. Justice David Brewer wrote the majority opinion, stating that women’s “physical structure, and the functions she performs in consequence thereof, justify special legislation” to restrict and/or qualify workplace conditions. The female physique, with its maternal functions made her less fit for long hours even when she is not pregnant. Because healthy mothers produced healthy offspring, the well-being of female workers of all ages became “of public interest to preserve the strength and vigor of the race.”

The Court reasoned that women’s maternal obligation to society was so vital, that it justified legislation “to protect her from the greed, as well as the passion, of men.” The sexes differed on multiple levels, and the Court believed that difference was something to be celebrated – in this case with extra protections to reward women for the burdens they faced with regard to childrearing. The Court stated that legislation mandating a

101 Muller v. Oregon Brief for Plaintiff, 35.
102 Erickson, Historical Background, 161-162.
104 Muller v. Oregon, Majority Opinion by Justice Brewer, 421.
105 Muller v. Oregon, Majority Opinion by Justice Brewer, 422.
ten-hour work day for women was constitutional based on women’s physical delicacy, the ability to have children, the responsibility to raise and educate her children, and an obligation to her husband and home.\textsuperscript{106}

Despite the social gains women had made by entering the workplace, the \textit{Muller} decision shows that the Court still very much viewed women as dependents who relied on men for protection and guidance. It would take more than women’s presence in public to displace Nineteenth century paternalism. In the eyes of the Court, “women still look to their brothers, and depend upon them” regardless of advances in “political and contractual rights.”\textsuperscript{107} Women were still dependents, who differed very little from children in that they were unable to fend for or protect themselves if danger presented itself. Women would have to achieve greater strides in the public sphere to convince reformers and legal scholars that they deserved an unrestricted workplace.

Many reformers applauded the \textit{Muller} decision, and believed that women in 1908 were not worried about how protective laws would affect their careers since many worked on a temporary (pre-marital) basis. A handful of reformers, however, recognized that aspects of the \textit{Muller} decision could potentially harm female workers. For example, employers might be less likely to hire women on principle if they could not contract freely. But despite this admission, it seemed that any harm done was at the expense of a few, and the decision ultimately “advanced Progressive policies that would benefit all women, and eventually all of society.”\textsuperscript{108} The \textit{Muller} decision became known as the

\begin{itemize}
\item \textsuperscript{106} \textit{Muller v. Oregon}, Majority Opinion by Justice Brewer, 421-422.
\item \textsuperscript{107} \textit{Muller v. Oregon}, Majority Opinion by Justice Brewer, 422.
\item \textsuperscript{108} Bernstein, \textit{Rehabilitating Lochner}, 101.
\end{itemize}
“bible” of protective legislation cases.109 State branches of Consumers’ Leagues distributed segments of the *Muller* brief as pamphlets through their constituencies to promote awareness of the decision and to encourage factory owners to practice safe and legal employment of women. But regardless of its protective nature, there were women who opposed its restrictive intent. Some, especially those without husbands and with children to support, resented the government’s paternalistic rhetoric.110 *Muller v. Oregon* was a landmark decision and it undoubtedly impacted the nature of women’s work. It would remain in effect for fifteen years before being overturned in the 1923 *Adkins v. Children’s Hospital* decision.

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Chapter 3: Victims or Vixens? 1908-1915

This chapter examines two of the most sensational cases of early sexual harassment – *The People of the State of NY vs. Chester Gillette* and *Leo M. Frank vs. The State of Georgia* – and argues that federal legislation, the escalating suffrage movement, and increased female agency in the public sphere did not protect women’s virtue in the ways many had hoped. Despite reform efforts to quell harassment in the workplace through federal legislation like the *Muller v. Oregon* (1908) decision, and social activism like the settlement house movement, cases of workplace exploitation persisted. Steadily increasing numbers of women entering wage labor since the post-bellum period fueled middle class reformers’ anxiety about women in public. But at the same time that reformers’ concerns grew, women felt empowered to spend even more time outside the home. As a result, each time society became comfortable with the new liberties women were taking, boundaries were pushed even farther. Reformers believed the pervasiveness of sexual harassment and exploitation in the workplace was the result of working women overstepping traditional Victorian gender restrictions. Though some advocates of female suffrage and women’s liberation deemed protective legislation as patriarchal and restrictive in nature, court records and contemporary newspapers show that women continually were taken advantage of in the workplace. The frequency of these incidents suggests that perhaps women did rely on gendered protections, to some degree, to remain safe while participating in the public sphere.

Immense public attention associated with the Chester Gillette and Leo Frank murder trials heightened national awareness of the inherent dangers of women working in public. It also significantly affected domestic policy toward women workers as the United States prepared for and entered World War I. This chapter also grapples with the legality of night work, and explores the debates about legislation preventing women from working overnight shifts. Finally, the chapter
addresses the lax regulations on domestic work, and demonstrates that women employed inside the home were not immune to the physical and emotional dangers prevalent in factory work.¹

*Muller v. Oregon* had widespread and long-lasting effects on twentieth century labor legislation. The decision set the precedent that women were more physically delicate than their male counterparts, while also still capable of childbirth, and thus needed state-imposed protection. Equal rights activists believed the decision set the precedent that women lacked agency and the ability to make important decisions for themselves. They further believed the court dictated that women had – and deserved – fewer rights than men. In addition to the maximum hour restrictions imposed in *Muller*, protective laws for women began to appear in many other states as the National Consumers League (NCL) advocated for widespread labor laws nationwide.² By 1906, the NCL had placed female factory inspectors in more than a dozen states.³ And between 1911 and 1914, fifteen states passed protective labor laws women – a list that grew with escalating American involvement in World War I.⁴

The NCL was founded in the late nineteenth century as a non-profit advocacy group to protect the interests of working class Americans, and to “enact, enforce, and defend” labor laws for disenfranchised groups such as women and children.⁵ The group’s founding members wanted to

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¹ Domestic work cannot truly be separated from factory work, and should be studied as a space rife with sexual coercion.


use their influence as middle-class consumers to punish those who mistreated and exploited women in the workplace.\(^6\) Progressive social reformer Jane Addams created the NCL with the hope of developing a minimum wage law for women, and believed that higher wages through greater federal regulation of industry would result in more satisfied employees. Subsequently, satisfied employees led to placated consumers. Addams believed that every state needed its own Consumers’ League to provide more detailed factory inspections, and also needed to advocate for increased protections for women and children workers at the state level. Moreover, she believed that at least one woman should be required to sit on statewide inspection boards to help prevent against male-centered factions that failed to represent the interests of women.\(^7\)

NCL leaders, such as Addams, feared that the federal government was not doing enough to protect working women. By 1911 several states had adopted minimum wage and/or maximum hour laws, but the NCL’s Committee on Labor Laws believed that “the prospects for such federal legislation looked dark.”\(^8\) Although the Supreme Court had mandated in 1908 a federally imposed maximum hour restriction on women’s labor, national legislation regarding minimum wages for women did not yet exist. Restrictions for women and girls were slow to develop, and some states even prescribed restrictions for boys working for telegraph companies before extending similar legislation to girls.\(^9\) Josephine Goldmark, head of the NCL’s Committee of Labor Laws, spoke out ardently against such gendered legislation and urged for a “new movement for educating and

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\(^7\) Vose, “The National Consumers’ League and the Brandeis Brief,” 273.


protecting all young workers” who endured the challenging conditions of factories and sweatshops. Goldmark advocated for the creation of public homes for women who had been abandoned by inebriate husbands and/or single mothers who struggled to create a stable lifestyle for their children. She feared that women who did not receive help would “inevitably give way in health, or morals, or both,” which ultimately could lead to the moral downfall of the entire family.

Echoing Goldmark’s sentiment that subsidized housing for women was essential to urban living, Jane Addams established Hull House – a settlement house in the Chicago area – in which immigrants and underprivileged women could live and participate in uplifting social activities. Although much of the living costs at Hull House were funded by charitable donations, Addams “did not think of Hull House as a charity, but as a living, dynamic education process.” A proponent of protective legislation for both women and children workers, Addams advocated for increased regulations on a wide variety of issues ranging from “suffrage to prostitution.” She believed that some of these issues, such as prostitution and unregulated workplaces, exploited women workers. Addams particularly was outspoken about the lack of maximum hour legislation that existed for women in industry at the turn of the century. She believed that overworked women could not fully engage with their children, which would have negative consequences on developing adolescents. However, with proper regulation women could both participate freely in the industrial workforce, and also raise responsible and healthy children. Until sufficient regulation existed, Addams worked


tirelessly to provide women – generally single mothers – with the companionship and support they needed to retain employment, make a living wage, and provide for a family.\textsuperscript{14}

Although Addams and other protective legislation advocates celebrated a major victory in the 1908 \textit{Muller v. Oregon} decision, sexual harassment in the workplace remained a pervasive issue. In the summer of 1906, Chester Gillette was accused of seducing and murdering Grace Brown, a young female co-worker at his uncle’s skirt factory in Cortland, New York. The daughter of a farmer, Brown lived in South Ostellie, New York, until 1904 when she moved to Cortland to work for the N.H. Gillette Company.\textsuperscript{15} Gillette and Brown met while both were employed at the Gillette family factory, and within three months their relationship had become intimate. A fellow employee noted that “Gillette was so infatuated with Miss Brown that he could not keep away from her table,” often defying his uncle's warnings to stay away from the girl.\textsuperscript{16} Before long, Brown was pregnant with Gillette’s child.\textsuperscript{17} Letters between the pair revealed that in June 1906, Brown planned to visit home and hoped Gillette would join her. When he refused, Brown was distraught. The letters she wrote to him from her parents’ home were “filled with expressions of affection for the defendant, with pathetic references to her physical and mental distress caused by her condition.”\textsuperscript{18} Moreover, the tone of much of her writing revealed her frustration with Gillette. She felt that he lacked affection

\begin{itemize}
\item \textsuperscript{14} Lundblad, “Jane Addams and Social Reform,” 665-666; and Margaret Strobel, “Hull House and Women’s Studies: Parallel Approaches for First and Second Wave Feminists.” \textit{Women's Studies Quarterly}, Vol. 30, NO. ¾ (Fall 2002): 55-56. Addams advocated for the \textit{Factory and Workshop Inspection Act}, passed in 1893, which “authorized inspectors to monitor sweatshop conditions as well as limitations on child labor and women workers’ hours.” Addams considered the act a tangible victory for her cause.
\item \textsuperscript{15} “Did Chester Gillette Murder Grace Brown?” \textit{The Syracuse Herald}, December 2, 1906, 11.
\item \textsuperscript{16} “Probing Girl’s Death,” \textit{St. Regis Adirondack News}, November 20, 1906.
\item \textsuperscript{17} \textit{The People of the State of New York vs. Chester Gillette}, Opinion by J. Hiscock, Court of Appeals of the State of New York (Feb. 18, 1908) 2.
\item \textsuperscript{18} \textit{The People of the State of New York vs. Chester Gillette}, 2.
\end{itemize}
and failed to respond to her letters in a timely manner. Perhaps most importantly, she questioned Gillette’s commitment to her, doubting whether he would follow through on his promise to visit.\textsuperscript{19}

After many months of correspondence, Gillette revealed to Brown his plan for a romantic getaway to Hamilton, New York.\textsuperscript{20} He chose Hamilton because it was a place the couple could be alone – a place where they were unknown to locals.\textsuperscript{21} Upon arriving in Hamilton, the couple checked into Hotel Glenmore where Gillette assumed the false identity Carl Graham, of Albany.\textsuperscript{22} On July 11, 1906, twenty-year-old Grace Brown was found dead in Big Moose Lake in the Adirondack Mountains of upstate New York.\textsuperscript{23} Three days later, Gillette was arrested and charged with the murder of Brown, alleged to have beaten her on the head with an oar from a rowboat, which they had rented on Big Moose Lake.\textsuperscript{24}

The tragic events leading up to Brown’s murder transpired quickly. Two days before her murder, Gillette met Brown in Utica, NY where they stayed for the night before continuing on to Big Moose Lake. Brown probably assumed the purpose of their trip was to elope, as “the time had passed when desire would prompt such a trip as the opportunity for mere illicit enjoyment.”\textsuperscript{25} In other words, she was pregnant, and the only legitimate remedy was to marry. But if Gillette intended to marry Brown, his behavior certainly was odd. He registered them both under false

\textsuperscript{19} The People of the State of New York vs. Chester Gillette, 3.


\textsuperscript{25} The People of the State of New York vs. Chester Gillette, 3.

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names at several hotels, and even concealed their relationship at times. In addition, as they traveled Gillette actively arranged to meet up with other women several days later. He did this “publicly and undisguised,” making no attempt to hide his identity as he had done with Brown.²⁶

Adding to the mystery, on the day of Brown’s death as the couple left their hotel for Big Moose Lake, Brown left some articles of clothes behind in the hotel room while Gillette left nothing. Gillette took with him items that seemed unnecessary for a summer day on the lake, such as a heavy coat and a tennis racket. The District Attorney speculated that Gillette had no desire to return to the hotel and, in preparation for his escape, took all of his belongings.²⁷ Brown’s legal team also revealed that this was not the first time Brown and Gillette had gone boating – about a month before the tragedy, Albert Raymond who owned a summer resort near Cortland, reported that the couple had rented a boat at his resort. Gillette reportedly asked for a round-bottomed boat, the same type of boat he rented the day of Brown’s death, despite Raymond’s warning that others avoided round-bottomed boats because they were prone to tipping over.²⁸ In the hours following Brown’s death, Gillette’s abnormal behavior continued. He left the lake, hid his tennis racket in the woods, checked into a hotel under his real name after previously assuming a false identity, and spent two days as an “ordinary summer tourist, showing no outward signs of distress and giving no information of what had happened” on the lake.²⁹

Though Gillette was the only eyewitness, Brown’s autopsy report answered some important questions about her death. The coroner noted that she had many bruises and scrapes, as well as a

²⁶ The People of the State of New York vs. Chester Gillette, 4.

²⁷ The People of the State of New York vs. Chester Gillette, 4.


²⁹ The People of the State of New York vs. Chester Gillette, 5.
gash on her head so deep that her skull was opened and brain matter exposed. It was concluded that all wounds were ante-mortem because she had significant bruising on her head and upper body. If the injuries had occurred after death, there would have been no blood flow to cause such bruising. Brown’s wounds were severe, the coroner’s report stated that “the cartilage of the nose was flattened out by violent force, lips severely swollen and bruised.” Again, the injury to the nose was inflicted before death due to the hemorrhaging in the area; an injury such as this inflicted after death would not have resulted in such serious swelling of the lips. A large blood clot had formed in her brain around the open wound, leading the coroner to state emphatically “this injury was inflicted beyond question before death.” A stroke or internal brain trauma was ruled out because the blood vessels surrounding the wound were healthy, leaving no explanation other than “external force or violence.” The coroner stated that something such as a tennis racket could easily have produced the type of injuries found on Brown’s scalp, and that as a result of the injuries incurred, her death was not caused by drowning but undoubtedly by blunt force trauma. These medical details were presented as evidence in court as further indication of Gillette’s guilt.

On July 14, 1906 Gillette was arrested and charged with Brown’s murder. Gillette initially denied knowing anything of Brown’s death, but eventually conceded to being in the boat with her

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30 Autopsy on Body of Grace M. Brown, Frankfurt, NY, July 14, 1906, Box 1, Chester E. Gillette Collection, Special Collections Research Center, Syracuse University Libraries, 2.

31 Autopsy on Body of Grace M. Brown, 6.

32 Autopsy on Body of Grace M. Brown, 6,7.

33 Autopsy on Body of Grace M. Brown, 7.

34 Autopsy on Body of Grace M. Brown, 8.

35 Autopsy on Body of Grace M. Brown, 8.

when it overturned by accident. His story continued that Brown fell into the water, and fearing that
he would be accused of killing her, he swam ashore and ran off into the woods until he came to a
small town called Eagle Bay.37 Even after admitting to being in the boat with Brown, Gillette
fervently denied all murder charges. But his behavior after Brown’s death led many to question the
authenticity of his story.38 If the circumstantial evidence pointing to Gillette as Brown’s killer was
not enough, the relics presented during the trial were heavily sympathetic toward the victim. As her
attorney gave his opening statement, the wedding dress that she had prepared, but never worn, was
displayed for the jury. This provided tangible evidence and gut-wrenching emotional appeal to the
all-male jury – any of whom could have had young daughters at home. Moreover, many of her love
letters to Gillette were read aloud and contrasted with his flippant responses, garnering sympathy for
Brown as the scorned lover. Her lawyers “aroused the crowd in court,” turning the jury and
observers so against Gillette that “six members of the Police Department surrounded him at all
times to ward off possible attempts to injure him.”39

Gillette’s two-month murder trial was highly sensationalized. Gillette’s defense consisted of
a story in which the boat he and Brown occupied suddenly capsized, and that Brown just happened
to drown while he made it out alive. However, several dry cleaners testified that Gillette’s clothes
showed no evidence of being submerged in water or having water damage. This effectively nullified
his defense, leading to his conviction and ultimate death sentence.40 At the trial’s end, the jury
deliberated for five hours before charging Gillette with first-degree murder. Upon hearing the

Appeal for The People of the State of New York vs. Chester Gillette, (Feb. 18, 1908) 2.
verdict, Gillette “gave not a sign of emotion – not a quiver showed that he had even heard it, his expression vacant.” Despite hearing the verdict Gillette maintained his innocence, telling reporters he never expected to be convicted of a crime he had not committed. The decision was challenged, but after careful review the Appeals Court ruled that despite the case leaning heavily on circumstantial evidence, and despite the only eyewitness denying any criminal activity, that the original verdict stood. Gillette’s death sentence was upheld based on the “substantial features and essential character of the case which was fairly established against him,” and on the notion that a new trial would not uncover any new evidence. On March 30, 1908, Auburn Prison posted a bulletin stating plainly that Gillette’s death by electric chair successfully had occurred.

As reviled as Gillette became throughout his trial, he also became a true media sensation. Headlines abounded with hyperbolic statements such as “Thousands disappointed in Syracuse and Auburn when they failed to see the prisoner!” Moreover, as he was transported each day from jail to the courthouse crowds formed, waiting eagerly to get a glimpse of him. Daily inquiries, primarily from women, poured into the prison, courthouse, and local newspaper offices from people hoping to find out more about the enigmatic Gillette. The trial was the most sensational that Central New York had seen in decades, making front-page news for weeks. And its popularity did not disappear immediately – author Theodor Dreiser modeled his character Clyde Griffiths after Gillette in his

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44 Prison File of Execution, State of New York, Auburn Prison, March 30, 1908, Box 1, Chester E. Gillette Collection, Special Collections Research Center, Syracuse University Libraries.
award-winning novel, *An American Tragedy*, published in 1925. Dreiser’s book also had several film adaptations, including the Academy Award nominated film *A Place in the Sun* (1951), starring Elizabeth Taylor and Montgomery Clift. The film was a commercial success, which suggests the continued relevance and cultural appeal of Gillette’s story.

In the cycle of public opinion about whether women were the victims or the vixens of early sexual harassment cases, reactions toward Grace Brown’s tragic story indicate that opinions had shifted. If the turn of the century had brought with it decreasing sympathy toward female victims, by 1910 public opinion had changed again as people were nostalgic for the Victorian Era woman – one who needed paternalistic protections to keep her safe. Reformers worried that a woman with too much agency would do irrevocable damage to her reputation and her future marketability as a wife. Grace Brown was no exception, as she challenged middle-class respectability by working outside the home and having pre-marital sexual relations with Gillette. And yet, the evidence presented during the trial – Brown’s unworn wedding dress, her potential pregnancy, and her sentimental love letters – all symbolized traditional Victorian domesticity. Despite changing notions of femininity, Brown’s shrewd legal team garnered her so much sympathy during and after the trial that she emerged as a symbol of victimization and served as a sobering example of the dangers young women faced in the company of the wrong type of man.

Just as the sensationalism surrounding Gillette’s trial began to slow, another case of sexual harassment in the workplace occurred. On April 27, 1913 Leo Frank was arrested and accused of murdering his fourteen-year-old employee, Mary Phagan. The previous day, Phagan left home to pick up her paycheck at the National Pencil Company in Atlanta, Georgia and never returned home. At 3:00 the next morning, her body was found in the basement of the pencil factory. An examination of the body revealed that Phagan had been strangled to death and “physicians declared
that she had been subjected to sexual violence...unquestionably the work of a pervert.”\textsuperscript{47} Newt Lee, the factory’s African-American night watchman, discovered Phagan as he was making his security rounds. Initially, Lee assumed some of the factory boys had pranked him by leaving a fake bloodied body on the basement floor, but as he got closer he realized it was the body of a young girl.\textsuperscript{48} Lee called authorities who quickly arrived to find a grisly scene. The sergeant of the Atlanta police department claimed that the crime scene was so bloody that he was unable to determine the girl’s race by looking at her, and that his only hint came by the ends of her blonde hair. She was so full of grime that only when the police “rubbed the dirt off her face could anyone tell that it was a white girl.”\textsuperscript{49} The girl’s face was badly beaten, “full of holes and swollen and black,” and she had a cord wrapped tightly around her neck with her “tongue protruding just a bit.”\textsuperscript{50} Moreover, there was explicit evidence of sexual violence prior to her death, probably in the last fifteen minutes of her life.\textsuperscript{51} Two handwritten notes were found underneath Phagan’s body, ostensibly incriminating the person who had raped and then murdered her.

It was not immediately obvious who had violated and killed Phagan, but authorities named two primary suspects: Jim Conley, the factory’s janitor, and Leo Frank, the factory’s superintendent. Conley was arrested initially and was considered the primary suspect until several days later when

\textsuperscript{47} “Jews Fight to Save Leo Frank,” \textit{The Sun}, October 12, 1913, 6; Argument of Hugh Dorsey, Solicitor-General, Atlanta Judicial Circuit at the trial of Leo M. Frank Charged with the murder of Mary Phagan (Macon, GA: N. Christophulos Publishing) 1914, v.

\textsuperscript{48} Leo M. Frank, Plaintiff in Error, vs. State of Georgia, Defendant in Error. In Error from Fulton Superior Court at the July Term 1913. Brief of Evidence 1913, 49.

\textsuperscript{49} Leo M. Frank, Plaintiff in Error, vs. State of Georgia, Defendant in Error, 54.

\textsuperscript{50} Leo M. Frank, Plaintiff in Error, vs. State of Georgia, Defendant in Error, 55.

\textsuperscript{51} Mary Phagan Autopsy Report, April 4, 1913. Conducted by Dr. H. F. Harris, Reported During Leo Frank Trial Aug. 1, 1913.
police found reason to detain Frank, too. Conley claimed that he had written the notes found under Phagan’s body, but only because he had been instructed to do so by Frank. The notes incriminated Newt Lee, the security guard who had found the body, blaming him for Phagan’s brutal death. Conley’s story raised more questions than it answered (such as why Lee would report his own crime), leading many to believe Conley was in cahoots with Frank, and an accomplice to murder.

Frank’s arrest and subsequent murder trial captivated the nation and provided endless fodder for the press. Prosecutor Hugh Dorsey led the charge against Frank, turning primarily circumstantial evidence into polished rhetoric that won Dorsey the favor of the jury. Dorsey’s eloquence, combined with powerful indirect evidence, pointed to Frank as the “despoiler and murderer of little Mary Phagan and would have made an acquittal difficult even if there had not been a shred of evidence to connect him to the crime.” In August 1914, Frank was convicted of murder, and sentenced to death. After several appeals, the case was heard by the Supreme Court. But before a decision was made, Frank was abducted from prison and lynched publicly by an angry mob. Hundreds of men gathered to see Frank’s body to “satisfy their morbid curiosities as to whether Frank was actually dead.” Frank’s trial and subsequent death were among the most sensational and widely followed events of the decade.

Despite the lack of hard evidence connecting Frank to the murder, Dorsey made an incredibly convincing argument for Frank’s guilt. He first addressed Frank’s personality, depicting him as a man of questionable morals and ill repute. Dorsey found more than twenty of Frank’s female employees who willingly testified to his “bad character for lasciviousness – the uncontrolled

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52 “Jews Fight to Save Leo Frank,” *The Sun*, October 12, 1913, 6.

passion that led him to kill poor Mary Phagan.”54 Further, he pointed out that Frank’s defense team refused to cross-examine these witnesses. Dorsey believed that had Frank been of sound character, his lawyers would have challenged the girls’ testimony, demanding to know from where they received their information, and why they testified against Frank.55 Despite others testifying in favor of Frank’s good morals (such as his Rabbi and administrators of the Hebrew Orphans Home), Dorsey laid on thick emotional appeal by asking the jury why these “poor, unprotected working girls” would possibly tell anything but the truth.56 Perhaps one of the best examples of Dorsey’s ability to influence the jury was after one girl’s admission that, while Frank sometimes behaved poorly, she cared for him so much that she would have died for him. Dorsey then turned to the jury and said, “When, gentlemen, did you ever know of an employee being so enamored by an employer that she was willing to lay down and die, if that friendship was purely platonic?”57

During the trial, Frank maintained that he did not know Phagan, and certainly was not having an affair with her. Yet co-worker testimony suggested otherwise. Willie Turner, a young factory boy, testified that he saw Frank verbally harassing Phagan several months prior. When Phagan protested and stated that she needed to return to work, Frank reportedly shouted, “I am superintendent of this factory, and I want to talk to you!”58 In addition, Dewey Hewell, a young factory girl, said that she saw Frank talking to Phagan many times, often with his hands on her

54 Argument of Hugh Dorsey, 26.
55 Argument of Hugh Dorsey, 29.
56 Argument of Hugh Dorsey, Solicitor-General, 1.
57 Argument of Hugh Dorsey, 43.
58 “New Witnesses Called Against Frank,” Atlanta Georgian, August 20, 1913.
shoulders. Finally, Dorsey explained to the jury that on the night of the murder, Frank had to check his payroll records to verify whether or not Phagan worked at his factory. Yet, Frank managed the company’s payroll, and as a result had written out checks to Phagan at least fifty-two times during the duration of her employment. Dorsey argued that Frank must have at least known Phagan’s name well enough to know, without verifying, whether or not she was employed at the factory. The implication was that Frank was lying about at least some aspect of his story. Despite this seemingly damning evidence, Frank’s lawyers argued that none of this testimony was substantial enough to prove that Frank actually knew the victim. Moreover, none of it proved that he had communicated with Phagan regarding anything other than her work.

Much like Chester Gillette’s murder trial, Frank’s ordeal was met with great sensationalism. At the close of the trial, the jury deliberated and returned with a verdict in just forty minutes: Frank was “guilty without recommendation to mercy” – he was to be hanged. While the jurors were unanimous in their decision that Frank was guilty of murder, one juror had to be swayed to the majority opinion for the death penalty. Meanwhile, a large crowd had formed around the courthouse to await the verdict, and at its announcement “a mighty cheer went up” to celebrate the posthumous victory for Mary Phagan. Frank sat in a state prison for over a year awaiting the death penalty, and on August 16, 1915, was abducted from his cell by an angry mob of men who decided to take matters into their own hands. The mob overpowered the prison guards and shoved Frank into a getaway car within a matter of minutes – the abduction went so smoothly, and was “executed

59 Argument of Hugh Dorsey, 73,74; Dewey Hewell also said that “a little girl who used to work at the National Pencil Company, probably lost her virtue though she is of such tender years.”

60 “New Witnesses Called Against Frank,” Atlanta Georgian, August 20, 1913, 1. Dorsey’s insistence that Frank “knew” Phagan was a reference to his “carnal knowledge” of her. This suggests a connection between “knowledge” of someone, and physical intimacy.

61 “New Witnesses Called Against Frank,” Atlanta Georgian, August 20, 1913, 1.
with [such] business-like skill and precision,” that no one even knew Frank had been taken until early the next morning when his body was found. Authorities found him hanged from a tree in a town about 100 miles outside of Atlanta, just a stone’s throw away from Mary Phagan’s birthplace.62

The public outpouring of support for Mary Phagan, coupled with national revulsion for Leo Frank, suggests that well into the second decade of the twentieth century women were perceived as the more virtuous gender. To many, it seemed nearly impossible that someone as young as Phagan could have been more than an innocent victim of a heinous crime, a notion best illustrated by the circumstances of Frank’s brutal death. But in the case of Frank, other factors also were at play.

Frank’s status as a Jew ignited rumors that he was a sexual pervert with primitive carnal desires for Phagan that he could not cast aside. Much of the American South was notoriously prejudiced against Jews, and as a result Frank dealt with rampant anti-Semitism throughout his trial and ruling. Rabbinical leaders from California ardently opposed Frank’s sentence, and tried relentlessly to “expose the religious bigotry which had infected Frank’s trial.”63 Jewish organizations nationwide, particularly in California and on the East Coast, were convinced that Frank was the victim of intense racism and maintained their positions that Frank was not guilty of murdering Phagan. Many Jews believed that the local Atlanta jury was predisposed to discriminate against Frank because of his Jewish heritage. Protests for a re-trial were initiated and funded by a group of California rabbis, but their efforts proved unsuccessful.64 Despite Frank’s conviction, which many historians have attributed largely to racial prejudice, national sympathy for Mary Phagan’s death revealed that women continued to be viewed as vulnerable, physically weak, and easily corruptible by men with

62 “Frank Was Hanged,” Cato Citizen, August 18, 1915.


64 Henig, “He Did Not Have a Fair Trial,” 168.
iniquitous intentions. This perception of women as virtuous victims gradually faded as the nation mobilized for World War I, and women were required to step into more masculine roles and to serve as the cornerstone of the war economy.

The widespread notoriety Chester Gillette and Leo Frank received, and the sensationalism associated with their murder trials were, in part, due to the explosion of daily newspaper coverage. Increasingly sensational reporting appealed to readers and advertisers alike – readers because they enjoyed the thrill of murders and secret love affairs, and advertisers because these stories appealed to a broad audience. The *New York Herald*, for example, provided readers with “a steady diet of violence, crime, murder, suicide, seduction, and rape” in order to attract the widest audience possible. Penny papers also exacerbated America’s obsession with crime news. These papers were inexpensive, easy to obtain, and appealed to a wide audience of different classes, genders, and races. Instead of reporting on high-minded ideas like public policy and elections, penny papers reported almost exclusively on crimes such as murder, rape, and kidnapping. Those who wrote for the penny papers “felt little of the modern journalists’ compulsion for accuracy” and often exaggerated the truth with the mere hope of selling copies.

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65 For more on Leo Frank as a Jewish man, see Jeffrey Melnick’s *Black-Jewish Relations on Trial: Leo Frank and Jim Conley in the New South* (Jackson, University Press of Mississippi) 2000; Other racial components were at play here, too. The jury was forced to decide whether to believe Leo Frank, a Jewish man, or Jim Conley, a black man.


The success of penny papers in the mid-nineteenth century drove fiction writers to begin publishing crime stories in newspapers. These fictional accounts often appeared alongside real crime coverage, which blurred the line between reality and imagination. Nonetheless, readers’ desire for stories about murder, seduction, and crime in general fueled sensational journalism in a way that had not been seen before in American society. And, as journalists dug deeper for the most recent stories and added elements of exaggeration to their stories, “real murder cases – with their inherent drama, suspense, and climax – could be even more exciting than the latest” works of fiction.

Penny papers, also called the “flash press,” are primarily to blame for both the crime craze that swept American culture at the turn of the century, and Americans’ burgeoning infatuation with daily coverage of detailed, embellished, and often gruesome crime news. But opinions about this type of reporting were mixed: While readers described the flash press as “racy, satirical, and spicy…their outraged adversaries called them obscene, libidinous, and disgusting.” The Gillette and Frank murder trials occurred during a period of intense sensationalism in the news, which enabled penny papers to challenge notions of Victorian morality. The papers glorified a world in which seemingly chaste young women turned out to be vixens, and ostensibly honest men cheated, seduced, and stole.

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The *New York Herald*’s coverage of the Helen Jewett murder was one of the first sex/murder scandals to be sensationalized. Jewett was a prostitute in New York City who was killed by Richard Robinson, a wealthy patron. News of Jewett’s murder spread rapidly, prompting newspapers to print special Sunday pamphlets to arouse public interest. Headlines such as “Most Atrocious Murder” made front-page news, drawing in readers of all genders, classes, and age groups. Murder was an inexplicably gripping subject that everyone wanted to read about, and Jewett’s case “only strengthened the association between sex and murder.” As the Robinson-Jewett murder trial continued, local newspapers reported daily on the trial’s minutia, detailing every witness’ testimony and analyzing each piece of evidence presented. Daily coverage by their competitors made the *Herald*’s editors fear that readership might decline if reports became too monotonous. As a result, they dug up information about Jewett’s life prior to her untimely death, and sought all the prurient details about “how and when Jewett lost her virtue.” The *Herald* also published an exclusive story about how Jewett became a prominent figure in the prostitution circle. Details about Jewett’s life that hardly seemed relevant to her murder became the subject of conversation throughout the Northeast, and kicked off a real ‘murder-mania’ in American news.

The aftermath of Helen Jewett’s murder suggested to editors that crime coverage sold papers, and as a result, similar stories began coming out of the woodwork. Articles with


75 Crouthamel and Jackson, “James Gordon Bennett, the “New York Herald,” and the Development of Newspaper Sensationalism,” 303.


77 “Fifth Day!” *New York Evening Post*, June 8, 1836.

questionable accuracy abounded, such as one titled “Another Awful Consequence of Seduction,” which exposed a woman from New Jersey who was seduced and became pregnant out of wedlock, killed her child, and committed suicide out of shame. But the details provided were vague, and sources lacked authority. Editors relied heavily on “emotional response[s]” to their articles, which often left readers wanting follow-up articles in subsequent papers. Journalists also became skilled at writing stories that exploited reader responses to “extreme violations of social norms.” These “violations” became commonplace in big cities like New York, and challenged preconceived notions of female morality and sexual purity. Writers exaggerated, embellished, and even created new details in order to outsell their competitors, as readership simultaneously thrived. By the mid-nineteenth century, America’s fascination with crime news had become an outright craze.

At the turn of the century, sensationalism and crime reporting still played a significant role in American culture. A persistent problem was the frenzied desire of newspaper editors to sell papers, sometimes at the expense of the accuracy of their reports. Journalists in the early twentieth century frequently took creative liberties, relying on “imagination, exaggeration, distortion, and conjecture” to make their stories sell. An issue more complex, and potentially dangerous, than mere exaggeration of the truth was journalists’ ability to influence public opinion before a case had gone to trial. Jurors who entered the courtroom already having read stories about a particular case could


have their opinions swayed before having any of the evidence formally presented to them. As a result, the sentiment that jurors must “not be governed by public opinion or public feeling” became meaningless.\(^{85}\) By 1910 it became clear that sensationalized journalism, profit-hungry editors, and increased readership posed a tangible threat to the sanctity of the American legal process.

Journalist Theodor Dreiser witnessed this explosion of crime news, and was privy to the controversy surrounding Gillette and Frank during their respective trials. Midway through his career, Dreiser turned his attention to fiction writing, publishing novels as social critiques in an attempt to “expose a society oppressed by poverty and crime.”\(^{84}\) Dreiser reacted particularly strongly to news of Chester Gillette’s alleged slaying of Grace Brown and wrote his famous book, *An American Tragedy*, in reaction to the blatant abuse of journalistic ethics during Gillette’s trial. Dreiser was aware of what journalists would do for a story because he had engaged himself in ‘yellow journalism’ as a young reporter. He once had been assigned to report on a train accident, and upon arriving at the sight was stunned by the gruesome scene. Instead of immediately helping the victims, and potentially saving lives, he recalled that he could “think only of how he would ‘describe, describe, describe’ once the time came” to sell the story in the papers.\(^{85}\) In another example of Dreiser’s unremitting drive to sell papers, he recalled covering a story about a child molester and wondering how he could manipulate the story to be told “in a slightly more entertaining way.”\(^{86}\)

After many years as a journalist, Dreiser grew disillusioned with the industry and dove into fiction writing. Before he began writing *An American Tragedy*, he spent months researching

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murder/seduction cases. Ultimately, he decided that Gillette’s story was most representative of America at that particular moment. Dreiser stressed that Gillette was a typical American man who “simply could not acquire wealth and status without committing murder.” He also used *An American Tragedy* as a social commentary on the public’s perception of criminals, like Gillette, before they were formally sentenced. He argued that the visceral reaction to seeing young girls brutally murdered created preconceptions of people like Gillette. Juries could be swayed by public opinion instead of the evidence provided, a concept that undermined the very basis of the American legal system. Dreiser called attention to the fact that “Gillette was merely a victim of social forces, as represented and magnified by the newspapers,” and hoped that his work would upset the trajectory of yellow journalism. *An American Tragedy* renewed interest in Chester Gillette’s story, and made it accessible to a new generation of young readers.

Chester Gillette and Leo Frank illuminated middle class reformers’ fears, and brought to light the fact that sexual harassment in the industrial workplace had negative – and sometimes tragic – consequences for those involved. Yet it is important to acknowledge that seduction was a wider issue that also took place in public spaces outside of the industrial workplace. In 1915, Chicago’s *The Day Book* reported that women were being harassed in Riverview Park, both by patrons and employees of the park. In only one summer, thirty-five young girls brought into Chicago’s District Court for various offenses blamed Riverview Park for their moral downfall. Many claimed that men with “plenty of money had given them a good time and led them astray” on park property. One young woman stated that she flirted with an older man in the park so that he would buy her drinks.

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He then lured her to a West Side hotel where he had reserved a room. A committee sent to
investigate this issue reported that many young girls under the age of eighteen were found drinking
with male companions in saloons and cafes around the park and in the park itself.90 Sexual attention
in public places was difficult to regulate due to the geographically expansive nature of places such as
parks. Moreover, the leisure culture of the early twentieth century inspired women to enjoy public
spaces with peers instead of with the protection of male family members, leading simultaneously to
increased sexual availability and vulnerability.

Harassment in public spaces was troublesome to social reformers who feared that women
who ventured into public without a male liaison were overstepping societal boundaries. Although
lawmakers were slow to act upon the inherent dangers women faced in the workplace, reformers
and political activists were not. One cause championed by protective legislation advocates was the
prohibition of night work for women. Evening and late nights had long been deemed dangerous
times for women to work because of the lack of overall supervision during these shifts. But
restricting when and how women could work was a controversial issue, especially during World War
I. This was articulated in the New York Supreme Court’s decision that state laws for limiting
women’s work were both constitutional and unconstitutional. The statute limiting women’s work to
ten hours per day and sixty hours per week was legal, but the statute prohibiting women from
working after nine in the evening breached their freedom of contract. The Court reasoned that the
second statute was unenforceable because managing the hours per day and the time of day these
hours could be attained was simply too restrictive for female workers. Yet advocates of the law
argued that limiting women to daytime work was the only way employers could be prevented from

putting women on night shifts, “a practice which has been found to be peculiarly mischievous.”\textsuperscript{91} In other words, women who worked late into the night had a heightened susceptibility to unwanted sexual advances.\textsuperscript{92}

While the controversy over night work began as early as the mid-nineteenth century, the issue became even more pervasive as America amped up its production during World War I. This is illustrated most clearly in an October 25, 1918 memorandum from Aetna Explosives Company to the Women in Industry Service, a division of the Department of Labor, which sought permission to employ women at night. In response, Mary Van Kleeck – director of Women in Industry Service, and the first director of the Women’s Bureau of the Labor Department – acknowledged Aetna’s request, and sent Agnes Peterson to inspect the factory.\textsuperscript{93} Peterson’s conclusions were damning. She found that while “plant conditions are very good, they are not such as to make it desirable to employ women at night.”\textsuperscript{94} Further, she suggested that if women were to be employed overnight, Aetna would have to meet certain criteria: 1) A female manager to supervise the hiring of women; 2) Bus service for women who worked at night, and a guarantee that the women would be dropped off after work within one block of their homes; 3) Adequate housing facilities built for female employees with a “competent person” in charge; and 4) The wages of women put on an equal basis


\textsuperscript{93} Guy Alchon, “The ‘Self- Applauding Sincerity’ of Overreaching Theory, Biography as Ethical Practice, and the Case of Mary van Kleeck.” In Silverberg, Helene (ed.). \textit{Gender and American Social Science: The Formative Years} (Princeton, NJ, Princeton University Press) 295. Van Kleeck was a long time proponent of raising the standards of living for women, and had been called to Washington, DC in 1917 to help create labor standards for the influx of women workers during wartime.

\textsuperscript{94} Memorandum from Agnes Peterson to Mary Van Kleeck, October 25, 1918, Van Kleeck, Box 1, Folder 3 (RG 86), Women in Industry Service, Correspondence to the Director, 1918-1920, National Archives and Records Administration, College Park, MD.
with the wages of men. These requirements embodied social anxieties about women joining the male-dominated workplace. Supervision – both in the form of female managers at work and paternalistic rules governing boarding houses – helped to ease public concern that women were engaging too freely in activities outside the home. But despite Peterson’s proposed conditions, the final word from Van Kleeck was that Aetna’s “request for permission to employ women at night should be denied.”

In addition to Aetna, companies like Bethlehem Steel voiced discontent with Van Kleeck’s decision to prohibit night work for women. Recognizing the widespread demand for a female labor force during the war, E.M. Hopkins, Assistant to the Secretary of War, wrote to Felix Frankfurter, Chairman of the War Labor Policies Board, to argue that wartime steel production was at only a fraction of its potential because the company had lost so many men to the war. He expressed concern that, “while such an emergency is existent, literally hundreds of machines within the Bethlehem plant are idle, which could be utilized if labor restrictions in regard to the employment of women should be removed.”

Though Bethlehem Steel was vocal about its desire to lift restrictions on working women, the company was not representative of all major employers. George Gillette, Vice President of Minneapolis Steel and Machinery Company, voiced a contradictory opinion that while female labor was necessary during wartime, protections and restrictions on their work were essential to their safety. Gillette claimed that he had personal knowledge “of places where women

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95 Memorandum from Agnes Peterson to Mary Van Kleeck, October 25, 1918, Van Kleeck, Box 1, Folder 3 (RG 86), Women in Industry Service, Correspondence to the Director, 1918-1920, National Archives and Records Administration, College Park, MD.

96 Memorandum from Agnes Peterson to Mary Van Kleeck, October 25, 1918.

97 Undated letter to Felix Frankfurter from E.M. Hopkins, Van Kleeck, Box 1, Bethlehem Steel Folder, (RG 86), Women in Industry Service, Correspondence to the Director, 1918-1920, National Archives and Records Administration, College Park, MD.
are employed under conditions which ought not to be permitted.\textsuperscript{98} The debate over workplace safeguards for women – primarily those dealing with moral rather than physical protections – divided many, both reformers and employers.\textsuperscript{99}

Advocacy for the abolition of night work for women dominated policy making at both the state and federal levels. The Industrial Commission of Wisconsin issued several bulletins warning local railroad companies of the dangers associated with women working overnight shifts. The bulletins explained that many girls who worked on the railroads were between fourteen and seventeen years old, and “were shown to be drug addicts; some prostitutes; and others of doubtful character.” Moreover, they suggested that the conditions in which the women worked surely affected them, turning them from “decent and self-respecting women” into those lacking virtue.\textsuperscript{100} Similarly, a 1917 report by the Industrial Commission of Ohio described the inspection of a shop inside an Ohio Railroad Station. The inspector reported that when asked if their night work was agreeable, the female workers replied that it was. However, the foreman was present at the time of questioning, and the inspector was “inclined to think they [the girls] did not care to commit themselves otherwise.”\textsuperscript{101} This report revealed additional examples of workplace sexual harassment,

\textsuperscript{98} Letter from George Gillette to Van Kleek, October 18, 1918, Van Kleek, Box 1, Women in Industry Folder, (RG 86), Women in Industry Service, Correspondence to the Director, 1918-1920, National Archives and Records Administration, College Park, MD.

\textsuperscript{99} Tentative Draft of Bulletin #1 of Standards Governing the Employment of Women in Industry, October 10, 1918, 10/10/1918, Standards for Employment of Women in Industry folder, (RG 86) Women in Industry Service, Correspondence to the Director, 1918-1920, National Archives and Records Administration, College Park, MD. In this document, the moral conditions alluded to include “employment in isolation or unsupervised association with men workers.”

\textsuperscript{100} Bulletin to County Court of Kings County by Industrial Commission of Wisconsin, June 18, 1918, Standards for Employment of Women in Industry folder, (RG 86) Women in Industry Service, Correspondence to the Director, 1918-1920, National Archives and Records Administration, College Park, MD.

\textsuperscript{101} Industrial Commission of Ohio, Division of Workshops, Factories, and Public Buildings, Aug. 1 1917, Standards for Employment of Women in Industry folder, (RG 86) Women in Industry Service, Correspondence to the Director, 1918-1920, National Archives and Records Administration, College Park, MD.
too. Recently two men were dismissed after becoming too familiar with some of their female coworkers. And, in a more jarring example, in the midst of an inspection a female employee was “being loved up by a male employee…this fellow had his arms around her giving her a nice tight squeeze.”

The flagrant disregard for state-imposed inspection is significant in several ways. It suggests widespread indifference toward the rights of female laborers, and more importantly, toward women in authority positions. The actions of the male workers further illustrate the gendered dynamics of the workplace, as well as the frequency with which workplace harassment occurred. If some women enjoyed the extra attention they received at work, those who did not were put in a rather difficult position: Tolerate the harassment, or be replaced by another woman who would.

Efforts to reform night work helped protect women who worked in public, but middle-class social reformers continued to push for women to return to the home. They feared that news of women’s sexual liberation in the press did not correlate to actual women’s liberation if they continued to be victims of seduction and other sex crimes. Coercing women back into the home seemed an obvious way to combat increased sexual vulnerability. The home had long been celebrated as a safe retreat from the public sphere where residents, particularly women, could feel safe. Yet men seducing and/or raping their domestic servants ensured that women working in private homes were, in practice, no safer than those working in factories. This was particularly upsetting to reformers because domestic workers functioned within the private sphere, which ostensibly offered protection from the public world of unscrupulous employers and foremen.

Harassment of domestic servants was pervasive throughout the nineteenth century, and continued well into the twentieth. In 1910, domestic servant Mary Driscoll was the victim of sexual

\[\text{\textsuperscript{102} Industrial Commission of Ohio, Division of Workshops, Factories, and Public Buildings, Aug. 1 1917, Standards for Employment of Women in Industry folder, (RG 86) Women in Industry Service, Correspondence to the Director, 1918-1920, National Archives and Records Administration, College Park, MD.}\]
harassment while she was employed in linen salesman John Melville’s home. Driscoll claimed to have been sexually attacked by Melville while his wife was away with their children, and became pregnant with his child.\textsuperscript{103} Driscoll brought Melville to court, and although her case was dismissed without any punishment handed down to Melville, it is noteworthy that she was able to bring him to court without a male liaison. In another example, the Superintendent of Chattanooga Public Schools in Tennessee was forced to resign in disgrace after he “ruined a young girl,” Carrie Buchanan, who worked in his home.\textsuperscript{104} The Superintendent paid Buchanan a monthly sum of money in exchange for her discretion. The Superintendent’s resignation marked a significant achievement for female agency and suggested that women were being taken more seriously by the legal system.

Conversely, however, a California judge decided that a Los Angeles woman was \textit{not} justified in leaving her position as a domestic worker without notice because her employer persistently proposed marriage to her. An unwanted proposal was not deemed a dangerous or damaging enough reason for leaving work without giving her employer notice. Despite the woman’s insistence that her employer had twice ignored her polite refusals, her case was dismissed in court.\textsuperscript{105} The inconsistency in decisions handed down by courts across America suggests that lawmakers struggled to maintain a cohesive stance on women’s sexual harassment claims during the Progressive Era.

Much of the information available to historians about domestic servants comes from the court records of women arrested for prostitution, as many prostitutes worked formerly as domestics. These women articulated the dangers of domestic work, which included “sexual harassment from

\begin{itemize}
  \item \textsuperscript{103}“Witness Against Melville: Servant Mary Driscoll Tells of Employer’s Attacks,” \textit{Brooklyn New York Daily Eagle}, March 4, 1910.
  \item \textsuperscript{104}“School Official Forced to Resign; Ruins Young Girl,” \textit{The Chicago Defender}, June 20, 1914, 1.
  \item \textsuperscript{105}“Employers May Propose,” \textit{Los Angeles Herald}, March 12, 1910, 6.
\end{itemize}
husbands” and male bosses, as well as horrendously long hours. Domestic workers rarely had time to themselves, and often remained out of the realm of public recreation. Because they lived and worked on the same property, “domestic servants often felt isolated from the social world of other young working people.” Burnout and turnover rates for domestic workers were exceptionally high, which meant that domestic servants often were out of work. As a result, many turned to less moral, but highly lucrative professions – like theater and prostitution – when all else failed.

Court records indicate that “domestic servants accounted for the highest percentage of prostitutes’ former occupations” – a statistic that terrified parents, middle class reformers, and lawmakers alike. Maimie Pinzer was a former domestic servant for a wealthy tailor, who wrote in her diary about the harassment she endured and how her experience drove her into prostitution. She wrote that when her employer asked her to engage in sexual acts with him, she could not think of what to say and believed “that he took my silence for a sort of consent.” Disgusted by how she was treated, Pinzer left her domestic job and found employment instead in a brothel.

Because of the influx of wage-earning women in the Progressive Era, individual women became expendable in the workplace – those not willing to meet an employer’s demands were readily replaced by another. While this drove many women to work harder and to respect the terms of employment, some employers used this knowledge to their advantage. Some women were forced to tolerate unpleasant, and often demeaning, behavior in order to retain employment. Both

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108 Rosen, The Last Sisterhood, 155.

109 Quoted in Rosen, The Last Sisterhood, 152.
domestic and factory workers were, on occasion, asked to “extend sexual favors to their male employers” in order to stay employed and make a living wage. Situations such as this were common for domestic servants, who were unprotected by the federal legislation that regulated women working in factories. Maimie Pinzer believed that “being a girl – and a rather nice looking one – made certain positions unbearable,” and assumed that her experience was indicative of how many other women, especially those working as domestic servants, were treated.

The prevalence of working women and concerns for their moral well being prompted discussions about Victorian Era sexual virtue and the ways in which social mores about sexuality had shifted by the early twentieth century. Nineteenth century sexuality was defined largely by ‘separate spheres ideology,’ in which women were deemed “naturally modest,” while men, by contrast, were portrayed as “sexual brutes, obsessed with sex and disposed to use their legal and social authority to exploit” naïve, innocent women. Women’s moral superiority in the home empowered them to resist men’s sexual advances, leading to the emergence of sexual restraint as a symbol of power for women in the Victorian period. Out of this Victorian ideal emerged legal penalties for breach of promise, seduction, and rape in several states. Reformers sought to protect the virtue of “courtship” practices in which a young girl could “observe her lover and judge his qualities as a future husband” without becoming sexually involved. Men could find instant gratification with sexually permissive women, but only the most modest women were worthy of courtship, and ultimately marriage.


By the early twentieth century, attitudes toward female sexuality had undergone a major shift: Women no longer were the centerpieces of domesticity, but were perceived instead as the more sexually deviant gender. This trajectory can be traced through cases of early sexual harassment, which are at once both representative and exceptional. They are representative of the experiences of young working women who dealt with gender inequality, the lewd ambitions of employers, and lax regulations concerning the protection of women. And yet they are exceptional in that they defy the traditional trajectory of how women were perceived from the Victorian to the Progressive Eras.

While sympathy toward female victims of sexual harassment fell in and out of favor for much of the nineteenth and early twentieth centuries, each of these cases resulted in some sort of victory for the woman involved. Decisions by juries, it seemed, were consistently concerned with female victims of assault, and not always concurrent with the shifting opinions of politicians, lawmakers, and reformers. The general public appeared more sympathetic to the plight of women than the lawmakers and government officials who were responsible for crafting official policy. One potential explanation is that the presentation of materials to a jury proved more convincing than mere stories of sexual harassment in the abstract. Alternatively, the lofty rhetoric against protective legislation may have appealed to a certain class of people who could understand it, but failed to attract those who could not. As a result, notions of patriarchal protection for women may have lingered in the minds of the American public even after laws liberating women from this type of paternalism had been enacted. Regardless of the justification, it seems that the idea of protecting women was less controversial among their peers, than among those who created and executed the law.

This chapter has shown that despite middle class reform efforts to eliminate harassment in the workplace through federal legislation and social activism, cases of workplace exploitation persisted.
Greater numbers of women participating in wage labor was troublesome to reformers who feared that women were overstepping acceptable social boundaries by engaging too freely in public. Some reformers believed that the pervasiveness of sexual harassment in the workplace was inevitable because women simply did not belong in the male dominated world of business and physical labor. But what they did not take into consideration was the possibility that harassment and exploitation could occur even in more traditional female occupations like domestic servitude. Though some advocates of female suffrage and women’s liberation deemed protective legislation as patriarchal and restrictive in nature, women repeatedly were taken advantage of in the workplace, suggesting that perhaps women did still rely on some kind of protection to remain safe.

The two cases of workplace harassment examined in this chapter brought increased awareness to the plight of working women, and laid the groundwork for continual efforts at federal legislation and female suffrage. Moreover, the cases illustrate the difficulty of defining female agency, and reveal that place and time of day affected how women were perceived. The following chapters will show that sexual harassment was an issue that lawmakers often addressed using language that conflated workplace protections and women’s maternal obligation to society. This implied that female weakness – and thus the special protection women warranted – was justified by their roles as the nation’s mothers, and not by the tangible threats to their physical and emotional well-being as American citizens.
Chapter 4: America’s Age of Consent Campaign

Age of consent legislation was controversial and hotly contested throughout the late nineteenth and early twentieth centuries, and often went hand in hand with larger discussions of protective legislation for women workers. Minimum wage and maximum hour regulations generally were dependent on age, which contributed to further discussion of the suitability of certain age groups for various types of labor. But while regulations for hours and wages were the prevailing forms of protective legislation, age of consent laws also provided protection for female workers. By the late nineteenth century, reformers grew increasingly concerned about teenage girls’ vulnerability to their superiors in the workplace, which fueled the debate over the age of consent. This debate addressed reformers’ underlying fears of losing control of middle class womanhood and virtue, and often objectified women as property instead of people. The push for age of consent reform grew out of frustrations over legal shortcomings in protecting young, working women from ill-intentioned men, both in the workplace and beyond.

‘Age of consent’ is derived from the concept that until a certain age it is unlawful to engage sexually with an individual, whether with or without consent. By the turn of the nineteenth century, American reformers feared that young girls were engaging too freely with adult men, and became fixated on raising the age of consent nationwide. Moral reformers who advocated for raising the age of consent had two primary goals: 1) Allowing girls to mature and develop more fully before becoming (legally) sexually active; and 2) Creating and enforcing more stringent punishments for men who violated underage women.¹ Age of consent laws were put in place to regulate sexuality between adults and children, effectively putting the State in the middle of sexual decision-making.

between children, teenagers, and adult participants. Legislation focused so heavily on women because a woman who became pregnant could not “keep her crime hidden as a man can.” Out of wedlock pregnancy resulted in women carrying the physical, financial, and emotional burden of sexual activity by either raising the child, or leaving it to the State.

This chapter considers the Women’s Christian Temperance Union (WCTU) as the primary driver of the age of consent agenda. It focuses largely on the WCTU’s crusade against women engaging too freely in public, which emphasized stronger industrial regulations for women workers and more severe punishments for men who took advantage of young women. The chapter also examines the WCTU’s use of educational literature as an effort to reform Americans’ understanding of childhood and to espouse social purity. Well-known age of consent advocates Grace Hoadley Dodge, Frances Willard, and Helen Stoddard are central figures in the chapter’s examination of proposed reforms to both local and national age of consent law.

Mary Odem has stated that the ultimate purpose of age of consent laws was to challenge the “double standard of morality” that existed in Nineteenth century America. Many reformers supported raising the age of consent because they believed that young women were increasingly vulnerable to the wiles of men. This was particularly pertinent as increasing numbers of women entered the workplace where they were supervised by older men. The official ‘age of consent

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4 Wood, Freedom of the Streets, 16.

5 Odem, Delinquent Daughters, 8.

6 Odem, Delinquent Daughters, 9-10.
campaign’ began in 1885, initially as an educational literature blitz that emphasized moral and social purity. But reformers grew frustrated when their efforts proved ineffective, and began to lobby state and federal legislatures to make underage sexual activity a crime. Odem argues that the age of consent campaign grew largely out of social tensions and the acknowledgement that changing environments threatened the morality of young women.

Kathy Peiss similarly addresses late nineteenth century social culture, and examines the ways in which young women engaged in public life. She links the social expansion of young adulthood to “modernity, individuality, and personal style,” which threatened reformers’ comfort with the status quo of gender expectations. Reformers hoped to stifle women as they pushed new social and sexual boundaries, but had little success. Pushing for state and federal legislation proved to be one of the few methods by which reformers could have their concerns addressed. Both Odem and Peiss address the fact that age of consent legislation was protective legislation. Although not explicitly labeled as such, setting an age of consent served the same overall purpose as minimum wage or maximum hour legislation: To protect the virtue of young working women. While protective legislation can be couched in language of protecting women’s physical health (i.e. their viability as mothers), there was an implicit assumption that setting an age of consent was about preserving female morality.

For many years the age of consent varied drastically from state to state. By 1886, many states set their age of consent at ten or twelve years old. The WCTU heavily pressured Congress to

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7 Odem, *Delinquent Daughters*, 11.


set some kind of national law protecting the sanctity of childhood, primarily for poor and working
class girls. The group argued that daughters born into wealthy families were already “shielded and
protected by good home environments,” and as a result there was less urgency to legislate on their
behalf. Poor and working class daughters, on the other hand, were born into a different situation
and in urgent “need of added legal safeguards” because they more often frequented the places where
impropriety occurred.11

Age of consent laws were closely intertwined with seduction laws. While English Common
Law defined seduction as “the act of a man inducing a woman to commit unlawful sexual
intercourse with him,” the American legal system granted individual states their own
interpretations.12 Many states agreed that seduction could occur only to “unmarried females of
previously chaste character,” and many included age restrictions. An 1889 Rhode Island statute, for
example, defined seduction as “enticing a chaste girl under age fourteen not proven to be of
previous bad character.”13 The crime was punishable by up to five years in prison.14 But women of
immoral character – “bawds, or adventuresses” – were unprotected under this law.15 An Iowa law
went so far as to state that even a woman “whose conversation and manners suggest the thought of

11 “Protection of Girlhood,” Philanthropist, 1 (October 1886), 2. Included in How did Gender and Class Shape the
Age of Consent Campaign Within the Social Purity Movement, 1886-1914, by Melissa Doak, Rebecca Park, and Eunice Lee.
(Binghamton, NY: State University of New York at Binghamton, 2000).

1022.

13 Mary Anne Greene, “Legal Status of Women in Rhode Island” (Woonsocket: Rhode Island: F.A. Colwell
Publishing 1900) 7.


indecency is not ‘chaste’ though she has not been guilty of sexual intercourse.” The underlying message here was that while any woman could be seduced, only a small subset of women were worthy of government protection.

Take for example the 1856 Iowa Supreme Court case of *Gover v. Dill* in which an Iowa woman sued her seducer for $5,000 in damages. The Iowa State Legislature defined seduction as “the flattery and deception, seduction and debauchery, and carnal knowledge of an unmarried female, of previous chaste character.” While the jury sided with the plaintiff, and therefore acknowledged the seduction of the woman, a key piece in their decision making process had to do with whether or not the woman in question was of previously chaste character. The onus was on the plaintiff and her attorneys to convince jurors of her virginity if she was to be worthy of monetary damages. This kind of subjectivity in terms of who was worthy of protection and who was not, was troubling to age of consent advocates nationwide who believed that girls beneath a benchmark age required protection regardless of their reputation.

A later Iowa case, *Andre v. State* (1879) shifted this burden from the woman to her seducer with the ruling that “the chastity of the female is presumed, and the burden of proof to the contrary is on the defendant.” This decision suggests that by the 1870’s, there was a deliberate shift in how

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16 *Andre v. Iowa* 5, Iowa, 389 (1879).


18 Iowa Supreme Court, William Penn Clarke and Chester Cicero Cole “Reports of Cases at Law and in Equity, Argued and Determined in the Supreme Court of the State of Iowa, Taken from the Original Opinions and Records, and Embracing All the Cases Decided During the Period Covered by the First Volumes of Iowa Reports, by Clarke, with Copious Notes.” (Des Moines, Iowa: Mills and Company Law Publishers), 1857: 339.

19 Iowa Supreme Court, “Reports of Cases at Law and in Equity, Argued and Determined in the Supreme Court of the State of Iowa,” 343.

20 *Andre v. State*, 5 (Iowa) 389 (1879)
courts dealt with seduction cases: Women were given the benefit of the doubt in terms of their chastity and naiveté. Similarly in Lewis v. People, heard before the Michigan Supreme Court in 1877, the Court weighed in on the credibility of the victim and sided with thirteen year old Alice Tiffany. Tiffany was “seduced and debauched” in her father’s house by Morgan Lewis who was accused, and convicted, of seduction. Unhappy with the verdict, Lewis appealed on the grounds that only unmarried women in Michigan could sue for seduction, and claimed that Tiffany’s legal team had failed to prove that she was in fact unmarried. After reconsidering the case and the jury’s decision, the Court upheld the original verdict and reasoned that Tiffany’s “extreme youth” implied that “she is a mere girl and unmarried.” Despite this shift in courts’ responses to female victims, there remained inconsistencies from state to state in terms of what judges, lawyers, and juries considered adequate defenses of seduction.

In response to inconsistent seduction laws, Massachusetts pushed to criminalize seduction “with penalty which shall be sufficient to discourage the prostitution of children and the traffic in all girls under eighteen.” Raising the age of consent to eighteen – and therefore adding an age component to what qualified as seduction – was an essential step toward criminalizing the seduction of girls all the way through legal adulthood. Otherwise women had little legal standing in court, as no law had been violated. An 1888 op-ed from Philanthropist echoed this sentiment when its author wrote that “a man who would be subject to imprisonment if he should rob a girl of her pocket book,

21 Lewis v. People 37 (Mich.) 518 (1877).

22 What I see driving this shift is a more serious acknowledgment from the medical community of the teenage years as a unique part of childhood. As Americans began to accept fourteen-year-old girls as adolescents, instead of wage earning young adults, the public view of them changed. The overall reputation of teenagers shifted from temptress to a vulnerable population worthy of protecting.

23 “The Age of Consent,” Union Signal, 10 June 1886, 2-3.
may with comparative legal impunity seduce her and despoil her person.”24 The loss of money was trivial compared to the loss of virginity, and yet the punishment for monetary theft was significantly harsher than theft of “purity and honor.”25 The author appealed to legislators, asking them to make seduction – regardless of age – a felony nationwide.

External factors within a rapidly changing society were the impetus for raising the age of consent across America. Late nineteenth century commercialized leisure brought about major concerns about the safety of young women and played into the debates about raising the age of consent. The rise of public amusement – dance halls for example – introduced a culture of teenagers interacting freely, often without parental supervision, and with peers of the opposite gender. Statistics indicated a rise in premarital birthrates from 10 percent in 1880 to 23 percent in 1910, which provoked anxiety in many reformers because it suggested two trends: 1) That the rate of premarital intercourse was actually much higher than 23 percent, because not all sexual activity resulted in pregnancy; and 2) That greater numbers of women were engaging freely in public spaces, away from family supervision.26

The late nineteenth century was one of the first moments in which working girls experienced social independence, which was tied directly to a rise in disposable income and unsupervised living situations. This scenario simultaneously excited the working class youth, and troubled middle class reformers.27 Reformers feared that a waning familial support system left women more susceptible to the wiles of wayward men in the workplace, which could lead to “flirtation and intimate encounters”

24 "Seduction a Felony,” Philanthropist, 3 (September 1888), 4.
26 Freedman, Intimate Matters, 199-200.
27 Peiss, Cheap Amusements, 163-164.
without a promise of marriage. In an attempt to challenge this newfound independence, reformers advocated for heightened regulations of commercial leisure. They pushed for more moral alternatives, such as dances sponsored by local reform groups in which adolescents could interact with the opposite sex in a strictly regulated environment. Reformers hoped that these supervised events would bridge the gap between the newfound desire for leisure activities and more conservative Victorian Era gender expectations.

Dance halls were particularly troublesome to reformers who feared that new forms of dance led to premarital sexual relationships. New York’s P.S. 63 regularly held mixed-sex dances which involved “about fifty young couples dancing…12 or 14 years in age…using vile language, smoking cigarettes, and shimmying while dancing.” Other descriptions noted scenes in which “every night from 9 to 10 o’clock, anywhere from a dozen to fifty girls of 13 or 14 waited for some utter stranger to bring them in.” Narratives like this challenged Victorian notions of propriety and deeply troubled those who were concerned about young women’s safety. Some cities, such as Elizabeth, New Jersey banned its dance halls altogether in an attempt to maintain the safety of its youth. Chicago’s Police Chief, John Collins, similarly hoped to rid Chicago of all dance halls with hopes of enforcing a higher standard of public morality in his city.

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29 Peiss, *Cheap Amusements*, 164.

30 Peiss, *Cheap Amusements*, 183.


33 “New War on Dance Halls,” *The Chicago Tribune*, February 17 1906, 2.
But imposing a complete ban on mixed-sex dances seemed impractical and raised concern that teenagers would congregate elsewhere if they were unable to do so at dance halls. An alternative to banning mixed-sex dances was more heavily regulating the establishments once patrons were already inside. The thinking here was that keeping young singles inside the dancehalls, where they could be supervised, was the key to regulating their behavior. An attempt at regulating behavior inside dance halls included a ban on “spotlight dances” in which all the lights in the dance hall were turned off with the exception of a single spotlight. New York City’s Chief Inspector of Dance Halls supported this ban, and believed that spotlight dances “permitted immoral and indecent dancing” that posed a serious threat to dancers of both genders.34 But regulating behavior within dance halls was not always enough: Young men and women often left the club together so the man could accompany the woman home, and this unsupervised time together also made reformers uneasy. One proposed solution was to make the last half hour of the dance gender specific – “girls only” or “boys only.” This forced members of one gender to leave, and enticed members of the other gender to stay for the final dance set.35 Dance halls in particular attracted women, both married and single, which further distanced turn-of-the-century family life from previous generations in which women rarely left the home for leisure activities without their husbands or fathers present.36

Reformers perceived these societal developments as problems that were inherently tied to women working and earning money, which sparked efforts to find remedies. A popular method for preserving Victorian era gender norms was the development of boarding homes and employment

34 “Spotlight Dances Immoral; Are Banned by Inspectors,” The Patterson Morning Call, March 16, 1920, 1.

35 Peiss, Cheap Amusements, 181.

agencies to help steer wayward women in the right direction. Grace Hoadley Dodge was an active proponent of special protections for working women, and advocated for boarding houses to keep women from living in downtrodden housing in urban areas.\textsuperscript{37} Dodge was the daughter of a wealthy New York merchant, and chose to use her privilege toward public service rather than becoming another New York City aristocrat.\textsuperscript{38} In her twenties, she began working for the New York State Charities Aid Association and taught classes for women ranging from vocational training to religious education. Her efforts received mixed reviews from working women; her wealthy upbringing bred skepticism about the authenticity of her motivations. Dodge worked her entire career to overcome the “natural hostility that working women felt towards the segment of society Dodge represented.”\textsuperscript{39}

Dodge’s business model was savvy; she knew that many women were sensitive to receiving “charity” from wealthy, white women like herself. Her employees did not simply manage and oversee boarding house tenants, but instead were there to “make their evenings pleasant and profitable...give friendly talks on many topics” and establish “confidential relations.”\textsuperscript{40} This helped working class girls feel at ease, and less like they were subject to the paternalism of boarding houses. It also encouraged open and honest conversation, which helped Dodge and her associates to pinpoint where the most harm was being done to women. For example, three girls from one boarding house “all gave the same name as that of the man who had brought them deep distress and


\textsuperscript{40} Aaron M. Powell, "The Moral Elevation of Girls," \textit{Philanthropist}, 1 (February 1886), 5-6.
who was the foreman of the factory where they all worked.”41 This reinforced reformers’ suspicions that the workplace was a problematic space for young, single women to spend their time.

Despite skepticism about her intentions, it seemed that Dodge was genuine in her desire to uplift working women. She believed that “the street claims hundreds, the cheap dance halls, theaters and concerts offer attractions to hundreds, while they [girls] then go home to sit in morbid despondency, feeling forsaken, lonely, sad.”42 It was the second part – going home to empty and “forsaken” homes – which Dodge worried about most. If she could provide housing that mimicked family life, women would not only be more protected, but would feel safer and more connected to their community. Dodge believed in self-betterment for all women, and led classes – both in academic and recreational fields – free of charge.43 She founded the Teachers College at Columbia University to provide specialized programs for women who wished to advance their careers in elementary teaching, and served as the first female member of the New York Board of Education.44

Though Dodge was an advocate for female empowerment, she worried about the growing impropriety of mixed-sex friendships between single men and women. She felt that working women placed less of an emphasis on marriage and motherhood than did their predecessors, which threatened the sanctity of the home and the family. Dodge did not believe that it was wrong “to have men friends, nor wrong to have pleasant times with them…what is wrong is the allowing of

41 Powell, ”The Moral Elevation of Girls,” 5-6.


One way to combat the fear of pre-marital intimacy was to have female supervisors present at the places where cross-sex mingling occurred. By the 1890’s Dodge convinced the New York Public Recreation Commission to employ a female supervisor during all business hours at public spaces that attracted young girls. Dodge also lobbied owners of public spaces like movie theaters and dance halls to employ their own female overseers to maintain a family friendly environment for all patrons. These specialized supervisors would help regulate sexuality and virtue in public, with a particular eye on female patrons.

Concern about young women engaging with men in public went beyond leisure activities and also encompassed the workplace. As news of repeated crimes against young girls in London factories made its way across the Atlantic, the United States began looking internally at its own factories. The realization was that there were many instances of sexual assault taking place in a variety of industries nationwide. While many states had some sort of protective legislation for girls in place, it was not always effective. And most states set the age of consent at ten years old; Delaware’s age of consent was set even lower at seven. One of the strongest proponents of raising the age of consent was the WCTU, a reform group founded in 1874 and based in Evanston, Illinois. The WCTU was established by wealthy Protestant women who advocated fiercely for social purity and raising the age of consent.

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46 Peiss, *Cheap Amusements*, 179.


As early as the 1880’s, WCTU President Frances Willard argued that women needed to self-advocate for the implementation of legally enforceable social and industrial protections. Willard was elected President of the organization in 1879, and is credited for shifting the WCTU’s focus away from a “temperance praying society” and more toward an organization with an activist agenda. She began the election process by going on a lecture circuit in which she laid out her plans for the organization’s future. Those who heard her speak found her charismatic and overwhelmingly likeable, and she drew an immediate following. WCTU members idolized her, and “competed for her favors as they would the attention of a male lover.” And Willard, in return, built personal relationships with many of them by physically embracing each new member upon initiation and remaining genuinely interested in their well-being throughout her tenure as President.

Willard suggested that legal protection, such as a national age of consent law, was most significant to the contemporary woman who was unmarried, but living outside of the protection of her childhood home. Some states, such as Tennessee, agreed with Willard and instituted an additional layer of protection for women: ‘consent of custodian.’ It stipulated that even in a consensual sexual relationship, a man could face charges of abduction and/or seduction “if it be done without the consent of her legal guardian.” This kind of legislation was most vital during a

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49 Minutes of the National Woman’s Christian Temperance Union at the Eleventh Annual Meeting in St. Louis, Missouri, October 1884. (Chicago, Ill: Woman’s Temperance Publication Association, 1884) 74.


51 Bordin, Woman and Temperance, 67.

52 Bordin, Woman and Temperance, 69.

woman’s vulnerable teenage years in which she may have outgrown her father’s home, but before she was legally protected by marital coverture.

In 1886, under Willard’s leadership, the WCTU petitioned Congress for the protection of women, citing the alarming frequency at which women, and “even little girls,” were becoming sexually active before marriage.\textsuperscript{54} The WCTU’s ultimate goal was to raise the national age of consent from thirteen to eighteen years. Despite initial legislative failures – particularly legislation blocked by male lawmakers who disapproved of women’s participation in politics – the national WCTU refused to stop pressing for greater protections for women.\textsuperscript{55} They instead tackled the problem from a different, more focused angle: Local branches began to pressure state governments for action.\textsuperscript{56} In 1887 the Massachusetts WCTU lobbied the state legislature to raise the age of consent to eighteen. Although Massachusetts required women to be eighteen to sell and/or hold property, or to enter into a marriage contract without parental consent, current age of consent laws “considered her by law competent to give away or sell her virtue at the tender age of thirteen years.”\textsuperscript{57} Age of consent laws epitomized government sanctioned protective legislation for women, as they endowed agency at certain stages of life, yet also dictated the age at which young girls no longer required government imposed protections.


\textsuperscript{55} Odem, Delinquent Daughters, 9.

\textsuperscript{56} Bliss, The New Encyclopedia of Social Reform, 9.

\textsuperscript{57} “Protection for Girls,” Issued by the Massachusetts WCTU from State Headquarters (Boston: December, 1887). Records of the National Women’s Christian Temperance Union, Frances Willard House, Evanston, IL.
In addition to raising the age of consent, the WCTU also fought to increase the severity of punishments for men who violated young women. The group claimed that men often benefitted from flimsy sentences because they were favored by societal gender standards. A higher age of consent would shelter America’s youngest girls from the “blindness of their own passions…and physical suicide,” and would help prevent “the murder of virtue and purity in womanhood.” The WCTU suggested that the unlawful carnal knowledge of a young woman or child be made a felony, punishable by between five and ten years in prison. Moreover, the group pointed out the paradox that while certain states granted protections for the theft of animals and property, inadequate safeguards were provided for the protection of women and their virtue. As late as the 1880’s, laws in Massachusetts protected girls until age nine – then, “at the age of ten a little girl might consent to what would ruin her for life, and the person who led her astray was fined $30.” This same law existed in twenty states, illustrating the widespread refusal to acknowledge that young girls faced sexual danger.

The WCTU lobbied legislators at the state level to intensify punishments for men who committed crimes against young women and girls. In an impassioned letter to the Congress, Helen Stoddard argued that current methods of chastisement were negligible. She described a scenario in which a man seduced an eleven-year-old girl and “was only subject to a $25 fine…while the girl

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58 “Protection for Girls,” 1887.


60 “Ringing Words,” Lynn Daily Sun, October 8, 1888.

61 “Ringing Words,” Lynn Daily Sun, October 8, 1888.

suffered the shame and ignominy through all her life.” Stoddard urged Congress to enact harsher punishments for male seducers, but had little luck getting widespread legislation passed.

Stoddard was a life-long anti-vice advocate who served as the President of the Texas WCTU from 1891 to 1907. During her tenure as president, she spoke out passionately about ‘age of protection’ legislation. In addition to lobbying state and federal agencies for raising the age of consent, Stoddard and the WCTU disseminated literature to make the public aware of additional dangers facing women. Between 1880 and 1920 the group published pamphlets focusing on issues such as community protection, proper housing for the morally and mentally unstable, and the introduction of female law officials to local police departments. The WCTU hoped that this information would “maximize the moral protection of girls while outside their homes,” whether in lodging-houses, places of employment, dance halls, or theaters. They even published didactic stories such as Almost: A True Story, to warn girls of the dangers of life outside the protection of the home. In Almost, Freda Thorne – a naive schoolgirl – waits for a train as a well-dressed young man approaches her. After talking briefly, the man invites Freda to his aunt’s home where he says they can spend time alone. Despite the man’s politeness and ostensible propriety, Freda refuses his offer because she has been warned (presumably by a group such as the WCTU) of the dangers facing girls who run off with men. At the story’s end, Freda expresses gratitude that she was taught how to protect herself – and her virtue – in this type of situation. Narratives such as Almost were circulated

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63 Helen Stoddard, “The Age of Consent: An Address to Congress.” From the Houston Post, February 3, 1895.


through schools, private homes, and even some places of employment in an attempt to teach girls to protect themselves from the advances of lewd men.\footnote{Thompson, \textit{Almost: A True Story}.}

Another effort to impose morality through literature was Helen Gardener’s \textit{Pray You, Sir, Whose Daughter?}, published in 1892, which strongly condemned the low age of consent in many American states. The book shows that the Victorian ideals of womanhood and gentility were precisely what contributed to a woman’s downfall by the late nineteenth century: “Dependence, desire to please, deference to judgement are what make women most agreeable, but these are the very traits that lead to her ruin.”\footnote{Helen Hamilton Gardener, \textit{Pray you sir, whose daughter?} (New York: New York, R.F. Fenno & Company 1892) ix.} In Gardener’s work, fourteen year old Ettie Berton is seduced by the manager of the shop in which she works.\footnote{Gardener, \textit{Pray you sir, whose daughter?}, 110-116.} But because Ettie is over the age of consent, her seducer faces no legal penalties. Ettie, on the other hand, loses her job and the respect of her family and friends.\footnote{Odem, \textit{Delinquent Daughters}, 18.} The foil to her character is Gertrude Foster, a middle-upper class, college educated woman. Foster serves as the voice of reason and morality – and as a thinly veiled spokeswoman for Gardener – advocating for more stringent punishments for male seducers and a higher age of consent.\footnote{Odem, \textit{Delinquent Daughters}, 18, 20.} Foster gives an impassioned speech to Congress in which she draws upon laws put in place to protect young boys, and claims that no such laws exist to protect young girls. She argues that “there is no law in any state which would bind a ten-year-old boy to any contract which he might have been coaxed into. That boy is without blame and his contract is absolutely void – it is
illegal.” Yet ten year old girls who enter into sexual relationships are “held legally responsible for her actions and her judgement.” Gardener’s work illustrates the widespread debate over the age of consent, and sheds light on the deep anxiety relating to women’s sexual and physical vulnerability in the world of male labor.

In conjunction with efforts to raise the age of consent, the WCTU also disseminated sexual education literature that focused on educating young men about respecting female virtue. The goal here was to teach boys the value of a pure woman, both in terms of chastity and public health. *The Parent’s Part,* issued by the New Jersey Department of Health, gave explicit instructions for teaching young boys about sex before, during, and after puberty. The pamphlet instructed parents to embrace the child’s “curiosity about all things that move and change and grow” on the body, which generally began about age six. It further urged parents to talk about sexual activity and childbirth prior to adolescence, as later in life – especially during the teenage years – “new personal experiences and new sensitiveness makes it harder to give this information.” The heavy emphasis on educating the male child was part of the WCTU’s “white life for two” program, which encouraged sexual purity for both sexes. The idea behind this literature was that young boys who knew about sexuality and its consequences grew into more respectable men.

A second way of bringing young boys into the discussion of female virtue was through the WCTU’s ‘Mothers’ Meetings,’ which taught women how to impart moral wisdom to both their

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71 Gardener, *Pray you sir, whose daughter?*, 127.

72 Gardener, *Pray you sir, whose daughter?*, 128.


daughters and sons. These meetings indicate that while protecting girls’ morality was a major goal, reforming male attitudes toward sexuality was also important. The age of consent campaign challenged the relatively accepted sexual double standard that women were expected to be chaste, but that men were allowed to experiment with their sexuality before marriage. Frances Willard gave an impassioned speech addressing this double standard in which she addressed a 17-year-old girl who became pregnant by her seducer, and subsequently killed the infant out of humiliation. Willard expressed her deep-seated rage that while this woman was mentally and emotionally tortured, her seducer experienced none of the pain. Invoking vivid imagery, Willard said “He, pillowed that night in comfort; she, shivering in cold and shame; he, her worse than murderer, yet unpunished; she, his helpless victim, yet a criminal.” Furthermore, she argued that the only way to protect women was to hold men to the same standard of morality as their female counterparts by imposing stringent penalties on men who preyed upon young, working girls.

Henry Blackwell’s article “The case of Maria Barberi” published in Philanthropist similarly addressed the gendered double standard that existed in American before women were granted full citizenship. Maria Barberi, a fifteen year old Italian-American girl living in New York City, was seduced under the promise of marriage by an older man who “boasted of his conquest, degraded and repudiated her.” Barberi’s feelings toward her seducer turned from love to scorn, and she killed him. After a jury trial, Barberi was sentenced to death by electrocution. Blackwell’s article

76 Odem, Delinquent Daughters, 28.


78 Odem, Delinquent Daughters 19.

79 Henry B. Blackwell, "The Case of Maria Barberi," Woman’s Journal, 10 (August 1895), 252.
highlights the double standard in Barberi’s sentence, and argues that if Barberi had resided in a state where the age of consent was set above age fifteen, such as Massachusetts, she would have received a different sentence. She would have been protected by the mere fact that “a girl of 15 cannot give a legal consent to the alienation either of her property or her virtue,” and the homicide would have been justified by “extreme provocation and outrage.” Moreover, had women already been granted suffrage, Barberi’s jury would presumably have been half female. Blackwell believed that female voices on the jury would undoubtedly have led to a more favorable outcome for Barberi.\footnote{Blackwell, "The Case of Maria Barberi," 252.}

WCTU efforts to promote social purity also focused on reforming the notion of childhood. Meeting minutes from the Sixteenth annual WCTU meeting in 1889 laid out a plan for educating the “childhood of the future” about temperance and female virtue in an attempt to create a more respectful and socially aware generation of adults.\footnote{Minutes of NWCTU Sixteenth Annual Meeting, November 8 to 13, 1889. (Chicago: Illinois, Woman’s Temperance Publication Association 1889)} The group feared that failing to provide moral education to any given generation would create a “retrograde movement” or worse – “a lost decade requiring us [WCTU] to do our work over again.” Their plan also included changes for young men in college, such as total abstinence and banishing wine at class suppers and all other school activities. Taking alcohol out of the equation would – at least in theory – make male students more responsible and upstanding adults. This, in turn, would lead to safer encounters with the women they met.

Physicians worked in conjunction with universities to provide moral guidance to young men by teaching their patients about the “physical effects of moral wrong-doing and the highest ideals of

\footnote{Minutes of NWCTU Sixteenth Annual Meeting, November 8 to 13, 1889.}
Medical pamphlets advocated purity until marriage, and discussed the dangers of premarital sex such as out of wedlock pregnancy. A 1909 study revealed an increase in venereal disease among unmarried men and women in the Northeast, which meant that pre-marital sex was occurring at least at some level. Physicians and moral reformers worked together to combat these statistics by preaching purity until marriage to protect both women and fatherless children from being socially ostracized. However, medical professionals did not share reformers’ concern for women’s moral well being. They instead advocated for social purity because of the physical damage that out of wedlock sexual behavior could have on both a mother and her fetus, such as venereal disease, botched abortions, and lack of adequate prenatal care.

Physicians who supported the WCTU’s agenda often rooted their argument in evidence from the “Darwinian Revolution” in which both childhood and adolescence were unique phases of life that differed markedly from adulthood. Darwin suggested that childhood ended not at the onset of puberty, but long afterward because the brain developed more slowly than the physical body. So while setting the age of consent at ten years old may have coincided with the onset of menstruation, it did not coincide with the onset of adulthood. This position helped to justify the WCTU’s scorn for states that refused to raise the age of consent beyond age 10 or 12. The group argued that there was a disconnect between the mental and emotional capacities of a ten year old, and the maturity required to enter willingly into a sexual relationship. Moreover, the WCTU grew

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84 Report of the National Woman’s Christian Temperance Union, Thirty Sixth Annual Convention (Omaha: Nebraska, October 22-27, 1909).


86 Odem, Delinquent Daughters, 35.

increasingly frustrated that the protection of a woman’s body was not protected as securely as her property or inheritance – in other words, in many states a woman could consent to sexual activity earlier than she could consent to selling her property. The group argued that raising the age of consent would help to prolong childhood because they believed that consenting to sexual activity marked the end of innocence.

Legislators’ failure to pass effective age of consent laws led women to voice their frustration through local WCTU branches. In an anonymous letter to the Massachusetts WCTU, one woman lamented that the government’s most basic role was to protect its citizens, but that age of consent legislation was failing to protect the nation’s girls and young women. Teenage girls needed moral and emotional guidance to navigate the tumultuous road of adolescence, and additional protections from the government would allow them to develop fully before entering into adult relationships. It seemed illogical that the government “forbids physical suicide, but does not forbid the murder of virtue and purity in womanhood.” At a time when virtue and purity were a key component to a viable future, having a tarnished reputation did in many ways “murder” a woman’s character.

Carrie E. King’s 1888 op-ed in the WCTU newspaper, *The Union Signal*, similarly discussed the failures of the movement to raise the national age of consent to eighteen. King advocated for a grass-roots movement to push the desired legislation through Congress. She believed that if she could drum up enough societal momentum, that Congress would have no choice but to listen. She proposed several measures, including a “lecture [promoting age of consent legislation] in every town where resides a candidate for the legislature,” and key endorsements for the new legislation from popular activists and politicians. She also called for educational lectures nationwide on such topics.

88 Anonymous Letter to Massachusetts WCTU, December 1887, Records of the National Women’s Christian Temperance Union, Frances Willard House, Evanston, IL.

as venereal disease, prostitution, and social purity. An organized and well-executed campaign would ensure that politicians “MUST raise the age of consent to eighteen years” on a national level, and King believed that enough ground level support would pressure Congress to improve protections for girls and women.

King’s grass roots movement and the individual crusaders she envisioned were not difficult to come by. The largely circulated “Petition of the WCTU for the Protection of Women” described the fears of many women who condemned the “increasing and alarming frequency of assaults upon women and the frightful indignities to which even little girls are subject.”90 The petition, which received 400 signatures, asked that a national age of consent be enacted, and that it be set no lower than eighteen years. It also expressed embarrassment that “the protection of the person is not placed by our laws upon so high a plane as the protection of the purse.”91 In other words, the protection of female virtue took a back seat to legislation about monetary and property restrictions and rights for women.

The WCTU suggested enforcing newfound national legislation through the incorporation of policewomen into the nation’s law enforcement agencies, whose responsibility would be to police the activities of women. Patrol work would include “general supervision and inspection of amusement parks, dance halls, cafes, cabarets.”92 The policewoman would be responsible for censoring “moral nuisances” such as inappropriate films and explicit posters, and dark alleys where young couples went before returning home. She also would serve as a deterrent for improper

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90 Petition of the WCTU for the Protection of Women to Congress, May 1888, Records of the House of Representatives, Box 147, National Archives and Records Administration, Washington, D.C.

91 Petition of the WCTU for the Protection of Women to Congress, May 1888.

92 Henrietta S. Additon, “The Sphere of the Policewoman,” North Carolina Community Progress, March 6, 1922. Additon is field representative U.S. interdepartmental social hygiene board.
relations with underage girls. The goal here was that while policeman was responsible for patrolling the sidewalks and public places for general nuisances and wrongdoings, the policewoman had the sole responsibility of protecting feminine virtue.\footnote{Additon, “The Sphere of the Policewoman.”} Infractions for girls who misbehaved grew increasingly stringent with each offense: The first incident warranted a chaperoned walk home, with a stern warning about immoral behavior. After a second offense, girls were escorted to a group home where they could be rehabilitated with proper supervision and moral education.\footnote{Arthur W. Towne, “A Community Program for Protective Work with Girls.”} After a certain period of good behavior in supervised housing, the girls would be returned home. The policewomen followed up with home visitations to ensure the girls continued living virtuous lives even when unsupervised, reinforcing the deeply entrenched paternalism within American society.

The WCTU was successful in increasing awareness about raising the age of consent and achieved its goal of bringing together various aspects of society for a common cause. But success at the state level was a double-edged sword. Although the WCTU lauded states’ decisions to raise the age of consent by any increment, there was also a concern that states would not push far enough to reach the target age of 18. WCTU supporters relentlessly lobbied state legislators “claiming that it [age of consent] must go still higher” than any age under 18. The goal was to create such public outcry that state legislators would give in to their demands simply to maintain smooth public relations.\footnote{Minutes of National Woman’s Christian Temperance Union, Twenty-First Annual Meeting (Cleveland: Ohio) November 16-21, 1894.} By 1894 three more states – Nebraska, New Mexico, and Iowa – had proposed legislation for raising the age of consent to 18.

In 1886 New York City raised the age of consent to sixteen because of changes in public perception of women and girls. Prosecutors began to notice that juries did not consider teenage
girls to be as vulnerable as younger children, and “consequently [juries] would not extend to teenage girls the same protection provided to younger girls.” This led to different – and often lesser punishments – awarded to men who engaged sexually with teenage girls versus men who were involved with pre-pubescent children. Attorneys, judges, and local legislators – even in nineteenth century America – acknowledged that the years surrounding adolescence were a period of development unlike any other seen in childhood or adulthood. This helped to foment the belief, and ultimately to pass city-wide legislation, that teenage girls should be included in age of consent laws.

The New York Society for the Prevention of Cruelty to Children (NYSPCC) echoed prosecutors’ concerns about low age of consent laws. They argued that “higher intelligence and greater strength of will” did not develop in girls until age sixteen, which marked a departure from childhood both physically and emotionally. The NYSPCC presented the rape of 9-year-old Anita Lanza as evidence for extending childhood as far as possible. Lanza was playing on the interior stairs of the building at which she and her family resided when an older man, Raffaele Nicolini, lured her away and took her to his room. He then “sat on a chair, took her on his lap pulled up her clothes, pulled out his penis, put it in her privates and kept it there for a little while.” This case was not necessarily a shining example for those who supported raising the age of consent, as Nicolini was prosecuted for his treatment of Lanza. But what this case highlights is the “passivity of the victim

96 Roberston, “Age of Consent Law,” 783.

97 Roberston, “Age of Consent Law,” 783-784.


reflected in her innocence and ignorance, rather than her consent.”\textsuperscript{100} This sexual assault occurred because of Lanza’s childish nature and inability to process – or to say no to – what was happening around her. This helped build the NYSPCC’s case that young girls simply did not have the mental capacity to give their consent to sexual activity before age sixteen.

To help make their point, NYSPCC attorneys made their female clients appear as young and naive as possible in court. They often dressed the girls “in short dresses typically worn by children,” and instructed that the girls’ hair be worn in braids or ponytails down their back to make them appear less physically mature. The girls also were urged to use juvenile language, though this sometimes backfired. In one case, 16 year old Maria Stadler used so much “euphemistic language” in her testimony about being raped, that the opposing lawyer challenged her innocence and pointed to her physical maturity, stating “this girl is no baby.”\textsuperscript{101} Girls of different ages used varying degrees of terminology to describe sexual assault, implying that there was a correlation between sexual knowledge and age. Phrases such as “he did something to me,” or “he put his privates in my privates” were perceived as sexually inexplicit, and thus inexperienced or naïve. However, phrases like “sexual intercourse” or correct usage of anatomical language denoted “understanding, sexual desire, and consent.”\textsuperscript{102} A girl who was sexually inexperienced “possessed the innocence and purity, if not the ignorance, of a child.”\textsuperscript{103} The ability to distinguish more developed, mature children from those who were undeveloped and naïve was imperative for age of consent legislation to develop into its modern form. By the mid 1910’s, society’s willingness to see teenagers as neither children nor


\textsuperscript{101} Trial Transcript Collection, Case 2157 (1916), 788, 789.

\textsuperscript{102} Trial Transcript Collection, Case 2157 (1916), 787-788.

\textsuperscript{103} Trial Transcript Collection, Case 2157 (1916), 789.
adults – but as a distinct group of adolescents – fomented age of consent legislation in various states nationwide.

Prosecutors and reformers saw many young and adolescent girls make their way through the court system – some as the victims of assault, and others who themselves were being prosecuted for crimes. Many age of consent advocates circulated theories about what made girls turn to vices such as prostitution and theft. One theory was that girls who came from poor or disjointed families were more frequently exposed to vice at an early age, and therefore internalized it as normal. These girls may have acted impulsively in periods of “intense and precocious passion, unprotected by knowledge which comes later.” A second theory was that puberty was such an essential and delicate moment in a woman’s life that exposure to material or conversation too “obscene or risqué” hindered normal development, and failed to protect against an interest in vice. Although middle class women grew up aspiring to become pure and virtuous women, such values did not always translate to underprivileged women. So-called “degenerate children” – girls from poor families – had a reputation for growing up to be uncontrollable and even “sexually perverted” after puberty, which may have contributed to their downward spiral into prostitution. Dr. Aaron Macy Powell, editor of the Anti-Slavery Standard, echoed this sentiment in his statement that while “the daughters of the wealthy are rarely ensnared [in prostitution], children of poverty or misfortune are the ones chiefly preyed upon.”

104 Adolphus, Moral Degradation, 371-372
105 Adolphus, Moral Degradation, 336
The lack of progress toward a national age of consent inspired Helen Stoddard to lobby Congress in hopes of fomenting a national movement. She argued that the years from fifteen to eighteen were pivotal years for a young woman in which she completed her maturation into adulthood. Her emotional growth “develops more rapidly than her reasoning powers; her judgment is not sufficiently mature to decide upon any matter of import.”\textsuperscript{107} Stoddard used emotional rhetoric to appeal to the all-male Congress, and asked them to consider whether an age of consent set at age fifteen was “reasonable, consistent, or just.”\textsuperscript{108} She challenged the congressmen to think and reason with “fathers’ hearts” as many of them likely had daughters at home, and reminded them of the naivety and innocence of young girls who lacked good judgment and the ability to make adult decisions. Stoddard believed it was “as illogical as cruel, that at an age when a girl’s consent is not held sufficient for legal marriage, it should be held sufficient to justify her destruction.”\textsuperscript{109} Moreover, a man could not marry the teenage daughter of another without her father’s consent, but he was “free to seduce her if he can.”\textsuperscript{110} Stoddard further argued that no reasonable man should allow his daughter or sister to go off into society unprotected under age eighteen. She asked each member of Congress to think outside of his own family, and to legislate with \textit{all} daughters and sisters in mind. The only way to ensure the greatest protections for young girls was to raise the age of consent.\textsuperscript{111}

\textsuperscript{107} Helen Stoddard, “The Age of Consent: An Address to Congress,” \textit{Houston Post}, February 3, 1895.

\textsuperscript{108} Stoddard, “The Age of Consent: An Address to Congress,” 1895.

\textsuperscript{109} Stoddard, “The Age of Consent: An Address to Congress,” 1895.

\textsuperscript{110} Stoddard, “The Age of Consent: An Address to Congress,” 1895.

\textsuperscript{111} Stoddard, “The Age of Consent: An Address to Congress,” 1895.
Stoddard also pointed out that women themselves were becoming more aware and more outspoken about age of consent legislation. She argued that in the 1870’s, very few women knew age of consent laws existed. By 1895, however, “the majority know what it is and every woman will remember the day she first heard of it.” Women resented low age of consent laws, which jeopardized the safety of their sisters, friends, and daughters. Some even began campaigns writing letters to congressmen expressing their deep dissatisfaction with local legislation. But so few women participated in these campaigns, that Congress was unlikely to listen to just the “occasional appeal coming from an indignant, helpless mother.” It would take more grass roots action and larger national support for women’s voices to have an impact on congressional policy before they even had the right to vote.

By 1920 almost every state had raised the age of consent to at least age sixteen, a major turning point in the age of consent campaign. This was a tremendous victory for both the working class women it protected, and for the reform groups such as the WCTU who supported age of consent legislation. Yet these laws were largely beneficial only to white women, and failed to protect black women – especially in the south – from the exploitation they faced in a society that valued whiteness. Southern legislators who supported raising the age of consent generally supported it on the principle of “protecting white female chastity, and did not challenge white men’s

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114 Odem, Delinquent Daughters, 35, 36. Many states, particularly in the South, had been resistant to raising the age of consent because of more conservative politics in the region. Southern women often lived in more restricted social and political circles than their Northern or Midwestern counterparts, and did not have access to literature and information about their rights, or about what other parts of the nation were doing in terms of age of consent legislation. The result was slower progress toward raising the age of consent in these states.

115 Odem, Delinquent Daughters, 37.
sexual exploitation of black women.”¹¹⁶ This led to more deeply entrenched notions of white supremacy in an already racialized Southern society. Expanded age of consent laws were also problematic because in their efforts to protect women more holistically, they stripped women of the ability to make decisions about when it was acceptable to engage in sexual activity.¹¹⁷ This idea became increasingly paradoxical as women achieved the right to vote, but still were treated as wards of the state by moral reformers.

Additionally, advocates conceded that age of consent laws could have unintended peripheral consequences. Helen Stoddard argued that encompassing a wider swath of girls in consent laws would lead to increasing numbers of men and boys in penitentiaries. This, in turn, would be harmful to boys’ development. Stoddard also believed that there was an inherent sectional divide between the American North and South where some regions had institutional safeguards already in place to protect women without formal age of consent laws. For example, the principle of southern chivalry tacitly ensured the safety and protection of southern women. But Stoddard’s argument failed to recognize that southern chivalry was geographically limited, and only protected certain groups of women. Southern gentility respected white women, and even, then, only middle and upper class white women.¹¹⁸ African American and poor white women were not protected under the same umbrella of chivalry and paternalism as their white, affluent counterparts.¹¹⁹ Stoddard was not alone

¹¹⁶ Odem, Delinquent Daughters, 36.

¹¹⁷ Odem, Delinquent Daughters, 37.


in her sentiment about Southern chivalry. Martha Lee Barnes wrote to the *Duluth Herald* in defense of her home state, Georgia, and its decision to maintain its age of consent at ten years. Barnes’ article was a response to an earlier *Herald* article which criticized Georgia for having one of the lowest ages of consent in the union, referring to the state as “uncivilized”. The paper attacked Georgia for being behind the times in its protection of women and girls, and challenged the logic behind a 1912 law that would raise the age of consent from age ten to age twelve. The paper claimed that the change seemed hardly worth it if girls over age twelve were still left to fend for themselves.

Unhappy with the criticisms of her home state, Barnes denounced the *Herald’s* indictment of Georgia’s age of consent. She insisted that local men were guided by southern chivalry and did not need formal laws requiring them to treat women well. Southern men understood that anyone “who wrongs a woman, [age] 10, or 20, or 50 meets with a punishment so swift, so terrible that even the lowest, most depraved dare not.” Barnes condemned the paper, calling attention to Minnesota’s (the paper’s home state) own problems with age of consent legislation. Barnes referenced an incident in Minnesota in which a middle-aged man was acquitted after having sexual relations with a 13-year-old girl. She believed this case called attention to inconsistencies in age of consent law, and conversely pointed to the benefits of Southern chivalry.

Age of consent legislation was more than a social reform: It was a labor reform. Although it dealt less explicitly with the workplace than maximum hour and minimum wage law, it was undoubtedly a middle-class response to changing workplace environments in the age of capitalism and female emancipation from the home. It both protected women and granted them expanded

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121 “In Defense of Georgia,” *The Duluth Herald*, August 18, 1913, 8.
social agency by placing the role of the ‘contract’ front and center in both workplace and romantic relationships. Age of consent law gave women legal standing to bring a non-compliant employer, or a much-older romantic partner to court. It created remedies for victimized women and a more structured penal code for men who violated age of consent laws. Advocacy for more stringent age of consent laws contributed to the start of many reformers’ careers. As this chapter highlights, Grace Hoadley Dodge, Frances Willard, and Helen Stoddard made names for themselves in their efforts to pass this legislation. By speaking out about raising the age of consent, these reformers became household names throughout the legislative process in their efforts to protect middle class virtue.

Raising the legal age at which girls could consent to sexual activity was a significant step in terms of protecting young women and girls from unwanted advances. The WCTU was perhaps the biggest age of consent advocacy group, and was the driving force behind the grassroots movement for legislation at the local and state levels. Improved consent laws would allow young women to grow and develop more fully before engaging in sexual activity, and also would enforce stricter punishments for men who violated young girls. The State’s willingness to intervene in the private lives of young women was just another aspect of protective legislation for women who were deemed ‘wards of the state.’ Age of consent legislation was controversial and hotly contested throughout the late nineteenth and early twentieth centuries, and often went hand in hand with larger discussions of protective legislation for women workers such as minimum wage and maximum hour regulations. Ultimately, age of consent legislation expressed middle class reformers’ fears that women were leaving the protected realm of the household and entering the unknown outside world. As the twentieth century raced toward female suffrage and further social liberation for women, reformers struggled to maintain what little control over female sexuality they still had.
Chapter 5: Emancipation from Protective Legislation:
Adkins v. Children’s Hospital, 1915-1923

In the years immediately following U.S. involvement in World War I (WWI), America’s perception of women as the weaker and more vulnerable gender changed. A combination of wartime work, unionization, the Nineteenth Amendment, and the "new woman" of the 1920's led many to believe that women were newly independent agents, and subsequently less deserving of state imposed protections than previously had been assumed. Changing attitudes toward post-war women explains the shift away from federal protective legislation for women in the workplace from 1908 to 1923.

Though workplace reformers embraced Muller, equal rights activists felt the precedent denied women the ability to make important decisions for themselves. These activists argued that the Court perceived women as having “different and lesser rights” than those attributed to men.¹ These feminists found allies in businesses that criticized the decision as a “step away from sexual equality” in the workplace.² This transition in female labor law culminated in the landmark Adkins v. Children’s Hospital decision, in which the Supreme Court ruled that protective legislation violated women’s right to contract labor. This chapter looks at the lead up to the Adkins decision, and details the debates – from the local to the national level – surrounding the Court’s decision to strip women of their protective legislation in the workplace. It also examines the impact of this legislation on women workers themselves and their attempts at collective organization. Finally, the chapter looks at that ways in which Progressive reformers, the Court, and employers grappled with gender differences and gender similarities in the industrial workplace.

² Woloch, Muller v. Oregon, 4.
After 1908, the Muller decision became known as the “bible” of protective legislation cases.\(^3\) State branches of Consumers’ Leagues distributed segments of the Muller brief as pamphlets through their constituencies to promote awareness of the decision and to encourage factory owners to practice safe and legal employment of women. But regardless of its protective nature, there were women who opposed its restrictive intent. Some, especially those without husbands and children to support, resented the government’s paternalistic rhetoric and stated that they actually “preferred to work ten hours over eight” to make more money.\(^4\) Despite the agency ascribed to some, women’s inability to unite in their attitudes toward protective legislation revealed the volatile political climate in which Adkins was situated.

Although the Supreme Court did not outlaw female protective legislation until 1923, as early as 1917 the wages of “bachelor girls” came under scrutiny as investigators for the Bureau of Labor Statistics of the Department of Labor investigated women’s finances. In an article aptly titled “Bachelor Girls, Read This,” a Washington Post journalist advised women that the investigation probably would result in a minimum wage law.\(^5\) Though women workers saw the potential for a state-imposed minimum wage as a positive change that would protect their economic interests, it worried many equal rights advocates who saw the new law as a step in the wrong direction. As predicted, in 1918 after much pressure from the NCL, Congress enacted a minimum wage law for women of the District of Columbia (DC). Women of all industries – “cleaners, elevator operators,

\(^3\) Letter to Felix Frankfurter from Mary Gawthorpe [Legislative Secretary of the Consumers’ League of Delaware], Dec. 18, 1919, National Consumers’ League records, General Correspondence Folder, 1882-1986, Library of Congress, Washington, D.C.


\(^5\) “Bachelor Girls, Read This!” The Washington Post, May 14, 1917, 5.
maids – were asked to meet and name a representative to the minimum wage conference,” which would then dictate a district-wide minimum wage. After much deliberation, the new law mandated that women earn a minimum of $71.50 each month.

Though many celebrated the minimum wage law, some female workers and employers were frustrated by its restrictive intent. The DC Children’s Hospital and Willie Lyons, a twenty-year old elevator operator, each challenged the new law. 1920 census data shows that Lyons was the daughter of two Maryland natives. The oldest of three children, she was literate and employed full-time by age twenty. Lyons was single, and lived at home – her wages probably went toward the family income. She had not attended school since September, 1919, suggesting that she did not pursue education beyond high school.

Lyons worked at the Congress Hall Hotel where she was paid $35/month plus two meals each day – a good wage for a woman, but significantly lower than the newly imposed minimum wage. She insisted that she was content with her income, and that if the DC Minimum Wage Board (the Board) forced her employer to increase her wage to meet the new requirement, the Congress Hall Hotel would terminate her employment. Lyons spoke out against the minimum wage law, urging the court to “enjoin the minimum wage board from enforcing the penalties

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8 Woloch, Muller v. Oregon, 52.


10 Woloch, Muller v. Oregon, 53.

attached to the (minimum wage) statute.” However, on May 25, 1920, just weeks before her case was to be heard by the D.C. District Court, the Congress Hall Hotel Company notified Lyons that, “while her services had been entirely satisfactory and while the hotel would be glad to continue her services at the same wages, the hotel company would be unable to do so” as a result of the recent minimum wage legislation. Despite negotiations with her employer, she ultimately lost her position to a man whose earnings were not set by the Board.

Willie Lyons was not the first woman to challenge the legality of the law proposed in Adkins. Mae Ancrum initially contested the law, but her case was “withdrawn on the ground that the woman [Ancrum] died.” Even before her death though, her lawyers realized that her case had no legal standing because Ancrum’s wage actually surpassed the proposed minimum. After dismissing Ancrum’s case, her lawyers scrambled to find another woman whose situation was of “exactly the same character.” They quickly came across Lyons, who was paid less than the proposed minimum wage and took the opportunity to make the case against the minimum wage law.

The D.C. Children’s Hospital also had qualms regarding the minimum wage law, primarily because it applied exclusively to “the salaries of women employed in hospitals, hotels, clubs, and restaurants” which worried the hospital’s financial board. Because the new law was fairly radical,


14 Novkov, Constituting Workers, 146.


the NCL initially included only specific industries in which women constituted the majority of the employees. If the law passed, the NCL then could work toward expanding the minimum wage to include other industries. The Children’s Hospital was the largest medical center in the DC metropolitan area, and it employed several hundred female nurses. As in Lyons’s case, the hospital contended that its female employees were satisfied with their wages and claimed that it could not afford to raise the wages of every female employee to meet the minimum wage requirement. Embracing emotional rhetoric, the hospital’s representatives argued that it was children who ultimately would suffer from the passage of the law because it would result in the termination of many of their female medical providers.

Felix Frankfurter, a Harvard-trained lawyer who later served on the U.S. Supreme Court, was asked to write the brief on behalf of Willie Lyons. Attorney Francis H. Stephens approached Frankfurter, stating that Frankfurter’s expertise in the “social and economic aspects” of the Adkins case made him well suited to prepare a brief for the D.C. Court of Appeals. Frankfurter agreed, and although he believed Stephens had “not chosen the most liberal period for urging social legislation,” he was cautiously optimistic he could win the favor of the Court of Appeals. He used his position to challenge Alice Paul’s “terrifying draft for a federal amendment” for full gender equality. Frankfurter strongly disagreed with Paul’s interpretation that no distinction existed between the sexes, and theorized that deregulating women’s work – and allowing women to jeopardize their health – differed very little from America’s anti-suicide laws that had been created in the eighteenth

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century. He lamented that the “freedom of the right to contract to the point of allowing women to contract away their health is distinguishable from suicide only as to method.”

Frankfurter utilized hard evidence from the *Muller* era to make his point. He cited statistics from the W.H. McElwain Shoe Company, which indicated that after four months of reduced hours for women workers, the factory had not decreased in its production. Winfield Shaw, who managed the company, wrote about this experience in a letter to Frankfurter in 1917 stating, “to sum up, our whole experience tends to justify the shorter hours movement.” Not only were shorter hours better for workers’ health, but decreased hours also increased productivity. More rest led to employees who were more willing to work their hardest. Frankfurter used this argument to justify protective legislation for women, and to ease business owners’ fears that federally imposed regulations would hurt business.

Frankfurter stated in his private correspondence that while he “appreciated full well the general purposes behind the Woman’s Party proposal” for the elimination of gendered legislation, he believed the lack of regulations would harm women when it came to matters of control over her property and children. Any version of Alice Paul’s Equal Rights Amendment (ERA) would amount to “crude and ruthless” treatment of women who had only recently achieved full

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participation in public. Frankfurter criticized women like Alice Paul who he believed were part of a leisure class of women, “indifferent to or ignorant of” the plight of wage-earning women. The proposed amendment jeopardized the well-being of millions of working women nationwide. In a cable to Florence Kelley, Frankfurter worried that the most “ominous part of [Adkins] is [the] suggestion that Muller doctrine has been supplanted by [the] nineteenth amendment.” He saw a glum future for women in the workplace, and urged Kelley to advocate for an “aggressive campaign” to reinstate gendered protections in wage labor.

Based upon the precedent set by the Muller decision, the DC Supreme Court and the District Court of Appeals upheld the minimum wage law in 1920 and 1921. “Court upholds low wage law,” read the front page of the Washington Post in June 1920, illustrating the high profile of the case. One journalist speculated that if the attorneys representing Lyons and the Children’s Hospital “amended their argument on the grounds that the minimum wage set by the board was confiscatory,” that the Court might reconsider its ruling. The majority opinion reasoned that working women needed a base minimum wage to provide for necessities like food, shelter, and clothing. Moreover, paying a woman less than the set minimum wage would negatively affect her health, and, subsequently, the health of any potential offspring. The Court feared that this could negatively affect natural increase in the population.

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26 Letter from Felix Frankfurter to Miss Ethel M. Smith, September 8, 1921.


30 Woloch, Muller v. Oregon, 52.
Chief Justice Smyth of the D.C. Court of Appeals wrote the dissent in June 1921, stating that women willing to work for a lesser wage than what was mandated by the new law should have the right to contract wages for themselves. Smyth argued that, “because the act deprives [women] of that right, it interferes with liberty and contract and thereby deprives [women] of their property without due process.”31 He continued that Congress had no legal power to regulate wages, “reasonable or unreasonable” for women or minors, even by way of protecting their health and morals. Although Smyth recognized that a minimum wage law did have a real relation to the health and morals of women, he believed it was not within the “limits of the police power” to impose restrictions on how much a woman could earn. As long as women were made aware of current wage laws, and fully consented to receiving the lower wage, Smyth saw no problem with women having full bargaining power over their own wages.32

Though proponents of the minimum wage law prevailed, their victory was short lived. Justice Robb of the DC Court of Appeals demanded a new hearing because he had been ill for the duration of the initial decision. In November 1922, the case was re-argued, this time resulting in a victory for opponents of minimum wage legislation. The majority opinion pointed to Willie Lyons’s loss of her employment and “paternalism in the highest degree” to justify the decision. The opinion also stated that enforcement of the minimum wage meant “the most industrious worker must share his living with his indolent, worthless neighbor.”33 If wages became regulated, it was argued, there would be no incentive to work harder to earn higher wages than apathetic co-workers.

31 Dissenting opinion by Chief Justice Smyth of the Court of Appeals of D.C., June 1921, 8.

32 Dissenting opinion by Chief Justice Smyth of the Court of Appeals of D.C., June 1921, 19.

33 Woloch, Muller v. Oregon, 52.
Proponents of the minimum wage, such as Florence Kelley – the first NCL General Secretary – were unsatisfied with their overturned ruling, and chose to appeal the case to the U.S. Supreme Court in 1923. By this time the NCL legal team, which represented Jesse Adkins (head of the D.C. Minimum Wage Board), had changed. The initial lawyers on the case did not believe the case had potential for further argument, and thus refused to challenge the District Court’s decision. As a result, Adkins was forced to find new representation if he hoped to bring the case to the national level. Ultimately, he hired Mary Dewson to write the Adkins brief. Though not an attorney, Dewson had extensively researched women workers for the Minimum Wage Board and wrote a 1,138 page brief conveying the needs of the modern woman of the 1920’s. She argued that the health dangers to women in the workplace were two-fold: Poor nutrition and limited access to medical care. Moreover, health concerns as a result of low wages – such as fatigue and malnourishment – could lead women to pursue immoral careers, such as prostitution, to make ends meet.

Dewson was born in 1874 and was a feminist and political activist. Raised in a wealthy family, she had access to the best female education of the time and graduated from Wellesley College in 1897 with a degree in social work. Though always interested in politics, she merely dabbled in it until meeting Eleanor Roosevelt in 1920. Roosevelt respected Dewson’s “politics with a feminine twist” and admired that Dewson was not interested in politics for her own gain, but

34 Woloch, Muller v. Oregon, 52.


36 Dewson, Brief for Appellants, 1050; Woloch, Muller v. Oregon, 52.
rather as an advocate for issues with which she identified. At the time, Roosevelt was working for the 1920 presidential campaign and offered Dewson a job working for Democratic candidate James Cox. Accepting the job hurled her into national politics and spurred a life-long friendship with Roosevelt.

Dewson’s key conviction – that women and men differed vastly and should be treated accordingly – was a guiding principle in her brief. Though Dewson staunchly disagreed with Alice Paul’s Equal Rights Amendment, she never slandered Paul. Instead, she remained committed to pursuing a “positive goal like the minimum wage law than the negative one of opposing the proposal of a another women’s organization.” Dewson’s brief included gender-neutral terms, and railed against the concept of “freedom of contract,” claiming that it forced employees to grovel for a wage beneath his/her base cost of living.

She also cited Wisconsin’s amicus curiae brief, which demonstrated that minimum wages in Wisconsin had “enhanced, rather than restricted, liberty.” Dewson’s brief echoed the District Court’s earlier decision that low wages could prove disastrous to women’s health, specifically their reproductive abilities.

Moreover, her work drew upon the Muller brief stating that the dependent woman of 1908 had transformed into an “updated counterpart who provided not only for herself, but for others as

37 Susan Ware, Partner and I: Molly Dewson, Feminism, and New Deal Politics (New Haven: Yale University Press) 1987, xiii.

38 Ware, Partner, xv.

39 Ware, Partner, xvii.

40 Ware, Partner, 96.

41 Novkov, Constituting Workers, 201.

42 Amicus Curiae Brief, state of Wisconsin, Adkins v. Children’s Hospital (1923)

43 Dewson, Brief for Appellants, 694; Woloch, Muller v. Oregon, 53.
well.” To prove her point, Dewson selected examples of women who were the primary breadwinners of their households and those who supported aging parents or disabled spouses. Dewson believed that the key difference between the *Muller* and *Adkins* decisions was that women in the post-WWI era needed a living wage “not because they were dependent, but because they were independent.” But as the argument morphed to address women’s new autonomy, opponents questioned whether women with dependents were inherently different from men who supported a family. Women’s case, they challenged, was “distinctive only insofar as they earned less.”

Dewson and the NCL also had the Women’s Trade Union League (WTUL) on their side. The WTUL, founded in 1903, was an organization dedicated to “improving the conditions of women wage earners.” By 1915, the WTUL had transformed itself from an organization that championed labor rights for all workers to one that “emphasized specifically female demands – namely suffrage and protective labor legislation.” The WTUL believed that women and men faced intrinsically different hardships in the workplace, and rejected any arguments suggesting commonalities between the male and female work experience. They focused instead on women’s “special needs,” and the problems encountered in the workplace, often citing potential damage to the womb as the primary reason for protective legislation.

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Gender historians have offered several explanations for the power behind Progressive women’s organizations, such as the WTUL. The WTUL’s “maternalist” theme which focused on labor reform for women that “accentuated gender differences,” echoed the popular belief that men and women were inherently different, and should be treated as such. The ‘maternalist’ approach also indicated that women’s organizations made significant gains toward gender equality and female suffrage while simultaneously leaving behind outdated modes of paternalism. Second, historians such as Linda Gordon have suggested that women who collected welfare have historically been discriminated against based more on personal qualifications than on actual need. Their male counterparts, however, often received social benefits based on more generic criteria like poverty, rather than age and number of children. The WTUL challenged this double standard by advocating for an end to gendered biases in the workplace and in government aid, and for uniform treatment for both men and women.

Kathryn Kish Sklar rejects the previous explanations, and presents the “strong state-weak state paradigm” – a theory suggesting that “women’s activism was greater when the state’s activism was weaker.” Sklar argues that women banded together across class lines in order to achieve the workplace rights they desired and as a result, “crucial dimensions of women’s success were achieved because gendered policies acted as a surrogate for class policies.” When women felt an absence of state protection, many sought the collective protection of women’s organizations and labor unions.


52 Sklar, *U.S. History as Women’s History*, 41.

53 Sklar, *U.S. History as Women’s History*, 41.

54 Sklar, *U.S. History as Women’s History*, 41.

55 Sklar, *U.S. History as Women’s History*, 41.
The WTUL provided refuge for women before labor unions were widely accessible, and when they felt the state failed to provide adequate workplace protections. Sklar disagrees with the previous theories because she believes they fail to take into account female labor activism. She claims that the “welfare state” – in which there is a safety net to prevent Americans from falling below a certain standard of living – was the by-product of “labor legislation for women and children created by middle class women between 1880 and 1930.” Sklar attributes this protective legislation almost entirely to female activism during the Progressive Era.56

Dewson’s brief on behalf of the NCL and WTUL served as the basis for these theories. Her commitment to protecting special legislation to target women’s specific needs reaffirmed the ‘maternalist’ theory stated above. She worried that the looming ERA threatened gendered protections, and constricted rather than emphasized differences in gender needs. Moreover, Dewson focused heavily on what the term “welfare” meant for women. She argued that welfare included not only access to a living wage, but also should include “reasonable comfort, reasonable physical well-being, decency, and moral-well being.”57 Her broad definition of welfare helped lay the groundwork for civil and gender rights activists of the following decades.

Dewson’s brief was well received and thoroughly researched. In her discussion of women’s poor living conditions, Dewson laid out six different interpretations of the word “poverty” from sources such as Principles of the New Economics and the U.S. Public Health Service.58 She also utilized statistics about “actual earnings” versus “potential earnings.” Dewson found that the calendar year was broken down into working seasons – “two busy seasons and two dull seasons, each lasting 12-

56 Sklar, U.S. History as Women’s History, 41.
57 Dewson, Brief for Appellants, 647.
58 Dewson, Brief for Appellants, 1070-1076.
14 weeks.” As a result, for about half of the year workers – primarily female workers – were underemployed. Using empirical evidence, Dewson calculated that a female worker’s actual annual income was between only 38% and 61% of her maximum possible annual earnings. Insufficient wages, in turn, led to “unfit diet, scanty clothing, an enfeebled physique and a harassed and haunted mind.” Dewson’s use of real statistics brought palpability to female unemployment and poverty. The brief also added to preexisting notions of female vulnerability in the workplace, which helped to justify the continued necessity of protective legislation.

On the opposing side, Wade and Challen Ellis made the argument for the Children’s Hospital and Willie Lyons. The brothers were Progressive lawyers from Kentucky who had worked with Alice Paul on the wording of the ERA. Wade Ellis believed that discrimination based upon sex, even with protective intent, was immoral and unconstitutional. He argued that American women were not in favor of such laws, and certainly not for their sex alone. Ellis found that “thoughtful and progressive women” across the nation sought “industrial equality, which follows as a natural and logical sequence to political equality.” He passionately proclaimed that women wanted – and deserved – equal rights, articulating post-war women’s belief in their own right to contract, as well as “better pay, a finer sense of self-respect, and a higher quality of citizenship.” He made the convincing case that minimum wage laws would not work in women’s favor, but ultimately would discriminate against them.

59 Dewson, Brief for Appellants, 1042.

60 Dewson, Brief for Appellants, 1043.

61 Dewson, Brief for Appellants, 1078.


63 United States Supreme Court 261 U.S. 525 (1922), 11.
Ellis condemned the paternalistic rhetoric espoused by the minimum wage law. He claimed that lawmakers who could in good conscience strip women like Lyons of their right to contract, were not people with women’s interests at heart. He argued that women deserved full equality in both rights and wages, and were “entitled to a little more respect” than what the proposed law warranted. Moreover, Ellis reasoned with the male-dominated courtroom and called men out on their contradictory rhetoric: Many lawmakers advocated for the female vote because they believed women were intellectual equals to men, but also believed that “they [women] are children and they need guardians and commissions to look after their wage.”

Ellis’s oral argument appealed to the emotions of the Justices. Justices Sutherland and McKenna each had three daughters and realized the limited potential a minimum wage law would mean for their members of their own family. Even dissenting Chief Justice Taft was moved by Ellis’s impassioned argument and considered the law’s implications for the women in his family. But Taft’s long time association with the political Right led him to disagree when his colleagues invalidated the minimum wage law.

Ellis loaded his argument with concepts from Alice Paul’s ERA. Paul reasoned that because “discriminations in regard to sex were removed,” there was no legal justification for sex

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64 United States Supreme Court 261 U.S. 525 (1922), 11.

65 United States Supreme Court 261 U.S. 525 (1922), 16.

66 It is interesting that Ellis utilized such emotional rhetoric, while Dewson relied so heavily on statistical evidence. It is worth considering whether or not Ellis was able to appeal to emotions because he was a man, and thus inherently ‘un-emotional,’ while Dewson may not have been taken seriously had she appealed to emotion rather than reason.

discrimination of any kind. She believed that qualities unique to women – such as childbearing – that were once seen as disabilities had become more celebrated after the ratification of the Nineteenth Amendment. Female suffrage encouraged Paul to advocate for more than just political equality for women. The ERA called for full gender equality throughout the United States. Paul’s egalitarian rhetoric stemmed from her Quaker roots. As a young adult, she became politically active at Swarthmore College where she worked on local projects to organize women workers. Paul became an active member of the women’s labor movement, and enrolled in a graduate program at the University of Pennsylvania where she wrote a dissertation about the legal rights and responsibilities of women. Her dissertation research encouraged her to advocate for gender equality, and for an amendment that would empower women politically and economically.

Inspired by Alice Paul’s call for gender equality, Ellis argued that the “revolutionary changes” which had taken place since the 1908 *Muller* decision – women engaging in wartime work, the growing female suffrage movement, and eventually the ratification of the Nineteenth Amendment – led to a society in which gender “differences have now come almost, if not quite, to the vanishing point.” Furthermore, he stated that the relationship between “earnings and morals” was not standardized – in other words, no tangible correlation existed between higher wages and higher morals. There was no evidence that “highly paid women safeguard their morals” any more

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68 Equal Rights Amendment to the Constitution, Hearing Before the Committee on the Judiciary House of Representatives (1923) 2.

69 Equal Rights Amendment to the Constitution, 2.


71 Zahniser and Fry, *Alice Paul: Claiming Power*, 123.

72 United States Supreme Court 261 U.S. 525 (1922), 11-12.
than poorly paid women. To bolster his argument, Ellis cited Dr. W.C. Woodward who did not believe that low wages could be connected to poor morals. Instead he claimed that hours were more disastrous to the morals of young women, as physical exhaustion and mental fatigue lowered resistance to temptation, “and certainly made yielding easier.”

Utilizing Paul’s ideas, the Ellis brothers softened her rhetoric in an attempt to win over the Court: While Challen Ellis made the explicit connection between equal rights for women and freedom of contract, Wade Ellis presented the Supreme Court with an argument against sex-based discrimination, and used clauses from the draft of the ERA to denounce a minimum wage for women only. Lyons added to the Ellis’s credibility in her testimony which railed against the minimum wage law, stating that she was “of sound mind and understanding” at the time of her termination and fully capable of making her own decisions regarding her compensation. She explained to the Court that she did not want, nor need, such “guardianship or interference” with her right to freedom of contract.

The Ellis’s made a compelling case on behalf of Lyons, portraying her as a victim of the state. They argued that Lyons earned “the best wages and compensation for her labor that she was able to receive for any employment which she was capable of performing, and the enforcement of the said order deprived her of any employment and wages.” Moreover, they drew attention to the

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73 United States Supreme Court 261 U.S. 525 (1922), 14.
74 United States Supreme Court 261 U.S. 525 (1922), 34.
76 United States Supreme Court 261 U.S. 525 (1922).
77 United States Supreme Court 261 U.S. 525 (1922).
“light, healthful, clean, and moral” atmosphere of the Congress Hall Hotel, suggesting that her termination could result in a workplace with lower moral standards. Lyons begged the Court to overturn the minimum wage law, testifying that she could then resume her employment at her previous wage—a situation desirable for both the hotel, and herself—and could continue earning a decent and moral living.

After days of contentious arguments, the Supreme Court ruled in a 5-3 decision (Justice Brandeis withdrew because his daughter held a leadership position on the DC Minimum Wage Board) that a minimum wage for female workers in DC was unconstitutional. Dewson contested that Brandeis should have dismissed his daughter from the Board so he could have contributed to the critical decision, but her challenge was dismissed since an extra vote in favor of the law would not have altered the ultimate decision. The decision was wildly unpopular among the press. The National Consumer’s League immediately convened a conference at which leading scholars “supported an amendment to the Constitution to limit the Supreme Court’s authority to rule on cases involving social welfare legislation.” But their lobbying efforts proved ineffective. Dewson lamented her loss in letters to Frankfurter. Frankfurter agreed that the Court’s decision seemed ill timed and posed a threat to Progressive ideology. However, he told her bluntly that when the

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78 United States Supreme Court 261 U.S. 525 (1922).
79 United States Supreme Court 261 U.S. 525 (1922).
80 Woloch, Muller v. Oregon, 54.
81 Ware, Partner, 101.
82 Ware, Partner, 101.
“United States Supreme Court says a red rose is green, it is green. That’s final.” Dewson had to accept the reality that the fight for a national minimum wage was over.

While groups like the NWP very publicly voiced their discontent with the Adkins decision, others illustrated their frustration with the Court in subtler ways. Perhaps the best example was Rollin Kirby’s political cartoon titled “Your Constitutional Right” that appeared in the New York World in May 1923. The cartoon shows Justice George Sutherland delivering the Court’s written decision to a female figure labeled “Woman Wage Earner.” Sutherland stated, “This decision, madam, affirms your constitutional right to starve.” Kirby’s understated sketches made him one of the most famous cartoonists of his time, and earned him three Pulitzer Prizes. Kirby thought of his cartoons not as drawings, but as “editorials.” They were wildly popular – he had a cartoon published six days each week – and became the centerpiece of the New York World. His cartoon depicting the Adkins decision had simple artwork and plain writing, which helped to explain the Court’s decision on a level that even the most modest of readers could understand, and made it one of Kirby’s most memorable, yet politically charged cartoons.

83 Ware, Partner, 102.

84 Ware, Partner, 101.

Despite public discontent, the Court justified its decision in several key ways. Justice Sutherland’s majority opinion expressed fear that maintaining a minimum wage restriction could potentially backfire, because “the government would use the power it had gained to set minimum wages to also set maximum wages.” Additionally, the decision stated that the recent gains in women’s rights (most notably the passage of the Nineteenth Amendment) had “emancipated women,” effectively nullifying any differences between men and women’s right to contract. Sutherland speculated that protective legislation might actually have hindered rather than helped women workers when competing with their unrestricted male counterparts. Men who were free

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87 Bernstein, Rehabilitating Lochner, 53, 54.


from minimum wage laws could maintain their right to contract, and could work for lower wages than their female counterparts. As a result, traditionally female employers might begin hiring men willing to work for lower wages.

Justice George Sutherland’s majority opinion emphasized that the Court could not condone special protections for women workers “which could not lawfully be imposed in the case of men under similar circumstances.”

The Adkins decision was not Sutherland’s first instance of pro-female sentiment. Sutherland had a long history of activism that advanced female rights both politically and in the workplace. In 1915, he introduced the Nineteenth Amendment to the Senate, citing women’s suffrage as an imperative piece of legislation. The same year he passionately told an audience at a Woman’s Suffrage Meeting that “any argument which I may use to justify my own right to vote, justifies the right of my wife, sister, mother, and daughter to exercise the same right.”

Sutherland’s opinion in Adkins foreshadowed the more contemporary theory that female workers should receive equal pay and equal treatment to their male counterparts, regardless of perceived “physical and emotional disabilities.” He was a staunch supporter of Alice Paul’s ERA, and believed a federal amendment was the best way to guarantee gender equality.

Though opponents, such as Dewson, saw the Adkins decision as a debacle for women, Sutherland believed the ban on protective legislative actually was a step toward gender equality. He viewed the decision as “emancipation from the old doctrine that she must be given special

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90 United States Supreme Court 261 U.S. 525 (1922), 11-12.

91 Bernstein, Rehabilitating Lochner, pp. 68-69.

92 George Sutherland, Speech at Woman’s Suffrage Meeting, Balasco Theater, New York City, 1915. Bernstein, Rehabilitating Lochner, 68-69.

93 Bernstein, Rehabilitating Lochner, 123.
protection” or treated differently than her male counterparts in contractual relationships. Women, he argued, now had full citizenship and were able to participate in the public sphere. Limiting their right to contract was an outdated mode of paternalism. Sutherland justified his position by stating that freedom of contract should be the default for all workplace relationships, and that the “exercise of legislative authority to abridge it can be justified only by the existence of exceptional circumstances.” Moreover, he stated that a woman’s right to contract could not justly be limited because the same restrictions could not be lawfully be imposed on male workers.

Sutherland also denounced the minimum wage as “vague…without any reasonable degree of accuracy.” A district-wide minimum wage, he argued, was subjective and could not be applied to women across professions. And conversely, the law did not reflect the incongruity of women’s needs within the same occupation. A comfortable living wage that protected the health and morals of the female workers depended upon various circumstances: Personal character, spending habits, health, and living situation. Those who lived frugally could live in relative comfort with the minimum wage while those who spent liberally could outspend their wages. Moreover, he argued that there was no standard relationship between earnings and morals. In other words, no tangible evidence existed which showed that women who were paid high wages preserved their morals any more than their poorly paid counterparts. Sutherland stated that he saw the potential benefits of

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94 United States Supreme Court 261 U.S. 525 (1922), 552-553.
95 United States Supreme Court 261 U.S. 525 (1922), 552-553.
96 United States Supreme Court 261 U.S. 525 (1922), 552-553.
97 United States Supreme Court 261 U.S. 525 (1922), 555.
98 Bernstein, Rehabilitating Lochner, 67.
99 United States Supreme Court 261 U.S. 525 (1922), 555.
100 United States Supreme Court 261 U.S. 525 (1922), 556.
setting a minimum wage for women to support themselves and their families in a comfortable way, but “as a means of safeguarding morals the attempted classification is without reasonable basis.” Morality, he insisted, was based upon circumstances other than wages. A lack of direct correlation between higher wages and morality made him unable to rule in favor of the minimum wage.

On the other hand, the dissenting opinions endorsed gendered protection on the basis of women’s potential to become mothers. Opponents felt that women’s labor should be subject to public control because of the “state’s interest in their reproductive capacities, which many courts saw as public property.” In Oliver Wendell Holmes, Jr.’s scathing dissent in *Adkins* he stated concisely, “it will take more than the Nineteenth Amendment to convince me that there are no differences between men and women, or that legislation cannot take those differences into account.” He argued that poor workplace conditions could lead to poor health, lack of morality, and even a decline in the quality of the human race, and as a result, failed to see how removing gendered protections fell within the power of the Court. Moreover, Holmes stated that the D.C. Minimum Wage law did not force employers to pay women a certain rate. Instead, “it simply forbids employment at rates below the minimum requirement of health and right living.” Employers still had the right to hire who they believed was best qualified for the position, and could even pay women different wages based on experience and quality of work. The law mandated only that employers pay their female employees a fair living wage.

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101 United States Supreme Court 261 U.S. 525 (1922), 556.
103 Hill, “Protection of Women Workers,” 255.
104 United States Supreme Court 261 U.S. 525 (1922), 567.
105 United States Supreme Court 261 U.S. 525 (1922), 570.
Chief Justice William H. Taft argued in his dissent that working women had become (by 1923) so desperate to make a living wage that they were “prone to accept pretty much anything that is offered.” Conversely, minimum wage laws protected women from undermining each other and bringing down wages. Taft failed to see any distinction between the 1917 Bunting v. Oregon decision in which a 10-hour maximum workday was upheld as constitutional for both men and women, and the Adkins decision in which all workplace protections were stripped. He believed there was no “constitutional distinction between employment in a bakery [as in Bunting] and one in any other kind of a manufacturing establishment.” He could not side with the majority opinion because he could not see how the D.C. minimum wage law jeopardized a woman’s right to contract, when just six years earlier (in Bunting) similarly restrictive legislation had been declared constitutional.

Taft disagreed with his colleagues’ willingness to differentiate between minimum wage and maximum hour legislation, and the relation of each to freedom of contract. Absolute freedom of contract, he argued, would not distinguish between minimum wage and maximum hour restrictions because “restriction as to one is not any greater, in essence, than the other.” For Taft, the principle remained the same: Limiting hours and limiting wages inherently infringed upon a workers’ right to contract freely. Moreover, he argued that the Nineteenth Amendment had no impact on women’s physical strength – the basis of the 1908 Muller decision. Although women

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106 United States Supreme Court 261 U.S. 525 (1922), 62.

107 If two women want the same position, but one will work for a lower wage, the employer will hire the woman willing to work for less. Eventually rates will continue to get lower as women become increasingly desperate for work.

108 United States Supreme Court 261 U.S. 525 (1922), 564.

109 United States Supreme Court 261 U.S. 525 (1922), 564.

110 United States Supreme Court 261 U.S. 525 (1922), 566.
had made strides toward political equality, and even had the right to vote, Taft did not believe the amendment “warranted varying constitutional construction” based solely on differences between male and female workers.\footnote{United States Supreme Court 261 U.S. 525 (1922), 567.}

The Adkins decision discernably frustrated Dewson and Adkins. Dewson was especially distraught over Justice Sutherland’s snide remark that the evidence presented in her brief was “interesting, but only mildly persuasive.”\footnote{Ware, Partner, 101.} Dewson’s disappointment was echoed by Jesse Adkins, who stated in a letter to Frankfurter that he was “very much disappointed” in the Court’s ruling. He denounced the Adkins decision as a victory for Alice Paul’s ERA, and referred to it as “the new Dred Scott decision.”\footnote{Quoted in Bernstein, Rehabilitating Lochner, 68.} He believed that women were not only stripped of physical protection, but also stripped of their liberties – much like nineteenth century slaves. Frankfurter and Adkins expressed difficulty in understanding how the Court could have decided as they did, and debated whether or not asking for a rehearing was a worthwhile request.\footnote{Letter from Jesse Adkins to Felix Frankfurter, April 9, 1923, Felix Frankfurter Papers, Minimum Wage Folder, Harvard Law Library, Cambridge, MA.}

Women nationwide had varied responses to the Adkins decision. For Alice Paul and others who advocated for the passage of the ERA, the decision was a tremendous breakthrough in legal equality for women. The Court’s decision in April 1923 gave Paul “the sanction of the Supreme Court for her view of equality,” motivating her to present her ERA legislation to Congress later that year.\footnote{Zimmerman, “The Jurisprudence of Equality,” 223.} She praised the decision, pointing out that without women’s right to contract, the minimum

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wage law “meant less money in the weekly pay envelope.” This posed a real problem for women without much expendable income.116

Others, however, did not share Paul’s celebratory sentiment. “Minimum wage ruling classed as calamity,” read the Washington Post headline on April 12, 1923 – just three days after the Adkins decision had been publicly announced. Mary Anderson, director of the women’s bureau of the Labor Department, gave a press conference exclaiming that “striking down the DC minimum wage law as unconstitutional is nothing short of a calamity” for women workers.117 Despite being given legal authority by the Court’s decision, Anderson condemned employers who paid women less than a living wage.118 Moreover, she argued that the independent woman of the Adkins era deserved wages nearer to, if not equal to, those of her male counterparts, regardless of government mandated minimums. Esther Anderson, head of the Massachusetts League of Women Voters similarly condemned the law, stating that minimum wage laws protected inexperienced girls from unscrupulous employers, as well as from other girls who would “underbid for the job, being willing to work for less than the living wage at a time of depression.”119

National organizations also spoke out against the Adkins decision. The National Consumers’ League made a plea for monetary assistance after the decision was made public. The NCL ran advertisements in newspapers nationwide, stating that they had spent nearly ten thousand dollars in the court battle for protective legislation. The ads explained that the NCL had hired Felix Frankfurter to argue the case in court, and yet his “masterful argument” was not enough to solidify

116 Kessler-Harris, Out to Work, 189.
an outcome in their favor. They pleaded for women to “help share the expense of it [the trial], for it is your fight, too.”\(^{120}\) Moreover, a *Washington Post* article from May 13, 1923 stated that a group of “twelve national women’s organizations, the American Federation of Labor (AFL) and affiliated labor bodies, and several church organizations” planned a meeting to “discuss and consider possibilities as to measures to remedy the effects of the Supreme Court decision.” Samuel Gompers, President of the AFL, would speak about the benefits of labor unionism for women and the connections between the labor movement, women workers, and progressive reformers.\(^{121}\) Like Gompers, trade union women and reformers remained bitterly opposed to the *Adkins* decision even though it “espoused a theoretical equality between the sexes.”\(^{122}\)

Differences aside, both women’s rights advocates and their opponents saw a major flaw in the Court’s ruling: *Adkins* failed to address whether unequal treatment of male and female workers was an “unconstitutional form of discrimination – like race discrimination, which violated the Equal Protection Clause of the Fourteenth Amendment.”\(^{123}\) ERA advocates such as Paul espoused the belief that gender discrimination was just as thwarting as racial discrimination; Paul would not be satisfied until *all* gender differences were abolished from the workplace. On the other hand, the NCL and the National Women’s Trade Union League (NWTUL) had worked hard since the early twentieth century to instate maximum hour and minimum wage laws for women. These groups feared the passage of Paul’s ERA, as it threatened the progress they had made toward protective legislation for women workers. Moreover, many women worried that the ERA would result in the


\(^{122}\) Hill, “Protection of Women Workers,” 256.

\(^{123}\) Hill, “Protection of Women Workers,” 255-256.
end of protective gender segregation for women in public spaces, such as restrooms. Although the ERA had not passed, Adkins represented significant gains for equal rights proponents. Still, the NWTUL publicly stated its discontent with Adkins and with the ERA, wanting nothing to do with any legislation that meant “a possibility of a return to the unprotected days of the late nineteenth century.”

The legal debates between advocates for equality and advocates for female protection devolved into “mutual distrust and hostility.” Equal rights advocates depicted “the independent woman who did not deserve to be classed with children and other incompetents in terms of her ability to bargain regarding her labor.” The independent woman joined strong labor unions in order to gain better working conditions. She sought collective action instead of protective legislation. On the other hand, protective legislation advocates “presented the picture of the exhausted mother who worked (often at night) more than eight hours per day” for menial wages and then went home to perform chores. This hypothetical woman dreamed of equality in the workplace, but knew that she “needed assistance from the state to wrest a living wage from her greedy or desperate employer.”

Despite bitter rivalries between proponents and opponents of the ruling, The Court maintained that gendered labor differences were at the core of the Adkins decision. Prior to WWI, women did not belong to mainstream labor unions, which further pitted them against men as

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124 Novkov, *Constituting Workers*, 186.

125 Novkov, *Constituting Workers*, 186.

126 Novkov, *Constituting Workers*, 187.


victims with little protection.¹²⁹ Lack of unionization gave the Court reason to believe in women’s lesser power in the workforce, which made them seemingly worthy of legislative protection. But when the *Adkins* decision was handed down in 1923, working women had begun to unionize. Thus the Court justified its decision to strip women of their state-imposed workplace protections by pointing out that many already had sought collective protection through private parties. As a result, after the ratification of the Nineteenth Amendment in 1920, the *Muller* (1908) decision – which mandated maximum hour legislation for women workers – was no longer valid. Gender discrimination finally was, at least in theory, unconstitutional.

Yet the *Adkins* decision did not truly free women from patriarchal protection, nor did it address some of the more abstract issues that were not solved by the ratification of the Nineteenth Amendment.¹³⁰ The decision conceived of an equal woman who did not yet exist, as women in industry had only mildly more freedom of contract in 1923 than did their nineteenth century counterparts.¹³¹ Moreover, the decision addressed only the gendered minimum wage law, but other regulations for women in the workplace still existed.¹³² Equal rights activists celebrated the decision regardless of the other limitations still in place, and viewed *Adkins* as a step toward total gender equality.

Following the *Adkins* decision, there was tremendous controversy over whether or not women should organize into labor unions. Prior to unionization, women were “underpaid,


¹³⁰ Siegal explains that the “physical and social roles of the sexes were not eliminated by the ratification of the Nineteenth Amendment.” Reva B. Siegal, “She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family.” *Yale Law School Legal Scholarship Repository* (January 2002): 1015.


overworked, and exploited,” and greatly discriminated against because of their gender.\textsuperscript{133} Though
women began unionizing as early as 1908, female unions were not well-received by the mainstream labor movement.\textsuperscript{134} There was an effort to keep women out of labor unions because they were deemed “labor transients” without a “serious commitment to collective organization.”\textsuperscript{135} However, by the outbreak of WWI women filled an increasing number of jobs in industries that warranted union protection, such as railroad work and munitions production.

A 1918 \textit{Washington Post} article urged women to organize in order to get the protection they deserved, claiming that women’s low wages were “largely due to the fact that women workers do not themselves realize their own worth.”\textsuperscript{136} The article addresses the key difference between union protection and state protection. Women who joined labor unions felt a sense of collective safety and protection against workplace ills. On the contrary, women who were \textit{not} in labor unions, mostly prior to WWI, did not seek collective protection because they received legislative protection from the state (i.e. \textit{Muller}). In the years immediately following WWI, women began feeling empowered enough to advocate for safe, moral, and even equal workplace environments. The pinnacle of their newfound female agency surfaced in the immediate aftermath of the \textit{Adkins} decision when women were, ironically, stripped of their legal protection. As a result, many turned to unionization because it promised collective bargaining power and the potential to take a stand against the abuses of the labor system. Despite its initial reluctance toward women unionizers, the American Federation of


\textsuperscript{134} Chafe, \textit{Paradox of Change}, 80.

\textsuperscript{135} Chafe, \textit{Paradox of Change}, 81.

\textsuperscript{136} “Women Organize!” \textit{The Washington Post}, May 26, 1918, 9.
Labor was the first craft union organization to allow women to participate in its unions shortly after the end of WWI.¹³⁷

*Adkins* has had lasting effects on both the labor movement and the women’s movement, and is cited in lawsuits even today. Perhaps the most important outcome of the *Adkins* decision is the shift in America’s perception of women after WWI. Though women once were considered the weaker and more vulnerable of the sexes, wartime work, unionization, the Nineteenth Amendment, and the "new woman" of the 1920's gave them agency. As a result, many reformers and politicians finally considered women autonomous agents who did not require the patronizing protection of the state. These changing attitudes toward post-war women help to explain the shift away from federal protective legislation for women in the workplace from 1908-1923. Though *Adkins* was overturned in 1937 in *West Coast Hotel Co. v. Parrish* (in which the Court declared minimum wage legislation in the state of Washington constitutional), the decision remains a significant example of the Court’s attempt to nullify legislation aimed at regulating the workplace.

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¹³⁷ Dye, *As Equals*, 123.
Conclusion

This dissertation provided an overview and analysis of sexual harassment in the industrial workplace from 1850 to 1920. It highlighted working women, legal scholars, and reformers who fought to bring workplace harassment to the forefront of the Progressive-era legislative agenda.

Chapter One began in 1850 and explored the stories of two young women who faced harassment in the workplace, but lacked appropriate legal remedies. The first, Fanny Hyde, murdered her employer after he raped her. Her case went to trial where she was tried for murder, but the jury ultimately could not settle on a verdict. The second, Mary Murray worked at the Baltimore Post Office and sued the federal government for lewd behavior in the office. While a Circuit Court rendered an initial verdict in favor of Murray, her victory was short lived. The decision quickly was overturned by the Maryland Court of Appeals, stripping Murray of her legal victory. These cases reveal that at the same moment that women began challenging harassment in the workplace, courts remained wary of ruling in favor of these challenges. This can be explained, at least in part, by the fact that perceptions about women as victims were shifting. The Victorian Era considered young women inherently innocent. But toward the turn of the century, the perception of the virtuous woman was replaced in favor of the promiscuous woman. Court rulings, pamphlets, and newspaper articles reveal that this shift was attributed to women engaging more freely outside of the home, spikes in premarital pregnancy rates, and the rise of public amusement.¹

¹ Between 1880 and 1910 there was a thirteen percent rise in America’s premarital pregnancy rate, from 10 percent to 23 percent. This rise suggests that the rate of premarital intercourse was actually much higher than 23 percent (because not all sexual encounters resulted in pregnancy) and that greater numbers of women were engaging freely in public spaces, away from family supervision. For more on this, see Christine Stansell, City of Women, 127; Mary Odem, Delinquent Daughters: The Sexual Regulation of Female Minors in the United States, 1880-1920 (Chapel Hill: University of North Carolina Press) 1995, 24. Also see John D’Emilio and Estelle Freedman, Intimate Matters: A History of Sexuality in America (Chicago: University of Chicago Press 1988), 199-200.
The publicity associated with Fanny Hyde and Mary Murray ignited campaigns to protect women workers from “dishonorable” employers. These campaigns culminated in the landmark Supreme Court case, *Muller v. Oregon*, which upheld the constitutionality of gender-specific protective legislation. Chapter Two examined the history of legal precedent leading up to the *Muller v. Oregon* case, and analyzed the significance of the case itself. *Muller* established the precedent that women required state-imposed workplace regulations solely because of their gender. Of pivotal importance was the influential Brandeis Brief which used sociological data, instead of legal precedent, to highlight women’s struggle in public life. *Muller* was seen by the public as a response to the cases of women like Fanny Hyde and Mary Murray.

Despite the victory for protective legislation advocates in the 1908 *Muller* decision, sexual harassment in the workplace remained a pervasive issue. Chapter Three detailed two sensational cases of workplace harassment, which revealed that protective legislation was not enough to guarantee the safety of women at work. The chapter first examined the 1906 case of Chester Gillette who was accused of seducing and murdering Grace Brown, a young female co-worker at a factory in Cortland, New York. Second it examined the trial of Leo Frank, who was convicted of murdering his young co-worker, Mary Phagan. This chapter addressed yet another shift in the narrative about victimization and responsibility in harassment cases. If the turn of the century saw decreasing sympathy toward female victims, by 1910 public opinion had changed again as people grew nostalgic for the Victorian Era woman who required protections to keep her safe. Reformers worried that a woman with too much independence would damage her reputation and future marketability as a wife. The Progressive Era saw a re-emergence of the perception that women were the more virtuous gender, and in need of court-mandated protections.

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2 U.S. Treasury Department, *Investigation into the printing of national securities in the Treasury Department*, 15.
Federally-imposed protective legislation for women workers remained in place for the first quarter of the twentieth century. Chapter Four detailed the age of consent campaign that swept America during the Progressive Era. Age of consent legislation focused primarily on protecting female sexuality as women moved outside of the home in larger numbers and at an earlier age. The rise in female employment in America’s cities led to a growing concern that workplace legislation was simply not enough to protect women. Age of consent legislation aimed to protect female morality and virtue at all times, not just when women were at work.

The dissertation concluded with Chapter Five, which examined the 1923 Supreme Court decision in *Adkins v. Children’s Hospital*. *Adkins* challenged and overturned *Muller*, ruling that women no longer required federal protections within the workplace. This challenge was brought by Willie Lyons, who worked for the Congress Hall Hotel. Lyons opposed a new minimum wage law that required employers to pay women more than their current wage. She argued that she was happy with her current income, and that the hospital would terminate her employment if required to meet the newly imposed minimum. After a drawn-out legal battle, the Court ruled in favor of Lyons: Women no longer required federally imposed protective legislation at work because the Nineteenth Amendment granted women full participation in government. As such, the minimum wage law violated women’s right to contract freely with their employers. Essentially, the Congress Hall Hotel did not have to comply with an increase in minimum wage for its female workers. Legally, this was significant as it recognized women as equals before the law. But in practice, employers found legal justification to continue paying their female employees low wages.

This dissertation is not the first to uncover sexual harassment in the workplace. In fact, women have endured unwanted sexual attention for much of American history. What this project has charted is that women’s entry into wage labor and factory work after the American Civil War led to a dramatic increase in what we today call harassment. That means that for more than a century
before sexual harassment was a legally recognized category, it existed in the workplace. Yet despite the rising numbers of harassment reports, lawmakers appeared to ignore the sexual and emotional dangers of women who worked. They instead voiced their concerns about women working within language about women’s maternal responsibilities to society. But despite implications that women’s physical and reproductive health was the primary reason for protective legislation, this project has shown that much of Progressive-Era labor law alluded to sexual harassment in the workplace.

The dissertation drew upon a large source base of trial transcripts, reform literature, government inspection records, and correspondence. The largest resource were newspaper articles, which established that sexual harassment was a pervasive issue in the American workplace. Newspapers reported on harassment regularly between 1850 and 1920, making it clear that women experienced workplace harassment and that the general public was aware of its existence. The New York Sun quoted a labor union leader who believed that “practically all employers seduce women in their employ.” A second example stated that the streets of New York City were lined with drunken prostitutes because “girls who had once been workwomen at the factories had there been seduced” and had fallen into lives of debauchery. Newspapers reveal that sexual harassment in the workplace was certainly happening. The frequency of articles about workplace seduction suggests that rising newspaper readership after 1820 coincided with awareness of sexual harassment in the workplace.

Awareness of the moral dangers of the workplace went beyond newspaper reports. The dissertation was also informed by local legislation and internal government investigations, which placed women’s morality at the forefront of discussions about workplace safety. The New York


4 “Labor,” The New York Sun, June 15, 1901.

Supreme Court’s 1906 decision to allow women to work overnight shifts drew fierce pushback from reformers who argued that night shifts “have been found to be peculiarly mischievous,” which made women particularly susceptible to harassment. In another example, an investigation into the United States Treasury Department uncovered instances of pornography being forced upon female employees, unlawful termination after witnessing immoral activity, and bribes to ‘forget’ after-hours impropriety. Examples of workplace misconduct in newspapers, legislation, and official investigations all suggest that Progressive-Era labor law alluded to sexual harassment in the workplace.

It is clear that lawmakers were aware of immoral workplace environments, and that this awareness likely informed their decisions. Yet they were careful to couch the language of their decisions in socially acceptable rhetoric. For example, many judges pointed to women’s maternal obligations to society, future viability as mothers, or the moral dangers of nightwork as justification for protective legislation for women workers. But despite extensive research, the evidence has fallen short of an explicit claim connecting Progressive-Era labor law to lawmakers’ knowledge of sexual danger.

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7 U.S. Treasury Department, Investigation into the printing of national securities in the Treasury Department,” 15, 408, 409.
There have been several recurring themes in this dissertation. The first is public anxiety about women leaving the home. This anxiety manifested itself as fear about women engaging too freely with men, being overworked in factories, and ruining their reputations as virtuous women. Concern for women’s well-being has existed for centuries, and did not subside with the ratification of the Nineteenth Amendment. In fact, it remains pervasive to this day. In 2020, there are six American states that mandate sexual harassment training for employees in an attempt to preserve propriety and professionalism in the workplace.⁹ The very existence of these mandates suggest that the issue of sexual harassment in the workplace, and people’s concern about its existence, has not been resolved.

A secondary theme is the change in perception about female victimization. Chapters One and Three highlight just how quickly America’s perceptions of women changed from 1890 to 1910, and emphasize an inability to settle on whether women were the victims or the vixens in sexual harassment cases. Women who faced harassment in 1900 garnered less sympathy than their counterparts thirty years earlier. The Progressive Era, however, saw the pendulum swing back in favor of sympathy toward female victims. This debate over victimization remains pervasive to this day. Modern women who experience sexual harassment in the workplace face similar inconsistencies in reactions. While some people acknowledge the reality of harassment and believe it should be combatted through preemptive training and termination of those who partake, others blame the woman for drawing attention to herself. The volatility of this topic suggests that there is still much to be done to preserve women’s safety and security in the workplace.

This dissertation has become increasingly relevant in today’s climate of awareness about sexual harassment in the workplace. What grew out of an interest in joining labor and gender history has

⁹ New York’s mandate extends to all employers, while in other states it applies to employers who exceed a certain number of employees (generally fifteen or more).
grown into a project that discusses piercing political and social issues of the last several years. In the midst of the global #metoo movement, it seems incredibly appropriate to share the stories of women like Fanny Hyde, Mary Murray, Grace Brown, and Mary Phagan. Their experiences bring awareness and understanding to the history of sexual harassment in the workplace.
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Name of Author: Elissa M. Isenberg

Date of Birth: August 16, 1989

Degrees Awarded:
Syracuse University, Syracuse, New York (Ph.D., 2021; M.Phil., 2014; M.A., 2014); University of California, Santa Barbara (B.A., 2011)

Teaching Experience:
- History Teacher, Brentwood School, Los Angeles, CA (2017-2019)
- Graduate Teaching Assistant, Syracuse University (2011-2017)

Grants, Fellowships, and Awards:
- Dobie-Kampel Fellowship, Syracuse University (2015-2016)
- Outstanding Teaching Assistant Award, Syracuse University Graduate Program (2015)
- Maxwell School Roscoe-Martin Graduate Award, Syracuse University (2015)
- Graduate Teaching Assistantship, Syracuse University (2011-2017)