

Article

The Age of Consent and the Ending of Queer Theory

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Abstract: This article uses the debates surrounding the age of consent as a broad umbrella to question the continued usefulness of Queer Theory. The debates surrounding the age of consent illustrate that Queer Theory has not fulfilled its original promise and that it is not (and possibly never been), “fit for purpose”. Towards the end of 2013, the topic of lowering the age of consent in England and Wales was once again much in the news. This article suggests that much of that debate focused expressly or impliedly on the age of which *men* and *boys* have sexual intercourse (whether gay or straight), rather than when *people* have sexual intercourse. Queer Theory (originating from feminism), was intended to be a liberating phenomenon, but contrary to these hopes and intentions, Queer Theory evolved to become synonymous with white gay men, thus denying its origins and becoming distinctly anti-feminist. Those who argue for a reduction in the age of consent have used (whether knowingly or not) an approach which is consistent with this evolved version of Queer Theory. Consequently, the debate on the age of consent has ignored, or given insufficient attention to, the effect(s) a lowering of the age of consent will have on girls and women. This article, therefore, seeks to question, disrupt and unsettle, what Queer Theory has become, suggesting that, in several significant aspects, it fails to fully acknowledge patriarchy; render (lesbian) women visible; acknowledge and accommodate the lived experiences of women.

Keywords: age of consent; queer theory; post-queer theory; feminist; neo-feminist queer theory

1. Introduction

The debate surrounding whether or not the age of consent should be lowered re-surfaced again in late 2013. Much of the debate focused expressly, or impliedly, on the age of which men and boys have sexual intercourse (whether gay or straight). The parameters of the age of consent debate illustrate that the issues were raised and discussed in a manner that on the face of it, discusses the sexual experiences of all individuals irrespective of sex or gender. However, I suggest that the “consent debate” privileges the sexual experiences of boys, and underplays or ignores the sexual experiences of girls. Denying or minimizing the experiences of some subjects whilst privileging the experiences of others, is reflective of what Queer Theory has become rather than what it originally intended to be. In this context, then, the debate is a “Queer” one because the emphasis has focused upon the effects on teenage boys, at the expense of the impact on teenage girls. This article uses the age of consent debate to illustrate how the scope of Queer Theory has shrunk from its gloriously wide and wonderfully promising beginnings to a rather narrow and restrictive understanding now. I am not seeking to argue the suitability (or otherwise) of Queer Theory as an analytical lens with which to consider consent to sex per se, rather, I seek to illustrate how the debate on consent is illustrative of some of the drawbacks and dis-functionalities of Queer Theory. Queer Theory no longer “does what it says on the tin”, and had tried and failed to successfully de-stabilize dominant patriarchal normative discourse and power structures. I suggest that this is because that which underpins Queer Theory is the post-structuralist idea that there is no subject, only discourse, and that it is discourse which gives “meaning” to identity categories. Consequently, if there is no subject, there can be no discrimination or differential treatment experienced by the subject. However, I argue in this article that the subject does exist and that the denial of the subject is a denial of subjectively lived experience. Whilst I happily endorse the idea that discourse plays a significant role in creating and giving “meaning” to categories, Queer Theory and post-structuralism unintentionally re-create patriarchally defined categories of legal relevance. If there is to be a more inclusive and genuinely queer debate, such a debate needs to be more explicit in acknowledging the lived experience of girls and thus more inclusive and reflective of these experiences. Lowering the age of consent is likely to lead to even greater pressure on girls to be sexually active before they are ready, exposing them to experiences and consequences before they are sufficiently emotionally and physically mature.

2. Brief History of the Age of Consent

The development of the laws surrounding the age of consent has differed according to whether the focus has been on girls or boys and whether the sexual activity is heterosexual or homosexual. In England and Wales, the current age of consent is 16 for everyone, by virtue of section 9 of the Sexual Offences Act 2003, which removed the remaining legal distinctions in the criminal law between heterosexual and homosexual sexual activity. Children aged less than 13 years do not have legal capacity to give consent [1]. It was during the passage of the Sexual Offences Act 2003 that law makers were faced with the difficulty of drafting a law which would protect children from sexual exploitation “whilst simultaneously recognizing that young teens will inevitably and “consensually” engage in sexual experimentation ([2], p. 131).

Historically, the Age of consent in England and Wales [3,4] has varied from as young as 10 in 1576; 12 in the late 19th century [5]; 13 in 1875. The late Victorian age saw increasing concern for the female child prostitution exemplified by a campaign by the *Pall Mall Gazette* in 1885 on child prostitution, argued that young girls were “too young, in fact, to understand the nature of the crime of which they are the unwilling victims”. This campaign was arguably largely responsible for the Criminal Law Amendment Act 1885, which increased the age of consent for girls to sixteen. In 1994, the age of consent for gay men was lowered from 21 to 18. It was lowered to the present age of 16 in 2000 following the case of *Sutherland v United Kingdom*, the *European Commission of Human Rights* (1997) App. no. 25186/94 and the subsequent Sexual Offences (Amendment) Act 2000.

3. What does the Term “Age of Consent” Mean?

At this stage, it might be useful to pause and consider in slightly more detail, what is understood by the term “age of consent”. Waites points out that in the late nineteenth century the phrase was understood as pertaining to “the legal age for a female to consent to sexual intercourse with a male [4].” Waites suggests that the phrase “age of consent” should be used to refer to “any law, past or present, which prohibits young people’s involvement in any form of ‘assenting’ and/or ‘consenting’ sexual behavior below a particular age” ([6], p. 73). Current understandings suggest that the term “age of consent” presents a twofold approach; it is firstly generally understood to be the age at which individuals can legally engage in sexual intercourse and sexual activity. Secondly, it is also the age at which the law deems those individuals to be capable of giving genuinely informed consent; it thus demands “a requisite level of cognitive and emotional understanding” [7].

The issue of lowering the age of consent became prominent in the news once again shortly after the Number 10 Policy Unit proposed a reduction in the age of consent to 14 [8]. There was a significant amount of both print and broadcast news time allocated to the debate. The story appeared in numerous news organizations, both print and broadcast such as, *the Daily Mail* [9]; *The Guardian* [10]; *The Independent* [11]; *The Telegraph* [12]; *The Times* [13]; *The Sunday Times* [14]; *The Huffington Post* [15]; PinkNews [16]; BBC News [17]; Sky News [18]; ITV News [19]. All of these news reports focused upon how the current law criminalizes under age sexual activity, and not one focused upon the issue of under 16 year old girls becoming pregnant. Although the proposal was quickly rejected by the Prime Minister, David Cameron, several other prominent figures declared themselves to be in favor of a lowering of the age of consent. These included Professor John Ashton, President of the Faculty of Public Health, who proposed a lowering to 15, although he rejected a lowering to the age of 14 [11]. Ashton’s argument was based almost exclusively on his concern that young people were being denied access to health care treatment and information, and that a change in the age of consent would make it easier for 15-year-olds to get sexual health advice from the NHS. However, health professionals are already permitted to provide confidential sexual health advice, information or treatment, largely as a result of *Gillick (A.P.) v West Norfolk and Wisbech Area Health Authority and the Department of Health and Social Security* [1986] AC 11. The “Gillick Competence” test now forms the basis for deciding whether a child is capable of consenting to medical treatment. The case does not speak to the point of refusing medical treatment. Although the Sexual Offences Act 2003 makes it an offence to aid, abet, counsel or otherwise facilitate sexual offences in children under the age of 16, it will not be a

criminal offence if health professionals give treatment in order to protect the young person's sexual health, physical safety or emotional wellbeing. Of particular interest was the omission in Ashton's arguments to any reference to the issue of legitimating the acceptability of under 16 year old girls getting pregnant. Similarly, Peter Tatchell, a political activist and campaigner well known in the UK for his work in promoting LGBT issues [20], suggested lowering the age of consent to 14, based on a "desire to reduce the criminalization of under-16s who have consenting relationships with other young people of similar ages [21]". Tatchell was clear that he is not advocating teenagers "having sex" before the age of 16 [22]. His emphasis was that if teenagers do have sexual intercourse before the age of 16, they should not be arrested, given a criminal record and put on the sex offenders register. Tatchell made a distinction between what he terms "having sex" and "sexual behavior", although neither of these terms or phrases were clarified. Perhaps more pertinently for the purposes of this article, the issue of 14 and 15 year old girls getting pregnant was not mentioned or addressed, the entire emphasis was on the undesirability of criminalizing under 16 sexual activities. Part of Tatchell's justification was based on his assertion that the average age for first sexual experience is 14 (citing the National Survey of Sexual Attitudes and Lifestyles [23]). It is noteworthy that the Sexual Attitudes survey, relied upon by Tatchell, included all first sexual experiences, not just first age of sexual intercourse. The suggestions put forward by Ashton and Tatchell were quickly rejected by all three of the major political parties [24].

4. Exploring the Links between the Age of Consent and Queer Theory

What, therefore, links the debate surrounding the age of consent and Queer Theory? I suggest that whilst on the face it, the age of consent debate is inclusive of all identities, it is instead, inherently privileging of patriarchy. Queer identity and Queer Theory have rested on the assumption that lesbians and gay men are "all in this together", that there is a common cause to fight. Queer Theory as an approach, fails to fully recognize how patriarchy functions because it fails to acknowledge the lived experiences of women (whether lesbian or heterosexual). As pointed out by Parnaby, one of the major demands of *Outrage!* (a British pressure group, formed in 1990 to campaign for lesbian and gay rights), for example, was to campaign for a change in the age of consent laws. Given that there was no age of consent restriction at all for lesbians until the Sexual Offences (Amendment) Act 2000, this was an issue which did not affect lesbians, yet Queer tried to convince women to join a movement based almost solely on a gay male agenda ([25], p. 96). Thus, illustrating that the campaign ran by *Outrage!* whilst purporting to be inclusive, was far from inclusive, illustrating as it does the patriarchy presumed in the debate. In this context, the mention of, and use of Queer Theory is not being presented as a useful analysis in and of itself, but rather as an illustration of how "consent debates" are in and of themselves, limitingly queer. At this juncture, it may be useful to mention the tension(s) between the liberal legal subject at the heart of the consent issue and some of the insights that could be potentially offered by Queer Theory. I do not of course wish to see norms of equality imposed upon the subject which will merely result in conformity to heterosexual and patriarchal identities. I am aware in this regard of liberal subjectivity underpinning the consent to sex debate and of course, tensions between so called liberal understandings of consent/autonomy. As I explore later in more detail, whilst I dispute the liberal notion of a sovereign singular physical body defined by heterosexuality and patriarchy, I

accept that the physical body inhabited by the concept of “women” has to exist in order to argue the relevance of subjectively lived experience. Whilst Queer Theory (as originally conceived) has the potentiality to contribute some interesting viewpoints that might alter perspectives on the debate, the current application of Queer Theory is ill equipped to do either, given that Queer Theory perspectives are incapable of acknowledging heteropatriarchal norms. I now turn to examine in slightly more detail, some of the origins of the term.

4.1. *Queer Theory*

Triggered partly by homophobic responses to AIDS, Queer Legal Theory emerged in the mid-1990s in response to political and legal events [26]. The term “queer” used to be a slang word for homosexual, or a term of hate speech, and as such, constituted homophobic abuse. More recently, queer has come to be used differently, sometimes as an umbrella term. Despite the fact that Queer Theory does not explicitly acknowledge its roots, feminism never the less allowed for Queer Theory’s emergence ([27], p. 142). It draws heavily on feminist theory’s commitment to “disestablishing patriarchy; Critical Race Theory’s dedication to unmasking the deep racist structures within society and life; Critical Legal Theory’s examination of how class structures are perpetuated and reinforced, and Gay and Lesbian Legal Theories of understanding how heteronormativity is constructed and reproduced [26].”

The term “Queer”, as Halperin suggests, is by definition whatever is at odds with the normal, the legitimate, and the dominant [28], and aims to destabilize dominant ideas of identity, whether that identity is sexual, gendered, ethnic, national, and political and so forth. Queer is not an identity, rather, it is a critique of identity and of identity construction. Thus, Queer,

[U]ndermines fixed identities and explores those areas excluded by such identities.

Therefore, queer functions as a kind of catalyst that strategically decenters identity positions without becoming a site of identity or identity construction itself ([29], p. 7).

Queer is therefore used as a verb; “to queer”. Queer Theory suggests that it is through the use of binary categories that “meaning” is created. Thus, society only understands what “homosexual” means in relation to the concept of “heterosexual” to which it is oppositionally positioned. Similarly, society can only understand what “man” means in relation to the concept of “woman”, which again is constructed and positioned as the opposite. Although the terms in these binaries appear fixed and natural, as Stychin argues, they are actually contingent and socially constructed and are far from being natural or fixed [30].

Queer Theory owes its intellectual roots to feminist theory, gender studies and to certain key writers such as Judith Butler, Jacques Derrida, Michel Foucault, Eve Kosofsky Sedgwick and Adrienne Rich. The person commonly credited with introducing the phrase was Teresa de Lauretis, who meant it to indicate at least three interrelated critical projects:

- a refusal of heterosexuality as the benchmark for all sexual formations;
- an attentiveness to gender capable of interrogating the frequent assumption that lesbian and gay studies is a single, homogeneous object;

- an insistence on the multiple ways in which race crucially shapes sexual subjectivities. She welcomed it saying that it was “another discursive horizon, another way of thinking the sexual ([31], p. iv).”

Drawing upon some of Foucault’s work on sexuality and his notion that bodies are given meaning by discourse and social structures of knowledge and power, Queer Theory aimed to challenge the categorization(s) of gender and sexuality. It was a political and theoretical critique of heteronormativity, *i.e.*, a critique of the institutions, structures, relations and acts that maintain heterosexuality as homogeneous, natural and all-embracing.

4.2. Praise, Criticism and Constraints of Queer Theory

Thus potentially, there is much to commend an engagement with Queer Theory and of utilizing the methodological tools it provides in order to challenge some of the essentialist notions supporting ideas of a core identity, or a natural, innate, inborn “self”. Indeed, Queer Theory has been instrumental in destabilizing and deconstructing some heterosexist norms. One of the main attractions of Queer Theory, therefore, is that it strives to avoid the damaging essentialist meaning often presumed by the terms “heterosexuality”, “homosexuality”, “lesbian” and “gay” [32]. For Queer Theory, therefore, the concepts of individualized and compartmentalized sexualities cease to exist because there is no subject and no definite distinction made between these categories ([33], p. 453). For Queer Theory, there is only discourse.

However, Queer Theory promised so much and delivered so little. Queer Theory was an exciting project, and I for one am deeply saddened that it has not delivered on its promises. To some, Queer Theory has had its day and “its project made obsolete by the full elaboration of its own logic” [34]. Of direct relevance to this article, I suggest that Queer Theory fails in several significant aspects to; acknowledge patriarchy and render (lesbian) women visible.

5. Failing to Address Patriarchy and Rendering Lesbians/Women Invisible Again

According to Queer Theory, oppositional identity terms (such as “woman”, “feminine”, “mother” *etc.*) are used to oppress all individuals, not just those who are regarded as being in a minority. If Queer Theory does “work” in successfully destabilizing identity constructs, it can act as a liberating force for all individuals. One of its original aims, therefore, was to be inclusive. However, a major criticism raised here against Queer Theory is that it is no longer inclusive (if it ever was). Although the word and/or the concept of queer has the potential to be liberating, it has been and continues to be, interpreted according to the dictates of the dominant discourses of heterosexuality and patriarchy. I suggest therefore that Queer Theory has not successfully managed to challenge the patriarchal aspects of heteronormativity ([35], p. 164). Wilkinson and Kitzinger for example, perceive Queer theory to be gay male-centered, primarily concerned with the needs of gay males ([36], pp. 375–82). As we have already seen, Teresa de Lauretis, credited with introducing the term, abandoned the term relatively quickly after introducing it, arguing that it had been taken over by the very mainstream forces and institutions it was originally coined to resist. She returned instead, to use the word “lesbian”, arguing that, for her, queer had rapidly become “a conceptually vacuous creature of the publishing industry” ([37],

p. 297). Thus, Queer Theory's failure to disrupt dominant hegemony further contributed towards the invisibility of lesbian identity because of what Queer Theory had come to signify. This, as Bindel points out is unlikely to change unless and until "gay men recognize that lesbians suffer the double bind of sexism and anti-lesbianism" [38]. It would appear then that "Queer Theory disappeared lesbians 'by subsuming them, at best, into a variety of gay men'" ([39], pp. 269–78).

Queer theory was meant to be an all-encompassing rhetorical umbrella, but the appearance of "the Queer", signals the disappearance of "the lesbian". As convincingly argued by Cruikshank, "I have fought too hard for the psychic freedom to name myself as lesbian to disappear now under the queer rubric" ([40], p. xii). As Jeffreys argues, Queer Theory threatens to render lesbians and lesbian issues invisible again; "The appearance of queer theory and queer studies threatens to mean the disappearance of lesbians" [41]. Jeffreys criticizes Queer Theory as the product of "a powerful gay male culture", which "celebrated masculine privilege" and "enshrined a cult of masculinity". She repudiates Queer Theory as anti-lesbian, anti-feminist, and anti-women ([42], pp. 1–2). Thus, despite its supposedly counter-normative associations, queer, and Queer Theory has come to signify gay male (as we shall see, gay *white* male), which means it does not challenge or change; it is simply "yet more patriarchy". The debate surrounding lowering the age of consent has on the face of it, focused its aim on helping both boys *and* girls under 16; it purports to be inclusionary. However, to a significant degree, the debate has placed insufficient emphasis upon the potentially damaging effect(s) a lowering of the age of consent will have on teenage girls, and has become therefore, exclusionary rather than inclusionary and complicit in perpetuating in exclusionary heteropatriarchal practices. In this context, then, Queer Theory, therefore, is not interested in examining the ways in which the implications of its normative power operate upon girls; for whilst it has the potentiality to bring "new conceptual frameworks for the analysis of gender and sexuality... [these] frameworks [are] not exclusively concerned with the lived experiences of women" ([43], p. 10). Further, the problems of Queer Theory go deeper than a failure to acknowledge and critique of the lived experience of girls, for whilst Queer Theory is purportedly concerned with destabilizing the *heterosexual* norm, it is not concerned with heterosexuality *as* patriarchy. Consequently, in order to be effective, any queer critique of heterosexuality must address both heteronormativity *and* male dominance ([44], p. 290). This is illustrated by the "mainstreaming" of Queer Theory and the process of the adoption of heteronormative assumptions, combined with neoliberal promises that amount to assimilative discourse ([45], p. 179). It is this assimilative discourse which, in part, contributes to the failure to take account of the lived experience of teenage girls and is no more than a "strategy for privatizing gay politics", in which we have "been administered a kind of political sedative—we get marriage and the military, and then we go home and cook dinner, forever" ([46], p. 189). Thus, the assimilative nature of Queer Theory leads to patriarchy's hierarchical position being implicitly maintained as "correct" [47,48]. If Queer Theory has failed to successfully resist assimilative discourse, what implications does this have in for its ability to account for and acknowledge lived experience?

6. Failure to Acknowledge and Accommodate the Lived Experiences of Women

When Queer Theory denies the subject, it also consequently denies the existence of what I argue are much needed categories of legal relevance; that of "girls" and "woman". I thus now turn to an

additional problem with Queer Theory; the denial of the subject. As outlined above, part of the attractiveness of Queer Theory and of post-structuralism is that it can act as a liberating methodological tool to resist a dominant hegemony of identity. However, this approach leads to the denial of not only the subject, and thus the continued subjection, oppression and the denial of subjectively lived experience. It can also be seen as a “violence” to women as a class of persons, thus, reinforcing hegemonic masculinity ([49], p. 173). In other words, the subject does not exist; the “I” and the “self” of lived experience are thus dismissed. Queer Theory suggests that identity is the product of discourse not the source of action [50]. My concerns with the shortcomings of Queer Theory in this respect are not isolated. Various authors have suggested that Queer Theory ignores the social and institutional conditions within which lesbians (and gay men) live [51]; that it renders it impossible to talk in terms of a “lesbian” subject [52].

The result is a non-existent subject, which consequently therefore, cannot be repressed. There is therefore, no acknowledgment of the possibility of affecting or challenging discourse or any acknowledgement of the effects of dominant ideological discourse. Thus, there is no consequent recognition of the repression of the subject’s exercise of self-determination. A major criticism levelled at Queer Theory therefore, is that it denies or ignores the material conditions and factors impacting on people’s lives that underpin discourse [53]. In many respects, this is hardly surprising given its roots in de-constructionism and post-structuralism. These roots make it highly problematic for Queer Theory to engage meaningfully with the concepts of “woman” or a “girl” as subjects [54]. In Queer Theory, there are, of course, no subjects, no categories, only a “fetishizing” [55] of discourse. Therefore, as a framework for examining those subjects, Queer Theory is next to useless. A major premise of this article is that the debate surrounding the age of consent denies the lived experience and subjectivity of the subject of “girl”. In direct opposition to the strictures of Queer Theory, I posit that such a subject does indeed exist, and that in existing, it has the potentiality to act as a site of resistance; how else am I to otherwise begin to successfully argue that this subject is ignored in current discourse? Women have no choice but to occupy the discursive space of “woman” if for example, they wish to argue for such things as the right to vote; equal pay and human rights *etc.* Whilst the term “woman” may be patriarchally constructed, we still have to “embrace the terms that injure... because they constitute [us] socially” ([56], p. 104). It is the distinct lack of attention to the visible constructed gendered girl subject, which results in the continuation of the acceptable subject as male and, thus, exempted from critique [57]. Within this context then, how can I identify and adopt the labels of “girl”, “female” and “lesbian”, without resorting to biological essentialism? I would suggest that categories of identity can still be used as a site of resistance whilst simultaneously opening up discourse and challenging the exclusionary operations and power relations that construct and limit “women” [58]. Thus, as argued by Butler,

The category of women does not become useless through deconstruction, but becomes one whose uses are no longer reified as “referents”, and which stand a chance of being opened up, indeed, of coming to signify in ways that none of us can predict in advance. Surely, it must be possible both to use the term, to use it tactfully even as one is, as it were, used and positioned by it, and also to subject the term to a critique which interrogates the

exclusionary operations and differential power-relations that construct and delimit feminist invocations of “women” ([58], p. 29).

Therefore, whilst Butler might reject some of the early feminist interpretations of a unified subject of “women”, her analysis nevertheless opens up possibilities of exploring identities at the intersection between sexuality/queer/gender ([59], p. vi). Indeed, this also allows for an acceptance of Foucault’s work on discourse and subjectivity. Given Queer Theory’s post-structuralist roots, it follows that Michael Foucault’s writing has been influential upon Queer Theory [60]. Much of Foucault’s work neglects and systematically excludes the lived experiences of girls and women. For example, in *Discipline and Punish: the Birth of the Prison* [61], whilst Foucault acknowledges that women, like men, are subject to many of the same disciplinary practices, he “treats the bodily experiences of men and women as the same... and is blind to those disciplines that produce a modality of embodiment that is particularly feminine” [59]. Foucault argued that the subject does exist or have “meaning” outside of discourse suggesting that discourse refers not just to language, but also to the practices that operate to produce objects of knowledge. It is these practices he argued, which caused “regimes of truth” to emerge and dominate. In other words, Foucault suggested that the subject is not the source of the meaning attributed to “woman” or “girl”. Whilst much of Foucault’s work concentrates upon the production of knowledge, it was arguably *The History of Sexuality*, which was of most significant importance for the development of Queer Theory. Foucault suggested that since the 17th century, there has been a fixation with sexuality and it is this fixation which has created a “repressive” discourse that has largely been responsible for the creation of sexual minorities such as “the homosexual.”

The approach taken by Foucault, Butler Post-structuralism and Queer Theory allows for an adoption of the idea that identity, particularly sexual and gender identity, is culturally constructed. It also simultaneously rejects biological essentialism as an explanation for the constitution of the subject. The debate surrounding the age of consent and the consequences for girls demands that we acknowledge the existence of the subject whilst resisting and subjecting to critique, the current discursive construction of “girl”. I can therefore resist the imperative of biological essentialism and still argue that there are biological differences between the bodies of girls and boys and that these differences are more than just mere semantic discursive constructions. There are significant physical and biological differences for the consequences of heterosexual sexual intercourse for boys and girls. The most obvious of these is, of course, pregnancy. Lowering the age of consent not only tells teenagers that this is the age at which they can legally have sexual intercourse, but it specifically tells 14 or 15 year old girls that this is when society and law consider that they are physically and emotionally mature enough to become mothers; a position I disagree with. This position has not been sufficiently acknowledged in the debates surrounding lowering the age of consent.

The social and medical risks to becoming a parent at 14 or 15 include increased maternal and infant death, low birth weight, lower educational achievement, and poorer long-term cognitive development [62]. More specifically, some of the medical risks attendant for young teenage pregnancy includes low birth weight, premature labor, anemia, and pre-eclampsia. World Health Organization (WHO) research demonstrates that girls giving birth aged 14 or younger are five times as likely to die, and that stillbirths and new-born deaths are 50% higher among infants of adolescent mothers than among infants of women aged 20–29 years. In addition, WHO research demonstrates that the rates of preterm

birth, low birth weight and asphyxia are higher among the children of adolescents, all of which increase the chance of death and of future health problems for the baby [63]. Early first sexual intercourse is also more likely to be unprotected against pregnancy and infection [64]. The UK Parliamentary Policy Advisory Committee also advised against a lowering of the age of consent due to the “undesirability of pregnancy at too early an age”. Young teenage mothers are at greater risk of experiencing a range of poor outcomes. For example, the infant mortality rate for babies born to teenage mothers is 60% higher than for babies born to older mothers, and young teenage mothers have three times the rate of post-natal depression of older mothers and a higher risk of poor mental health for three years after the birth [65].

Some of the social risks associated with early teenage pregnancy include long-term social exclusion [66], lower educational levels, higher rates of poverty and other poorer life outcomes in children of teenage mothers. Only 30 per cent of teenage mothers are in education, training or employment [67]. Additionally, the age of consent debate has always, historically, been linked to the age at which people can get married [68]. Whilst this is not an automatic link, it is highly unlikely that current or future law would say to teenagers that they can have sexual intercourse at 14, but not marry until they are 16 [69]. Thus, to lower the age of consent would be likely to have the consequence of lowering the age of legal marriage and effectively encourage what is currently considered to be child marriage [70]. According to the Convention on the Elimination on All Forms of Discrimination against Women (CEDAW) [71], marriage before the age of 18 should not be allowed, since children do not have the “full maturity and capacity to act”. Child marriages are, of course, not just a problem in the UK. UNICEF estimates that between 2011 and 2012, there were 100 million female child brides worldwide [72]. In the UK, the All Party Parliamentary Group on Population, Development and Reproductive Health has also stated that the effect of lowering the age of consent would be to encourage child marriage [71].

Part of the justification for lowering the age of consent has been that young teenagers are having sex anyway, either with other underage teenagers or with those just over the age of consent. I reject this justification as a sufficient basis for a change in the law; “[t]he extent of underage sex is not necessarily an argument for a lower age of consent” [72]. Just because teenage girls are having sexual intercourse and sexual encounters below the age of 16, does not automatically mean that they are “ready”, that they do so free from peer pressure and that the sexual activity is genuinely consensual. Similarly, the fact that *both* parties are under 16 does not automatically mean that the activity is consensual, since “earlier first intercourse is less likely to be an autonomous and a consensual event [73].” More than 15% of all the calls that ChildLine receives about peer pressure are related to sex, (they define “child” as anyone aged 17 or under), and this is differentiated by gender, suggesting that girls were twice as likely as boys to rate their experiences of early intercourse negatively [74]. The pressure to have sexual intercourse at a young age is borne out by research carried out by various organizations. The NSPCC, for example, found that two out of three cases of sexual abuse in teenagers aged 0–17 years were carried out by perpetrators who were also under 18 [74].

7. Is Concern for Young Pregnancy Being “Protectionist” Towards Women?

I am aware that in arguing for an emphasis upon the potential dangers of young pregnancy, I might be accused of falling into the trap of denying young girls their agency or of adopting a protectionist approach. Historically, women have been perceived as “profoundly lacking in the forms of rational competence necessary to make decisions as autonomous subjects” ([4], p. 72). Referring to the Sexual Offences Bill, Lacey suggests that it reflects an underlying paternalism ([75], p. 518). Indeed, the rationale underlying the Sexual Offences Act 2003 makes it clear that the purpose behind the legislation was the “protection of children from harm” [76]. This of course, has a historical influence mentioned above; the Victorians were concerned with protections young girls from prostitution and sexual exploitation, based on notions of sexual innocence.

I concede that the current law surrounding the age of consent not only denies the agency of girls and boys under the age of 16, but also places them in a position of non-autonomous passivity. It would be difficult to argue against a position of reproductive autonomy for adult female bodies. There can be no full citizenship if there is no control over the body and controlling one’s own body is a necessary condition for any freedom. Yet, it is the paternalistic and patriarchal views of the female body, as something in need of protection, which has shaped law and policy. How then can these two positions be reconciled? Perhaps a full answer to this question cannot be given, for such an answer would have to resolve the question of when girls become autonomous, sovereign, liberal individuals capable of giving (or not) consent to sexual activity. In order for this to occur, law must,

[T]ake into account structural inequalities found in the very process of the formation of the individual subject, as well as in the material circumstances of lived experience, which impact on the quality of choices, consents and refusals ([77], p. 5).

At the risk of stating the obvious, successful attempts to make Law take account of structural inequalities have been meagre. However, whilst Law can be argued to be “part of the problem”, it also has the potentially to be part of the solution. Preventing female bodes under the age of 16 from becoming pregnant is a desirable and welcome outcome, and the consequent denial of agency is therefore necessary. One small way for Law to consider structural inequalities is to continue to deny the agency of girls under 16 to give consent to sexual intercourse without resorting to heteronormative patriarchal imperatives. The so-called “autonomous choice” made by a 14 year old girl is not made in a “free will vacuum.” Thus, the issue of the age of consent for girls is inextricably linked with the question of when those girls become mothers. This has the consequences of widening the issue to become one of the transitions from girl child to adult mother. Queer Theory has been unable to successfully address this problem due to its inability to satisfactorily account for the influence of patriarchy. I would suggest that in the alternative, we must return to feminism as a possible way forward in addressing how to contextualize discussions regarding the age of consent. This would allow for a legal re-appraisal of *why* girls under 16 should not be considered capable of consent to become mothers, separate from the historical patriarchally heterosexist one of non-autonomous passivity. A feminist analysis allows for the explicit acknowledgement that we live in a society where patriarchal heterosexuality is (still) pervasively dominant and continues to impose a “natural” role for girls and women—part of that role being one a child bearer and raiser. Whilst I advocate a return to feminism

and feminist principles as one way to continue questioning patriarchy, I am aware of the potential dangers of the “grand claims” and/or essentialism trap. As mentioned above, this trap can be avoided by using the term “women” as Butler suggests it be used; as a tactic whilst simultaneously subjecting the term to an interrogatory critique. A feminist approach reminds us, in ways that Queer Theory cannot, of the normative effects of gender performativity and the difference that gender makes. As Walters points out, feminism sees male as the default gender and homosexual is commonly imagined as male, thus to see queer as “gender neutral is ludicrous and willfully naïve” [78]. Whilst the original aim of Queer Theory to challenge and expand upon the concept of difference is laudable, “too often, gender is not complicated but merely ignored, dismissed or transcended”.

A feminist approach also allows us to recognize the importance of power relations in the constructions of male and female identities and of the specificity of women’s location in, and experience of, socio-legal constructs; again, something that Queer Theory fails to do to the same extent. There is not unfortunately the time and space within this article to undertake a large scale exploration of the different variations of feminist approaches and methodologies and I do not wish to engage here in an exploration of which “type” of feminism would be “best”. Each interpretation of feminist theory has value, even whilst differing in focus and they often overlap with each other; many feminists identify with more than one “branch” of feminist thought. Other studies have explored different types of feminism in more satisfactory detail than can be covered here, but see for example these works [79–85], but a brief overview might suggest that liberal feminism for example, primarily seeks equality of men and women without necessarily seeking radical changes in societal structure. Radical feminists generally consider that women’s oppression comes from a sexist patriarchal society that over values male concerns. For radical feminists, women’s liberation will come through the abolition of sexist society and the values that underpin this patriarchal system. Within radical feminism, there is an emphasis male violence against women as central to women’s oppression [86]. Cultural feminism promotes the idea that there are differences between women and men, but that these differences are culturally constructed rather than biological ([87], p. 32). Socialist feminism finds inspiration from Marxist ideas linked to the oppression of women and to the issue of capital and labor. Separatist feminism is closely related to lesbian feminism and focuses on the idea that women are oppressed due to heteronormativity. Black feminism looks to racism as the primary cause of oppression for women whilst acknowledging that gender and class intersect with ethnicity and color [88]. Emerging in the early 1970s, lesbian feminism sought to contest, among other things, the institution of heterosexuality [89], and attempted to place focus upon how persistent structural differences and access to resources can be challenged. Lesbian feminism was challenged for its adherence to a unified or unitary subject. Indeed, the idea of unified subjectivity has been the basis on which much of feminism (how so ever defined) has been critiqued and arguably, it was dissatisfaction with a defined subject that helped to give rise to post-structuralism and Queer Theory. There are of course other “feminisms” such as third-world feminism; Postcolonial feminism; postmodern feminism; standpoint feminism; post-structural feminism.

Given the enormous scope of what can legitimately be referred to as “feminist” work, engaging with the question of “which feminist” discourse or methodology should prevail would be to impliedly criticize the choices made by other feminists and feminist methodologies. Such an exercise would be an unnecessary distraction. Whilst ongoing discussions are important to the development of ideas, the

danger is that “the point becomes one of disagreement rather than looking to new ways of engaging with the issues said to be at stake” ([61], p. 3). If feminists continue to expend energy disagreeing with each other of what “type” of feminism should prevail, patriarchy continues to successfully divide and rule. Suffice to say however that whichever of the different feminist methodological approaches are used, feminism’s focus on gender as an axis of power continues to have “analytic purchase” ([90], p. 24). Of singular importance to any type of feminist discourse are the issue of patriarchally defined gender performativity and the facilitating of investigations in to normative gendered practices and assumptions. This issue is central to feminism and feminist studies in ways in which it is not central to Queer Theory, failing as it does to compensate adequately “for real, persistent structural differences in style, ideology, and access to resources” [91]. If Queer Theory has demonstrably failed to have analytic purchase on patriarchally defined gender performativity, what might be a possible future for Queer Theory?

Before moving on to examine some of these possible futures and alternatives, I wish to pause briefly to outline a further concern with Queer Theory; that of the whiteness of queer theory. Postcolonial queer theory is deserving of a significantly greater and more extensive analysis than can be given here; indeed the issue of what postcolonial queer theorist can or cannot contribute to our understanding of the age of consent debate justifies separate, further research. However, I never the less wish to acknowledge, albeit briefly, the implicit imperial whiteness of Queer Theory. The prevalence of white gay men within Queer Theory ([92], p. 7), has been commented upon and writers such as Kapur have set out to try and decenter queer theory by refusing to use queer theory as “the starting point” of analysis ([93], p. 38). Others, such as Puar, have examined the concepts of “Sikh” and “Muslim” from a queer perspective looking at how the war on terror “reconciles queerness to the liberal demands of rational subject formation”. In so doing, Puar exposes how Sikhs and Muslims are constructed as “homophobic and backward”, whilst simultaneously constructing the Western identity as “tolerant” [94]. Therefore, pervasive and unacknowledged has been the whiteness of queer theory, that it has led some writers to suggest that,

[M]uch of queer theory nowadays sounds like a metanarrative about the domestic affairs of white homosexuals. Surely, Queer studies promises more than a history of gay men, a sociology of gay male sex clubs, an anthology of gay male tourism, a survey of gay male aesthetics ([95], p. 12).

It would appear therefore that Queer Theory has become a methodology for white gay men; given these limitations, should Queer Theory be abandoned completely? Is there any way perhaps that Queer Theory, or some alternative interpretation of it, could possibly continue to be used?

8. “Post-Queer” as a Way Forward?

Given that Queer Theory no longer does “what it says on the tin”, what scope is there then for a possible re-interpretation or re-formulation of Queer Theory? Is it possible to re-conceptualize the theory or indeed to discover or develop new theories in order to address the problems outlined above? Might it be possible to think in terms of “post-queer” or a “neo-queer” theoretical framework that might address some of the shortcomings of Queer Theory?

I suggest that a fusion of some of the disruptive aspects of Queer Theory and feminism could go some way towards incorporating the concerns outlined above. Recognizing that the concerns raised in this article represent only a small part in a much larger on-going project, I have termed this (for the time being), “neo-feminist queer theory”. In many ways, I wish to preserve the deconstructionist functionality of Queer Theory, as it has the potentiality to facilitate an avoidance of using gender as a definitional tool. Queer Theory has helped enormously in seeing gender as that which is discursively constructed and performed. I suggest that a possible way forward might be a return to the feminist concern of gender with Queer’s focus on disrupting ideas of “normality” which will help to continue the much needed critique of heterosexuality. Perhaps it might be possible to conceptualize the material body and the material subject as an on-going ontological process, not only in relation to discourse and deconstruction, but also in relation to institutions such as the State, the family, the courts and so forth. This would mean that “the subject” could be studied as the on-going phenomenon existing in the gap(s) between the discursive creation and the institution/state. Connell argues for something similar, in suggesting that sexuality should be understood as “neither as nature nor discourse, but as a sphere of social practices that constitute social relations” ([96], p. 390). This would allow for the possibility of the existence of a category of “woman”, without succumbing to notions of essentialism. The subject has the potentiality to have more than one meaning and giving up the idea that there is one specific meaning associated with the subject does not mean the non-existence of the subject [97]. If Queer Theory is truly flexible and continuously evolving as it claims to be, it has the potentiality and flexibility to “mold” itself around all critiques and criticisms levelled against it. There is no need for Queer Theory to defend itself against criticisms, it can, and should, re-incorporate feminist concerns. In so doing, Queer Theory can be revised and yield itself to feminist concerns ([58], p. 229).

There are those however, who would suggest that there is no such thing as “post-queer”, because Queer Theory is not, and never was, a phenomenon that could be superseded or overtaken by subsequent theories. Queer Theory would reject that kind of linear “building block” approach and indeed, as Richardson points out, would reject the notion that just because Queer Theory came after feminism it supersedes it ([98], p. 4). If Queer can be anything and is not bounded by boundaries, then there is no ontological reason why it cannot be “post” and why it cannot be combined with feminism in order to engage with material realities and material bodies in posing an effective challenge to oppressive structures ([99], p. 171). What I suggest matters, is that the lived experience of girls and women are taken into account in more meaningful ways within the operation of law and policy. It therefore does not matter what label is given to how this is done. What matters more than the label is that that the lived experience of young girls are *seen* to matter and in a Butlerian sense, the *Bodies that [should] Matter* are the bodies of young teenage girls.

9. Concluding Remarks

This article has sought to interrogate some of the norms underpinning the discourse surrounding the age of consent. I have attempted to combine the disruptive theoretical aspects of Queer Theory and feminism to bear upon the practical application of sexual age of consent laws. It would appear that Queer Theory as originally envisaged has tried and failed to successfully de-stabilize dominant hegemony, discourse and power structures and perhaps, more importantly, failed also to disrupt the

influence of patriarchy. Queer Theory has failed to fully take account of, and incorporate, the interlocking and overlapping underpinnings of the normative frameworks by which *female* sexual and gender identities are constituted. There is, therefore, no “queerness” about the debate surrounding the lowering of the age of consent, the effects on teenage boys has been over emphasized at the expense of the impact on teenage girls. In order to have a truly genuine queer debate about the age of consent, sufficient attention must be paid to *all* of those affected and involved, particularly girls and that the attention should be extended to schools, medical staff, social workers, *etc.* Lowering the age of consent is likely to lead to an even greater pressure on girls to be sexually active before they are ready, exposing them to experiences and consequences before they are sufficiently emotionally and physically mature.

Rather than lowering the age of consent, there should be a significantly greater emphasis upon compulsory sex education in schools. Sex education should extend significantly further than the limited education currently provided. The Opposition tabled an amendment to the Children and Families Bill (debated and defeated in the House of Lords on 28 January 2014), which would have made sex and relationship education at all stages of education compulsory [100]. Statutory guidance would also have been updated to reflect the changes the internet. The amendment would have made sex and relationships education (SRE) a compulsory subject as part of the statutory Personal Social Health and Economic Education (PSHE) requirement [101]. The amendment was supported by The Sex Education Forum [102], Brook [103] and the PSHE Association. At the present time, schools are only legally required to teach the biological aspects of sex, contraception and sexually transmitted infections in science lessons. Schools are not required by statute to teach pupils about pregnancy, delaying first sexual experiences, sexual orientation, safer sex and relationships. That this is needed has been found by such organizations as the National Children’s Bureau, whose recent research found that nearly a third of teenagers said they did not learn about sexual consent in sex education lessons and that they were not taught about the legal age of consent for sex in schools [104]. If the debates surrounding the sexual age of consent and Queer Theory are to begin to successfully acknowledge patriarchy and render (lesbian) women more visible, there needs to be a greater acknowledgement and accommodation of that which has always been central to feminist thought; the lived experiences of women and girls. In addition, and perhaps, more importantly, for this to happen, women and girls need to make *themselves* heard and seen more.

Conflicts of Interest

The author declares no conflict of interest.

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