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## THE CHILD AS RISK: PRECOCIOUS GIRLS AND SEXUAL CONSENT IN LATE VICTORIAN BRITAIN

*Victoria Bates*<sup>1</sup>

### Abstract

The figure of the precocious girl pervaded Victorian culture, yet is poorly understood. This article focuses on concerns about sexual precocity and their influence on age-of-consent debates in the 1880s. It shows that even this single form of precocity (sexual) took multiple forms and was a malleable concept, often used selectively in parliamentary debates to suit particular agendas. These different uses of precocity did have in common, however, a tendency to be situated against the normal as 'ideal' rather than only statistically 'typical'. As precocity was generally measured against the ideal sexual development and behaviour of respectable North European girls, it was as much a value judgement as a measurable concept. Medical, legal and social commentators identified undesirable social groups along lines of race and class for whom precocity apparently was the norm rather than the exception. These girls were excluded – mostly implicitly, but at times explicitly – from the protection of the new age of consent law in 1885. Overall, the case study of sexual consent law shows that the idea of precocity operated to include and exclude certain girls from the 'at risk' framework. By embedding these social concerns into law, particularly in relation to girls aged between 13 and 16, the 1885 Criminal Law Amendment Act also had long-term repercussions. It provides an important backdrop to the continued challenges facing so-called 'precocious' girls up to the present day.

### Keywords

Age of consent; precocity; puberty; Criminal Law Amendment Act; sexuality

### Introduction

In 1858 *The Monthly Packet*, an Anglican magazine, cited a traditional proverb in reference to precocious children: 'early ripe, early rotten'.<sup>2</sup> This old proverb originally related to early intellectual development, but gained new layers of meaning in the nineteenth century when sexual precocity became a particular social concern.<sup>3</sup> One physician noted that, by the turn of the century, 'speaking generally, one may say that the word carries a bad meaning ... The term "precocity" has been used with very different meanings, and often with no very definite

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<sup>2</sup> A. Gatty, 'One of Aunt Judy's Tales', *The Monthly Packet of Evening Readings for Younger Members of the English Church*, 1 December 1858, p.589.

<sup>3</sup> Before the nineteenth century the term also related to plant development, see 'Precocity, n.', *OED Online* (Oxford University Press, 2012). Claudia Nelson has shown that not all of its meanings were negative, as an economically precocious girl could be a relatively sympathetic figure, but notes that sexual precocity and early marriage were controversial issues; Claudia Nelson, *Precocious Children and Childish Adults: Age Inversion in Victorian Literature* (John Hopkins University Press, 2010), p.104.

meaning at all, but in a vague, loose, or popular way'.<sup>4</sup> Various 'vague, loose' forms of sexual precocity sat in opposition to normal sexual development. The 'normal' in itself was a disparate concept that came in the nineteenth century to represent typical, healthy and/or ideal development.<sup>5</sup> In its opposition to these different norms, sexual precocity articulated a range of contemporary concerns about age, gender, class and race. Despite this significance, precocity remains an understudied aspect of Victorian historiography.<sup>6</sup>

This article examines the place of female precocity within debates about sexual consent in the late nineteenth century, focusing on the 1885 Criminal Law Amendment Act (CLAA).<sup>7</sup> The law changed the felony clause for 'carnal knowledge' of girls from twelve to 13, and the misdemeanour clause for the same offence from 13 to 16. Legislative discussions, particularly such high-profile ones, provide valuable insights into the intersections between legal, medical and social thought on sexual consent. This law played an important role in consolidating trends in thinking about age, sexual development and risk. This is not to label 1885 as something so simple as a 'turning point', as the courts demonstrated concerns about precocity both beforehand and afterwards.<sup>8</sup> Rather, it acknowledges that the CLAA responded to growing concerns about female precocity and was important in writing them into law. Social and medical concerns were thus embedded as legal ones, with lasting repercussions for complainants in cases of suspected sexual crime. Steven Angelides shows that Freudian theory would come to normalise child sexuality in a way that further embedded the child as risk, extending the figure of the child as potential 'seducer' to include ever younger girls.<sup>9</sup> Late feminism challenged these fears around the precocious girl, although never eliminated them completely. The late Victorian period and its medico-legal history are key for understanding this longer history of concerns about precocious girls and victim blaming.

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<sup>4</sup> On the lack of clear definition, but generally negative use of the term, see R. L. Langdon-Down, 'Precocious Development', *British Medical Journal*, 21 September 1907, 743-47, p.744.

<sup>5</sup> On the different aspects of 'normality' see Ian Hacking, *The Taming of Chance* (Cambridge University Press, 1990); Ian Hacking, 'Normal People' in Nancy Torrance and David R. Olson (eds), *Modes of Thought: Explorations in Culture and Cognition* (Cambridge University Press, 1996) pp.59-71.

<sup>6</sup> Many scholars of girlhood mention precocity, but there are few studies that focus on this concept in its own right. Claudia Nelson's book *Precocious Children and Childish Adults* provides a rare example, but focuses on literary representations. Even fewer studies of precocity focus on sexual precocity or its medical aspects.

<sup>7</sup> In 1885 the Criminal Law Amendment Bill was languishing in Parliament when public furore, following W. T. Stead's newspaper exposé of the 'White Slave Trade', ensured its passage into law. The law focused on juvenile prostitution, but its clauses on sexual consent law generated particular controversy.

<sup>8</sup> For relevant court cases in the period 1850-1914 see Victoria Bates, *Sexual Forensics in Victorian and Edwardian England: Age, Crime and Consent in the Courts* (Palgrave, 2016).

<sup>9</sup> Steven Angelides, 'Feminism, Child Sexual Abuse, and the Erasure of Child Sexuality', *GLQ: A Journal of Lesbian and Gay Studies*, 10 (2004), 141-77.

Deborah Gorham rightly describes the 1885 legislation as ‘a compromise between widely divergent points of view’, particularly in its use of 16 as the upper limit of the misdemeanour clause.<sup>10</sup> Precocity was only one part of this negotiation or compromise, but was an important one. This article looks at two different categories of precocity in turn: physiological (menstruation and outward appearance) and mental (understanding and behaviour). It shows that the label of ‘precocity’ could be applied at very different ages and life stages, and that it was often used to articulate value judgements: the precocious girl was situated against the normal as ‘ideal’, more than the normal as ‘typical’. Medical, legal and social commentators identified groups for whom the precocious was the norm as girls who posed a risk to others. These girls were excluded – mostly implicitly, but at times explicitly – from the protection of the 1885 law.

Growing concerns about female precocity destabilised the assumption that a girl was always at risk, rather than posing a risk to themselves and others. This significance has not passed by historians of Victorian Britain, some of whom have examined how precocity fed into victim/threat binaries and shaped debates about juvenile sexuality and ‘pollution’ discourses.<sup>11</sup> Many have also acknowledged the gender dimensions of these concerns. While some juvenile male sexual behaviours were undoubtedly a cause of great concern, the notion of sexual ‘precocity’ typically focused on girls and articulated specific anxieties about – for example – disorder, respectability, illegitimacy and juvenile prostitution (concerns about delinquency and young boys focused instead on petty crime, or on engaging in non-sexual adult vices).<sup>12</sup> However, scholarship has not yet studied closely the wide range of forms that female precocity took and the multiple perceived risks associated with it. A closer examination of the medical, social and legal concerns surrounding precocity reveals that there was no single type of precocity, nor did it pose a single type of threat. Moving beyond

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<sup>10</sup> Sexual consent legislation was not a partisan issue in the period under study and therefore the stances of MPs and members of the House of Lords on the subject of age-of-consent legislation were largely personal, hence at times ‘widely divergent’. As *The Times* noted in 1885, ‘the Liberals and the Conservatives were struggling for [the law’s] authorship’; ‘The Criminal Law Amendment Act’, *The Times*, 18 August 1885. Deborah Gorham, ‘The “Maiden Tribute of Modern Babylon” Re-examined: Child Prostitution and the Idea of Childhood in Late-Victorian England’, *Victorian Studies*, 21 (1978), 353-79, p.364. This description of the legislation as a ‘compromise’ is also common beyond the discipline of history, as exemplified by Brian Hogan, ‘On Modernising the Law of Sexual Offences’ in P. R. Glazebrook (ed.), *Reshaping the Criminal Law: Essays in Honour of Glanville Williams* (Stevens & Sons, 1978), 174-89, p.179.

<sup>11</sup> Louise Jackson, *Child Sexual Abuse in Victorian England* (Routledge, 2000), p.53.

<sup>12</sup> As Nelson notes: ‘there are few male versions of the sexually precocious child-woman’; *Precocious Children and Childish Adults*, p. 10. See also Shani D’Cruze and Louise A. Jackson, *Women, Crime and Justice in England since 1660* (Palgrave Macmillan, 2009), p.75; Larry Wolff, ‘“The Boys are Pickpockets, and the Girl is a Prostitute”: Gender and Juvenile Criminality in Early Victorian England from *Oliver Twist* to *London Labour*’, *New Literary History*, 27 (1996), 227-49.

victim/threat binaries opens up the opportunity to explore the different types of risk that a single figure, the sexually precocious girl, could represent.

## **1 Bodies and Blackmail**

The female body was a key part of discussions about the age of sexual consent because it was an outward indicator of maturity. It was not, however, a straightforward indicator. Sexual maturity was a lengthy process, rather than an event or turning point, and apparently involved a range of physiological and mental changes. In relation to physical maturity and sexual consent, commentators tended to focus on measurable markers of development that allowed them – in theory – to distinguish normal from abnormal ages of maturity. This section focuses on the different functions of a ‘precocity’ label for two of these measurable indicators: menarche (age of first menstruation) and maturity of appearance. It shows that physical precocity was a multifaceted concept, but consistently reflected social concerns more than medical ones. Commentators on the 1885 law distinguished between cases of unusual precocity and social groups for whom physical precocity was apparently common, who did not have the physical characteristics of an innocent ‘victim’.

Sexual consent had long been linked to the capacity to reproduce, particularly after the thirteenth century Statutes of Westminster that aligned sexual consent with the marital age of twelve. The average age of marriage had increased to the mid-20s by the Victorian period, but the age of first menstruation continued to be a part of discussions about sexual consent. Medical, legal and social commentators did not claim that menarche was the only feature of maturity, not least because mental maturity was believed to emerge later, but many focused on menarche as one of the few measurable markers of maturity. For a law seeking to protect the majority, this measurability was important, although the statistical distribution of menarche actually problematized efforts clearly to delineate precocity from normality. Of most significance were discussions about menarche that focused on precocity as the norm for certain social groups, particularly so-called ‘lower’ races and classes. These girls were identified as the group most likely to pose a risk to men, through disorderly sexualities, rather than to be the children at risk and in need of protection.

The Victorian period was significant for research about ages of puberty. The rise of anthropometric studies and new statistical conception of the normal body fed into research on typical ages of menarche. These studies confirmed long-held ideas about the average age of puberty, but also actually blurred the lines between precocious and normal puberty. Anthropometrist and surgeon Charles Roberts wrote in *The Lancet* in 1885 that:

When we are told that the average age for the function of menstruation to commence is fourteen years and nine months, we get an idea that most girls arrive at puberty at this age, while in truth only nineteen or twenty in every hundred, or 20 per cent., do so, 80 per cent. being distributed over the five or six preceding and five or six succeeding ages in a certain definite manner.<sup>13</sup>

Focusing on statistical distribution in this way, rather than mean or model averages, revealed that menarche could occur at wide a range of ages. As medical researchers revealed that the normal body was more variable than previously realised, sexual precocity also became more difficult to define. At the same time that it gained medical, legal and social significance, precocity therefore became an increasingly unclear concept. The growing vagueness of the label, but continued negative connotations, would be invaluable for those seeking both to promote and resist legislative change.

The normal did not have infinite range. To cite Ludmilla Jordanova's work on the eighteenth century, medicine acknowledged 'the plasticity of human beings, [but] there were considered to be limits on the extent to which people could be changed'.<sup>14</sup> Even though there was a concept of abnormal development, including abnormally early and late maturity, there was no simple separation between typical and atypical ages of puberty. From the late nineteenth century up to the turn of the century *The Lancet* and *British Medical Journal* reported on 'precocious menstruation' and 'precocious puberty' in relation to infants and to girls up to the age of 11; however, not all girls who menstruated at 11 years old were automatically deemed to be precocious.<sup>15</sup> The age of 11 was neither clearly normal (the average age was 14 or 15), nor sufficiently rare to be abnormal. Boundary cases of this kind illustrate how medical practitioners applied the label of precocity with discretion.

These discretionary definitions of normal and precocious menarche carried over into debates about sexual consent. In July 1885, surgeon Charles Roberts complained in *The Lancet* that 'an important physiological question is being dealt with, without, so far as appears in the discussions, any physiological knowledge being brought to bear on it'.<sup>16</sup> His comments had some basis in fact, as medical practitioners were rarely directly involved in parliamentary debates or committees, but some practitioners did write influential pieces on

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<sup>13</sup> Charles Roberts, 'The Physical Maturity of Women', *The Lancet*, 25 July 1885, p.149.

<sup>14</sup> Ludmilla Jordanova, *Sexual Visions: Images of Gender in Science and Medicine between the Eighteenth and Twentieth Centuries* (Harvester Wheatsheaf, 1989), p.27.

<sup>15</sup> 'Notes, Short Comments, and Answers to Correspondents: Early Menstruation', *The Lancet*, 11 March 1871, p.366; 'Precocious Menstruation', p.518; 'Clinical Society of London', *The Lancet*, 5 May 1906, p.1246. For a case of reportedly healthy menstruation in a girl aged 11, see Charles Bell, 'The Constitution and Diseases of Women, Part II', *Edinburgh Medical and Surgical Journal* 62 (1844), 311-30, p.323.

<sup>16</sup> Roberts, 'The Physical Maturity of Women', p.149.

sexual consent law. In *The Lancet* in August 1885, Frederick Lowndes addressed the question of 'what, medically speaking, should be the limits of age in the Bill now before Parliament'.<sup>17</sup> Lowndes was a generalist, with some experience as a surgeon to the Liverpool Lock Hospital and Liverpool Police. His previous work may have informed the decision to seek an input on the subject of sexual consent law and to take a protectionist stance. He dismissed concerns about the risks associated with precocity in order to do so, writing that 'instances of precocity, though frequent, [are] still the exceptions which prove the rule. And it must not be forgotten that the cases of exceptionally late menstruation more than counterbalance those exceptionally early'.<sup>18</sup> This work had influence beyond the medical profession. In his 'Maiden Tribute of Modern Babylon' exposé of child prostitution, which helped to push the 1885 law through Parliament, journalist W. T. Stead directly cited 'Dr. Lowndes, who was recommended to me by Mr. Cavendish Bentinck as a leading surgeon of Liverpool', with a very similar comment: 'all the cases of abnormal precocity we have heard of ... are very exceptional, and it seems to me that carnal knowledge of any female under puberty is a cruel outrage'.<sup>19</sup> He emphasised that precocity was sufficiently rare to justify a felony clause as high as 14 or even 15: the average age of puberty. It was only possible to do so because he defined precocity in terms of 'exceptionally' early cases. While technically these comments were in line with contemporary research, they also represented a selective use of statistics to promote a protectionist agenda; by defining precocious menarche as only the clearest cases of 'exceptionally' early development, Lowndes could emphasise its unusual nature.

In theory, anthropometric studies of menarche meant that precocious menstruation was straightforwardly defined in relation to statistical norms. Lowndes did discuss it in these terms, but precocious menarche also sat in opposition to another implied norm: ideal girlhood. The gender, race and class dimensions of precocity indicate that the term referred to undesirable girls, rather than just to unusual development. It is significant that the label of precocity in such cases did not always correspond to medical research on menarche ages; the label was social as much as scientific. There was a widespread belief that girls from the working classes were more likely to be physiologically precocious, despite evidence that better nutrition – typically linked to higher classes – actually brought earlier menarche<sup>20</sup> Medical and social commentators similarly noted that girls from hotter climates and working-

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<sup>17</sup> F. W. Lowndes, 'The Criminal Law Amendment Bill', *The Lancet*, 1 August 1885, p.221.

<sup>18</sup> Lowndes, 'The Criminal Law Amendment Bill', p.221.

<sup>19</sup> 'The Maiden Tribute of Modern Babylon – III', *Pall Mall Gazette*, 8 July 1885, 1-5, p.3.

<sup>20</sup> William B. Carpenter, *Principles of Human Physiology: With their Chief Applications to Psychology, Pathology, Therapeutics, Hygiene & Forensic Medicine*, 5th edn (Blanchard & Lea, 1855 [1842]), p.797.

class 'factory girls' developed earlier and were more sexually active.<sup>21</sup> In the mid-nineteenth century one medical statistician actually provided evidence to contest a link between climate and ages of menarche, although propagated different value judgments by arguing that girls from warm countries developed earlier for cultural reasons rather than physical environment.<sup>22</sup> Despite such interventions there was an enduring social and medical link between heat and sexuality. Such ideas had roots in humoral medicine, but the notion of sexual precocity itself and imperial concerns about race, climate and national strength were also peculiar to the period under study. Girls for whom early physical maturity was the norm – or at least for whom it was claimed to be the norm, even against the evidence – were important symbols of disorderly sexuality.

These concerns implicitly made their way into discussions about the age of sexual consent. In a parliamentary debate about the 1885 CLAA Mr Macartney highlighted the relative precocity of Mediterranean girls and girls of the lower classes:

If any hon. Gentleman knew girls of 14 who seemed to be marriageable their experience did not accord with his. No doubt there were cases amongst the lower classes where girls married at 14; but they were very few ... It seemed to him that their Common Law as to the period when boys and girls were marriageable was founded on the Roman Law. Well, the Romans lived in a much more Southern latitude than we, and their children—as was the case with the children of the South of France, Spain, and Italy at the present time—were much more precocious than our children.<sup>23</sup>

Macartney made this statement in support of an increase in the felony clause, to protect most respectable North European girls. The only groups for whom precocity was normal apparently were members of the 'lower' races and classes, indicating that these social groups were not the target of child protection campaigns. Like Lowndes, therefore, Macartney emphasised the atypicality of precocity for certain social groups to advocate a rise in the age of sexual consent. Although Macartney referred only to the social issue of 'marriageability', for which the age of 14 was earlier than ideal or expected, it was closely linked to menarche in relation to a capacity to reproduce. The notion that a 'Southern latitude' made girls more 'marriageable' implicitly referred to the belief that they matured earlier physically. For these girls, precocity (in relation to the North European ideal) was the norm and these girls were not included in the 'at risk' framework. The exclusion of girls from

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<sup>21</sup> For the humoral roots of ideas about heat and sexuality and the rise of a 'moral panic' about factory girls, resulting from medical witness testimony at select committees for the Factory Acts in the 1830s, see Robert Gray, 'Medical Men, Industrial Labour and the State in Britain, 1830-50', *Social History*, 16 (1991), 19-43, p.38.

<sup>22</sup> John Robertson, *Essays and Notes on the Physiology and Diseases of Women* (John Churchill, 1851).

<sup>23</sup> HC Deb. (3rd series), 31 July 1885, vol.300, c.721. The typographical error of 'whore' has been corrected to 'where' in this citation.



'Southern latitudes' was seemingly a value judgement, rather than just the result of their limited number in the UK population, as working-class girls were often constructed in similar terms.

Over subsequent decades, case law interpretations of the 1885 law strengthened the idea that physical precocity could be the norm for certain social groups; most significantly, this seemed to be accepted as mitigation of an offence. In 1913, for example, a case came before the Court of Appeal in which the judge stated that:

The appellant was convicted under s. 4 of the Criminal Law Amendment Act, 1885. All cases of that kind are very grave, but it must be remembered that the people concerned in this case are of a race which develop at an earlier age than English people ... Both the man and the girl are of a different race to the people judging them and applying the law of England to them. Trying not to be rendered indignant by the fact that the girl was rendered pregnant, which was not the offence, we feel that the justice of the case would be met by a sentence of five years' penal servitude. Sentence reduced.<sup>24</sup>

This case related to the pregnancy of a twelve-year-old girl, which would likely have been considered a 'precocious pregnancy' in relation to white North European girls. Again, although not explicitly about menarche, this comment related to the capacity to reproduce. The judge drew upon ideas that racial difference – albeit in an unspecified form in this case – and associated inherited characteristics could make 'develop[ing] at an earlier age' the norm. The prisoner was not acquitted on this basis, but his offence was apparently mitigated because of the girl's relative precocity. Interpretations of the law, embedded in case law, therefore supported discussions in Parliament.

Overall these comments indicate that medical practitioners, Members of Parliament and Judges drew distinctions between girls for whom precocious menarche was an aberration and those for whom early reproductive capacities were apparently typical. Precocity therefore served a complex function in relation to the question of sexual consent. Anthropometric research actually showed precocious menstruation to be a problematic concept, unless in extreme cases, and challenged some assumptions about its links with climate and social class. Use of this term was therefore seemingly as much social as medical, indicating undesirability rather than just statistical abnormality. For respectable North European girls, precocious menstruation was conceptualised as occurring very young and being unusual; this argument was most often put forward by those promoting a rise in the age of consent, as it enabled them to preserve the idea of childhood innocence. For working-class girls, those from hot climates and so-called 'lower' races, in contrast, precocity

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<sup>24</sup> *Simmonds* (1914) 9 Cr App R 51.

was constructed as the norm. Statistics did not clarify exactly where lay the boundary between precocious and normal menarche; instead, it was a malleable label that contemporaries used to exclude certain social groups from child protection.

These trends were also evident in relation to the development of secondary sexual characteristics and outward appearance. There were occasional discussions about the problem of girls who 'looked older' than their years in relation to the felony clause, albeit to a much lesser extent than discussions about the misdemeanour clause. One MP proposed an amendment that 'it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court, justices, or justice, or magistrate, before whom the charge shall be brought, that the person so charged had reasonable cause to believe that the girl was of or above the age of thirteen years'. In support of this proposed amendment Mr Ackers, Conservative MP for West Gloucestershire, noted that 'they must remember that there were cases of early precocity; that there were cases where it would be absolutely impossible for anyone to say what was the age of a girl'.<sup>25</sup> He made no claim that such cases were widespread, and certainly it was thought unlikely that a girl under the age of 13 would appear older than 15 or 16, which were then the proposed ages for the misdemeanour clause. Ackers argued instead that the law should 'not to allow a man to believe that he was committing one offence [misdemeanour] while he was committing another [felony]'.<sup>26</sup> This amendment did not pass, unlike a similar clause introduced for the misdemeanour age group. However, it remains significant in showing that – although physical precocity was thought sufficiently rare for the age of 13 to be accepted relatively easily – some MPs tried to mitigate the consequences for men who fell victim to those few precocious girls.<sup>27</sup> The case law decision discussed above also indicates that the 'reasonable cause' defence may have been implicitly accepted in relation to those of 'lower' races, for whom physical precocity before the age of 13 was thought common rather than a rarity.

Precocity of appearance was of greatest concern in discussions around the misdemeanour clause, because of its apparent prevalence. In parallel with studies of menarche ages, in the late nineteenth century there were a growing number of studies of the female body and its development. These studies revealed a trend that bothered those who opposed a high age for the misdemeanour clause: girls often looked older than boys at a comparable age. This

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<sup>25</sup> HC Deb. (3rd series), 31 July 1885, vol.300, c.753.

<sup>26</sup> HC Deb. (3rd series), 31 July 1885, vol.300, c.753.

<sup>27</sup> The upper limit for the age at which carnal knowledge was considered a felony was only altered once in Parliament during the various earlier versions of the 1885 CLAA, from twelve to 13 years old, by a majority of 18; see the difference between Criminal Law Amendment Bill (1884-5) [159] and Criminal Law Amendment Bill (1884-5) [257]; 'The Criminal Law Amendment Bill', *Pall Mall Gazette*, 1 August 1885, p.10.

discovery fed into pre-existing concerns about the potential for blackmail that might result from a higher age of sexual consent. Charles Roberts opposed legislative change on the basis of this bodily precocity, for example. Roberts wrote a statistical discussion of the 'law of error', cited above, and published in *The Lancet*, in which he stated that:

Judging from the physiological facts, the girls [of fifteen] who have attained to the physical maturity of boys of from seventeen to nineteen years of age and to the functional maturity of womanhood will probably prove very troublesome wards of the state, and some disagreeable or unfair litigation and punishment may result from the adoption of the Bill in its present form.<sup>28</sup>

Roberts emphasised that the precocity of girls, compared with boys, was statistically normal. On this basis he articulated concerns about physically mature younger 'girls of the lower classes' seducing their male peers, who then could be prosecuted unfairly.<sup>29</sup> His comments clearly linked together physical and behavioural precocity, but focused on precocity as a relative rather than absolute concept. Similar claims were widespread throughout medical literature in the late nineteenth century, including that on the professional periphery such as sexologist Havelock Ellis's work. He linked such concerns to ideas about the natural precocity of 'lower' races also, when he wrote in 1894 that 'physical precocity is greater in women than in men, and the lower the race, generally speaking, the earlier is the full stature attained'.<sup>30</sup> In a similar pattern to discussions of precocious menarche, when bodily precocity was commonplace it represented a group of girls as risk rather than at risk.

When the risks associated with precocity grew in this way, speakers in Parliament similarly latched onto precocious appearance as a danger rather than an anomaly. In order to defeat an amendment that proposed flogging as a punishment, for example, the Liberal MP Sir Thomas Chambers commented that 'it might be that a girl of 13 looked much older than she was; it might be that she was not the seduced but the seducer ... [A] man might be more sinned against than sinning; it would be unfair to assume that the man was guilty in all cases, and surely it was enough to make a man liable to penal servitude for life'.<sup>31</sup> He linked together the fact that a girl might 'look older' with the likelihood of her being a 'seducer', a comment that echoed medical thought on the links between premature puberty and precocious sexuality. In August 1885 Captain Price, the Conservative MP for Plymouth Devonport, also raised some objections to a proposal to raise the age of the misdemeanour clause. He declared, during a debate in the House of Commons, that in his opinion it would be 'common' for 'easy extortion' to occur if '[a] man had improper relations with a young girl

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<sup>28</sup> Roberts, 'The Physical Maturity of Women', p.149.

<sup>29</sup> Ibid.

<sup>30</sup> Havelock Ellis, *Man and Woman: A Study of Human Secondary Sexual Characters* (Walter Scott, 1894), p.36.

<sup>31</sup> HC Deb. (3rd series), 31 July 1885, vol.300, c.747.

under 16 – 15 and a-half, say – a precocious, well-advanced, and well-developed girl, who looked more like a woman of 17 or 18'.<sup>32</sup> His comments are significant for a number of reasons. Firstly, Price implicitly connected a 'well-developed' appearance with sexual immorality and went on to link precocity with juvenile prostitution. Secondly, Price implied that the man would be the victim in such cases, even if he knew the girl to be under the legal age of consent. He viewed the physically precocious girl as a risk, rather than being *at risk* from those who misjudged her development. Thirdly, Price used the term precocious to mark 'advanced' sexual maturity even for a girl within the normal age range of puberty. Finally, his claim that such instances would be 'common' indicated a widespread belief that precocious girls of this kind were sufficiently numerous to pose a danger to themselves and to the men around them.

Such concerns about precocity and blackmail clearly shaped the outcome of the 1885 Criminal Law Amendment Act's misdemeanour clause as, although the age of 16 was ultimately accepted, it incorporated the 'reasonable cause to believe ...' clause that had been rejected for the felony law.<sup>33</sup> This clause removed the guarantee of legal protection from any physically precocious girl. Although beyond the scope of this article, it is also noteworthy that concerns about precocity were evident in the courts both before and after the 1885 law was implemented. The courts often dismissed cases in which medical witnesses described girls as 'well developed' or newspapers noted that they looked 'much older' than their years, and were particularly lenient if a case involved girls and boys of a similar age.<sup>34</sup> The prevalence of these concerns in the courtroom fed into legal reform, which in turn operated to reinforce such concerns in the courtroom. The CLAA was thus crucial in consolidating concerns about the precocious girl as/at risk, in a way that would shape legal responses well into the next century. Leniency when girls under the age of consent looked older was limited, but never fully removed from the law, in the twentieth century.

Physical precocity was theoretically a measurable, purely physiological issue, that was characterised by its opposition to typical patterns of development. In practice the norm against which it was measured was that of middle-class North European girlhood: an ideal, rather than just statistical normality. Social groups for whom physical maturity was thought to come slightly earlier were statistically normal, but still defined as precocious and therefore excluded from child protection frameworks. Precocity represented anxieties about class,

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<sup>32</sup> HC Deb. (3rd series), 3 August 1885, vol.300, c.898.

<sup>33</sup> Section 5.

<sup>34</sup> See, for example, Gloucester, Gloucestershire Archives, Pre-Trial Statements, John Doggett and George Young not tried (no bill) at the Gloucestershire Quarter Sessions in October 1894 for indecent assault, Q/SD/2/1894; 'Middlesex Sessions', *Daily News*, 10 September 1856, 6, p.6.

disorder and blackmail rather than being a simple measure of the normal/abnormal to protect the 'majority' as was often claimed in debates around legislation. The 1885 CLAA did not create these concerns, but for the first time officially allowed for legal discretion in cases of physical precocity. The legacy of this law, and of case law related to it, is significant. Despite challenges to such ways of thinking, particularly with late feminism, it is not unusual for cases still to come before court in which 'the appearance of the girls' as older is noted as a mitigating factor.<sup>35</sup>

## 2 Maturity and the Mind

In his 1878 *Lectures on Medical Jurisprudence*, prominent Scottish medical author Francis Ogston highlighted a case of alleged sexual crime against a girl aged just nine years of age. Ogston did not, as might be expected, use the case to call for child protection, to discuss the 'ruin' of the young or to highlight the importance of justice in such cases. Instead, he used the case as a cautionary tale against false charges and against assuming the innocence of young girls. The text noted that this young girl's 'familiarity with the usual details connected with sexual intercourse showed that she was no stranger to the subject, and she turned out to be one of those precocious children who are known to go about at night to solicit libidinous practices on the part of inconsiderate youths'.<sup>36</sup> Ogston implicitly highlighted the relevance of another kind of sexual precocity to sexual consent: knowledge or the mental aspects of sex. This precocity overlapped extensively with physical development in contemporary thought, particularly in relation to concerns about blackmail. It was also a specific concern of the period in its own right and can be further broken down into three issues – considered here in turn: firstly, the capacity to understand sex; secondly, knowledge about sex; and thirdly, sexual behaviour or experience. While the first was largely conceptualised as a developmental issue, the latter were also social issues. Precocity had a specific meaning in relation to each of these, but again operated to define which girls merited child protection and which should be excluded from the 'at risk' framework.

Medical practitioners widely believed that the capacity to understand sex came gradually with sexual maturity, but this was much more difficult to measure than bodily change. Discussions of the age at which a girl or boy achieved the mental capacity to understand sex were largely limited to debates about sex education, many of which came slightly later than the 1885 law.<sup>37</sup> No practitioner completed statistical surveys of mental maturity, in part

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<sup>35</sup> Laura Perrins, 'Why are young girls still blamed for being sexually abused?' *The Telegraph*, 8 August 2013.

<sup>36</sup> Francis Ogston, *Lectures on Medical Jurisprudence* (J. & A. Churchill, 1878), p.91.

<sup>37</sup> 'Sex-Teaching in Girls' Schools', *Eugenics Review* 2 (1910), 145-46, p.145.

because of the nascent nature of psychiatry as a profession at the time, but there was a general belief – repeatedly articulated – that mental capacity was the final stage of the developmental process. When Thomas Clouston considered ages of mental development at puberty, drawing upon his professional background as an alienist, he left the degree of the alleged discrepancy between physiological and psychological maturity undefined. In 1880 he merely noted that ‘it takes several years for the full development of the size and form of the body that is normal and typical for each sex, and it takes still longer for the complete evolution of the masculine and feminine psychical characteristics’.<sup>38</sup>

Mental capacity was also an important part of the negotiations around sexual consent law. In 1908, the Royal Commissioners on the Care and Control of the Feeble-Minded referred retrospectively to the motives for the 1885 CLAA, stating as follows:

What should be the law? I think an answer is to be found in the precedents of the criminal law concerning offences upon children of tender age who presumably cannot give an intelligent consent or who, on grounds of public policy, ought not to be allowed to consent to their own defilement. Their immaturity, their inexperience, and their weakness of mind or body call for protection, and the law in response imposes upon them a statutory disability to give their consent ... The power of consenting to unlawful defilement ... on the grounds stated has been taken from girls under sixteen.<sup>39</sup>

This statement draws attention to a common contemporary trend of describing the ‘power’ to consent as being ‘taken away’ from girls under the age of consent rather than being given to those above it.<sup>40</sup> This language is a significant part of understanding what consent meant in the context of late nineteenth-century legislation, as the age of consent did not represent a recommended or appropriate age for sexual activity. Instead, below the legal age of consent, girls were considered incapable of consenting or lacked the ‘power’ to consent. Medical and feminist literature of the period also emphasised ‘incapacity’ as an important marker for sexual consent legislation.<sup>41</sup>

The belief that mental capacity came later than physical maturity was also evident within parliamentary debates. It is key for understanding why girls were labelled as mentally or behaviourally precocious at ages for which physiological maturity was normal. In the House

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<sup>38</sup> T. S. Clouston, ‘Puberty and Adolescence Medico-Psychologically Considered’, *Edinburgh Medical Journal* 26 (1880), 5-17, p.6.

<sup>39</sup> Report of the Royal Commission on the Care and Control of the Feeble-minded, (1908), p. 500.

<sup>40</sup> For another example of the same terminology see Report from the Select Committee of the House of Lords on the Law Relating to the Protection of Young Girls, (1881), p.91.

<sup>41</sup> For example see Roberts, ‘The Physical Maturity of Women’, p.149; ‘Untitled’, *The Shield*, 7 October 1871, p.676.

of Commons in July 1885 the Liberal MP for Dewsbury Mr Serjeant Simon stated, in support of a felony clause of 14, that:

There was this distinction between the felony and misdemeanour – that in the former the female was immature, both in body and mind, and the man guilty of it must be of brutal nature. He believed, even at the age of 15, a girl was not always able to understand the consequences, because she was deficient in mind; and the same reason applied in a stronger degree to the age of 14. Although there were some females prematurely developed, yet it was no uncommon thing for development to be deferred to between the ages of 15 and 16. But at the age of 14 the girl was but a child, and he said that at that age there was neither knowledge nor passion; if there were, it was the result of unusual precocity.<sup>42</sup>

Although 14 was the average age of menarche, Simon here cited it as an age of ‘unusual precocity’ in relation to the mental side of development: the ability ‘to understand the consequences’ of consent. He emphasised the ‘unusual’ nature of such development in order to promote a higher age for the felony clause.

It was not unusual to discuss mental maturity alongside ‘knowledge’ and ‘passion’, as in Simon’s comments. These were interconnected issues, but precocious sexual knowledge was slightly different from the ability to understand sex; the former was apparently culturally imparted, whereas the latter was a developmental stage. Young girls who had premature sexual knowledge were often considered victims of unusual circumstances. *The Times* reported that, in one Middlesex court case from 1885, two girls aged nine and ten demonstrated familiarity with W. T. Stead’s ‘Maiden Tribute of Modern Babylon’ exposé of the ‘white slave trade’, but the judge observed that ‘the witnesses were not to blame for the evil knowledge’.<sup>43</sup> The framing of precocious knowledge in this way presented it as unusual and thus reinforced childhood innocence, as it was only exceptional external forces that corrupted the girls. Although they then apparently became a risk to others, contaminating the minds of their peers and making false claims, such legal responses indicate that such cases were considered unusual. Precocious ‘fallen’ girls could also pose a risk to their young peers.<sup>44</sup> They were, however, thought to be more common in certain – generally undesirable – social groups. Medical and parliamentary sources reveal a general belief that working-class girls raised in overcrowded houses, for example, had premature intimate knowledge of

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<sup>42</sup> HC Deb. (3rd series), 31 July 1885, vol.300, c.717.

<sup>43</sup> ‘Middlesex Sessions’, *The Times*, 27 August 1885. For a similar Middlesex case, in which a judge commented that ‘whatever foundation there was for observations upon their child’s depravity was owing to the prisoner’s wickedness’, see ‘Middlesex Sessions’, *The Times*, 23 January 1867.

<sup>44</sup> On concerns about pollution and contamination see Jackson, *Child Sexual Abuse*, p.89.

the opposite sex.<sup>45</sup> These girls were likely the basis for Ogston's comments, cited earlier, in relation to 'those precocious children' who were 'familiar' with the details of sex.

The older the girl, the more commonplace such mental and behavioural precocity was feared to be. Girls close to the upper end of the misdemeanour clause were an even greater worry in relation to blackmail. Their precocity was thought more likely to be common, thus they were often excluded from protectionist frameworks of thought. In 1894, a correspondent wrote to *The Standard* bemoaning the impact of the new sexual consent law. He stated that:

Raising the age of consent to sixteen was undoubtedly a mistake. Young girls between the ages of fourteen and sixteen have now, it is feared, in an immense number of cases, become sources of income to depraved parents by practising the system of blackmailing. Respectable and innocent lads are led away by designing girls, and induced to break the law, whereupon the boy's parents have to pay heavily to avoid exposure, or see their son in the dock, with character ruined for life.<sup>46</sup>

Although the specific label of 'precocity' was not used in this instance, comments about 'designing' girls aged 14-16 certainly echoed concerns about the precocious sexual knowledge of girls at these ages. As with discussions about bodily appearance and blackmail, precocity was powerful here as a relative concept: girls posed a risk to less mature male peers. Such concerns aid an understanding of why, in the aftermath of the 1885 law, there was a significant drop in the conviction rate for girls in the 'misdemeanour' age group.<sup>47</sup> Louise Jackson has rightly described this statistical trend as the consequence of judges and juries 'running out of sympathy for girl victims', who were 'threats as well as victims'.<sup>48</sup> This article indicates that the concept of precocity was central to this lack of sympathy.

Premature sexual capacity and knowledge were both closely related to a final form of precocity: precocious sexual behaviour. Sexual consent was by no means a recommended age of sexual activity, but concerns about precocious behaviour were relevant to fears about blackmail and false victimhood. Again, those who supported raising the age of consent generally emphasised how unusual this form of precocity was, while those who resisted change represented precocious sexual behaviour as commonplace. One editorial in *The Lancet* acknowledged fears about 'false charges by precocious females', but emphasised

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<sup>45</sup> See 'Report of the Thirty-Sixth Annual Meeting of the British Medical Association', *The Lancet*, 15 August 1868, p.233. Such concerns were not specific to high-density urban areas. The *First Report of Her Majesty's Commissioners for Inquiring into the Housing of the Working Classes* (HMSO, 1885) dealt with incest, immorality and overcrowding in the provinces and agricultural areas as well as London.

<sup>46</sup> 'The Criminal Law Amendment Act', *The Standard*, 10 May 1894.

<sup>47</sup> See the introduction to Bates, *Sexual Forensics*.

<sup>48</sup> Jackson, *Child Sexual Abuse*, p.106.



that such precocity was rare.<sup>49</sup> In consequence, it argued, 'there is much to be said in favour of adopting [14 for the felony clause and 18 for the misdemeanour clause], seeing that the law would thus provide more effectually for the protection of immature girls from the assaults of vicious men, as well as from their own inexperience'.<sup>50</sup> As sexual experience was not advocated widely until marriage, it was possible to construct normal (ideal) girls as 'immature' and sexually 'inexperienced' into their late teens. In this framework, girls could be physically developed but still inexperienced and in need of protection. The flip side of this approach was that the label of 'precocity' could also apply to older girls, but those advocating the higher age of consent emphasised that such precocity was still rare. Child protection and feminist groups commonly framed their arguments in such terms when seeking to increase the age of consent as high even as 21. Again, they did so primarily in relation to those for whom precocious sexual behaviour was *not* expected to be the norm: respectable girls.

Not everybody agreed with this approach; the concept of precocity had a wide range of functions. A few social purity campaigners such as Ellice Hopkins believed that a higher age of consent would help to control working-class girls at the 'dangerous years' of 16 and 17, thus they excluded such girls from the child protection framework even while advocating a higher age of consent.<sup>51</sup> Others who shared Hopkins' concern about the prevalence of precocious sexual immorality opposed legislative change. The Liberal MP for Stockport, Mr Hopwood, disagreed with an increase in the felony clause on the basis that 'he saw many young women that he believed were not older than 13, or who, at all events, were debauched as early as 13 ... In evidence before the House of Lords it was stated by the chaplain of a gaol that in many cases children began a life of immorality at the early age of seven or eight years.'<sup>52</sup> Hopwood was seemingly, though, in the minority in arguing that precocious 'immorality' among girls quite so young was prevalent rather than unusual.

Despite the resistance of feminist and child protection groups, such comments became more commonplace in relation to the misdemeanour clause and older girls. These arguments often drew upon the perceived links between female precocity and juvenile prostitution, the

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<sup>49</sup> 'The Criminal Law Amendment Bill', *The Lancet*, 8 August 1885, p.252.

<sup>50</sup> *Ibid.*

<sup>51</sup> Report from the Selection Committee of the House of Lords on the Law Relating to the Protection of Young Girls, (1882), pp.6-11. See also Hopkins's comments in 'The Criminal Law Amendment Bill', *The Standard*, 9 July 1883.

<sup>52</sup> HC Deb. (3rd series), 31 July 1885, vol.300, c.753.

embodiment of animalistic and disorderly sexuality.<sup>53</sup> The 1885 law officially dismissed previous sexual experience as irrelevant to the question of consent. However, girls aged 13-16 were treated slightly differently from those in the under-13 category because of these fears about prostitution and blackmail. There was some significant support for a proposed amendment to exclude girls who were 'common prostitute[s], or of known immoral character' from the protection of the misdemeanour clause. Sir Richard Webster opposed it on the basis that such girls could be saved yet, noting that 'there was no reason to suppose that there would be many girls under the age of 16 who would be prostitutes' and that such girls might only have slightly injured their 'moral character'.<sup>54</sup> He constructed such precocity as sufficiently rare still to include such girls within the protection of the law. Many other commentators, however, supported the amendment: 'Captain Price thought that if they did not accept the Amendment proposed the result would be very serious indeed, especially in certain towns. He represented a large borough, where there was a large garrison, with many soldiers and sailors; and there were many girls of this kind on the streets, many of them being very young girls.'<sup>55</sup> It seems that the amendment failed not because juvenile prostitution was thought to be rare, but for the opposite reason: extending protection to these girls would apparently help to drive the immoral trade of juvenile prostitution from the streets. This decision was an uneasy one considering the apparent prevalence of such precocity. Extending the law to protect habitual prostitutes was a route to tackling street prostitution, rather than truly framing such girls in 'child protection' terms. It is also questionable whether the law ever truly did protect such girls, as it was rare to see cases of alleged assaults on prostitutes reaching trial.<sup>56</sup>

Concerns about precocious sexual behaviour meant that the law initially did not extend to include girls up to 16 in indecent assault cases, protection that had been provided to girls up to the age of 13 (then the top of the misdemeanour clause) in 1880. Attempts to extend the law's protection failed as late as 1914, with the Lord Chancellor objecting on the basis that: 'in the case of a girl under thirteen ... it is presumed that she is a child and does not know what she is doing. But with a girl nearly 16 the state of things is quite different. The precocity

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<sup>53</sup> Some medical literature even linked juvenile prostitution to evolutionary theory at the end of the century. The 1895 English translation of Cæsar Lombroso and William Ferrero's *The Female Offender* noted that 'the very precocity of prostitutes – the precocity which increases their apparent beauty – is primarily attributable to atavism ... We have only to remember that virility was one of the special features of the savage woman'; Cæsar Lombroso and William Ferrero, *The Female Offender* (T. Fisher Unwin, 1895), p.112.

<sup>54</sup> HC Deb. (3rd series), 31 July 1885, vol.300, c.776.

<sup>55</sup> HC Deb. (3rd series), 31 July 1885, vol.300, c.777.

<sup>56</sup> in the period 1850-1914, for example, not a single prostitute successfully prosecuted a case of sexual assault in the Middlesex Sessions or Gloucestershire, Devon and Somerset Quarter Sessions. See Bates, *Sexual Forensics*.

which some girls at that age exhibit who are habitual prostitutes is very remarkable'.<sup>57</sup> This comment implied that 'habitual' prostitution was sufficiently common among such girls to exclude the entire age group from further protection. The law was finally extended to protect girls up to the age of 16 in indecent assault cases in 1922, but this delay was significant in itself and formally set apart girls aged 13-16 as a more problematic – potentially precocious – age group. Concerns about new issues such as pregnancy would come to overtake those relating to juvenile prostitution over the course of the twentieth century, but concerns about the sexually risky behaviour of 'teenagers' evidently long predated the term.

Precocity served a particular function in relation to the mental and behavioural aspects of maturity, in part because they were expected to come later than physical maturity. Girls at the average age of physiological maturity could still be conceptualised as precocious in mental capacity, knowledge or experience. In theory only the capacity to understand or give consent was relevant to the law, as the 1885 CLAA did not mark an age of recommended sexual education or activity. In practice, sexual knowledge and behaviour became a part of discussion about legal change because of their relationship to concerns about class, race and blackmail. Despite the different contexts in which the label of 'precocity' applied to mental and behavioural maturity, it – like physical precocity – always operated as a euphemism for undesirable femininity.

### **Conclusion**

The 1885 Criminal Law Amendment Act is a rare example of high-profile debates about developmental norms that shows how the malleability of sexual precocity operated in practice, both within and beyond medical thought. While many scholars have identified the importance of precocity in Victorian thought, a close study of its medico-legal dimensions shows that precocity was never a homogeneous concept. Ideas about sexual precocity changed with a girl's age even within the legal and social category of 'childhood'; there was no simple victim/threat binary that operated consistently in relation to 'the' figure of the child, but rather a range of risks that shifted with the degree and type of precocity. The precocious girl embodied the many dangers that undesirable and disorderly forms of femininity posed to more respectable members of society.

The term 'precocity' applied to a wide range of contexts relating to sexual maturity, and in different ways to define statistically abnormal and/or undesirable girlhood. The former type of precocity was generally thought to be exceptional, and implicitly defined the normal girl at

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<sup>57</sup> HL Deb. (5th series), 20 July 1914, vol.17, c.26.

risk. The latter, in which precocity was the norm, marked out girls who posed a risk to the function of the law. Despite its malleability as a concept, precocity consistently operated to include/exclude girls from the child protection 'at risk' framework. For those seeking the highest ages of sexual consent, it was useful still to conceptualise girls at 14 or 15 as precocious in the sense of unusual. Those seeking to oppose legislative change instead pointed to the apparent prevalence of precocity among certain social groups. The final law was a compromise between these different perspectives. It raised the age of consent, but – implicitly and at times explicitly – excluded the 'lowest' races and classes from the child protection framework.

Precocity is poorly understood as a historical concept despite its significance within histories of childhood, sexual maturity and consent. This article has shown that the concept can shed light on wider social concerns of a given time, in part because it generally operated more as a value judgment than a medical diagnosis. It has explored the flexibility of precocity as a concept, arguing that scholars have only acknowledged its broad significance for histories of sexuality rather than exploring in depth its various functions. Debates about sexual consent provide an important example of these functions, as a context in which the social, medical and legal interacted. Late nineteenth-century changes to the age of sexual consent embedded growing social concerns about precocity in law. The 1885 law was significant in validating and strengthening a division between respectable girls 'at risk' and precocious girls 'as risk', especially those groups for whom precocity was apparently commonplace. Challenges to such divisions in the twentieth century were never entirely successful. The longer history of precocity and its impact on sexual consent law and judicial practice merits closer examination. Only by understanding how precocity evolved over the modern period as a value judgement, rather than just a statistical abnormality, is it possible to understand fully its continuing impact and legacy.