

## FROM TURKEY TROT TO TWITTER: POLICING PUBERTY, PURITY, AND SEX-POSITIVITY

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I.  
INTRODUCTION

For over one hundred years, American social structures have largely embraced two central principles—the innocence of children and the omniscience of adults. But as we now know from behavioral and development experts, adolescents—neither children nor adults—challenge such simplistic categories. In resisting binaries, adolescents represent a threat to the standard world order. But rather than simply accepting the fluid nature of adolescents and adolescence, American adults continually try to manage, regulate and control teens in ways that deny their agency, encroach upon their personhood, and impede social change.

From outward appearance, to physical presence, to intimate communications and engagements, young people have continually faced familial, community-based, and state-sponsored management of their most basic day-to-day actions and interactions. This obsession with policing puberty has, at times, reached the level of panic. Extreme reactions have manifested themselves not only in behaviors of individual actors, but also in the terms of court orders, local ordinances, and codified laws. This article seeks to examine this recurring phenomenon and suggests that adults might find more productive ways to grapple with the teen identity formation process in this country.

It focuses on one particularly powerful panic-producing intersection of adolescence with American life—young girls and the big city. It describes reform efforts that took place in emerging urban centers at the turn of the last century, comparing them to policing strategies that are taking place in our newest metropolis—the Internet. In doing so, it analyzes how the state has repeatedly proscribed and prosecuted popular adolescent activities in the name of protecting youth from the dangers of modern life.

Claiming to safeguard girls from sexual exploitation and oppression, reformers have pressed for legal prohibition of everything from doing the Turkey Trot to using Twitter, dancing the Fox Trot to “friending” on Facebook.

But while such interventions may be declared necessary to protect individual girls from individual harms, this article describes a more complicated and paradoxical set of motivations behind our country’s recurring legal love affair with policing the female adolescent process. It is not just a story about thwarting threats to teenage girls, but one about upholding traditional sexual norms, maintaining racial hegemony, and defending dominant culture more generally.

This article argues that supposedly benevolent legal interventions too frequently reflect fears about the breakdown of American society, its borders and boundaries, and the place of adults in its hierarchies. The state has been trying to hold the line around categories by regulating purity, prosecuting female puberty, and punishing sex-positivity—all without engagement with, or input from, youth themselves. Instead of providing a sense of security for young girls, punitive actions often have sent mixed messages about intimacy and sexuality, discounted

youthful and female agency, and impeded both the evolution of youthful personhood and modern norms more generally.

This article argues that we should take some lessons from the failed efforts of our Progressive Era past and respond differently to adolescent identity formation today. We should not seek to shape girls' futures by legally controlling their development in the present. Instead, we should take account of behavioral science findings about the normalcy of many teenage tendencies, including sexual and identity exploration, in developing contemporary laws and orders. We should also work with—rather than against—young people who seek to challenge unnecessary limits, boundaries, and binaries in contemporary America.

This article proceeds in five parts. Beginning with a history of the treatment of female puberty, Part Two describes how girls in American cities came to be seen as “a problem” at the start of the twentieth century. It provides an account of the ways in which juvenile behaviors were understood at the beginning of the 1900s and how these interpretations largely reflected Anglo-androcentric norms and fears. For instance, “white”<sup>1</sup> teenage girls were expected to be raised in roomy, safe, and orderly homes. They were to socialize with their own social strata, and ultimately find a worthy husband to father their children to ensure the continuation and strength of the Anglo race.

Thus adults wished to control the sexuality of these teenage girls and at the same time have girls exercise power over their sexuality. They further sought to manage and restrict youthful urban expression of alternative identities. White girls in our cities who danced in ethnically diverse spaces, publicly flirted with boys at amusement parks, or openly wore provocative dress were of particular concern to reformers.

Such acts challenged existing social structures, crossed accepted race and class lines, and threatened prevailing notions of proper female personhood. When these girls rejected available alternatives, such as supervised settlement house functions or playgrounds in parks, adults turned to the law. Setting the tone for years to come, individuals, groups, and state actors used prosecution and legal

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1. Obviously, as this article further describes, the concept of “whiteness,” central to dominant thinking both then and now, is not static but constructed by law and other powers. It has changed over time and as circumstances seemed to require. See Barbara J. Flagg, *Foreword: Whiteness as Metaprivilege*, 18 WASH. U. J. LAW & POL'Y 1, 1–2 (2005) (arguing that “[w]hiteness is a social location of power, privilege and prestige” that “carries the authority within the larger culture it dominates to set the terms on which every aspect of race is discussed and understood”); SpearIt, *Enslaved by Words: Legalities and Limitations of “Post-Racial” Language*, 2011 MICH. ST. L. REV. 705, 744 (“Critical race scholars have embraced the ‘social constructionist perspective’ of race, but any understanding of race cannot be separated from the question of power.”). See also Eric Olund, *Traffic in Souls: The ‘New Woman,’ Whiteness and Mobile Self-Possession*, 16 CULTURAL GEOGRAPHIES 485, 487 (2009) (describing the “ambiguous whiteness of Jews and Italians” that resulted in such individuals being seen as white or nonwhite, depending on the circumstances, during the Progressive Era). As a term it is probably best presented in quotation marks throughout this text. But to avoid distracting the reader, I have not used quotation marks beyond this point.

penalties to put a stop to girls' activities that were not seen as sufficiently "pure" or "innocent."

Of course, a powerful subtext of this narrative is that while white girls were seen as holding promise for the country's future, persons of color and other outsiders were feared as a threat to its foundations. They were either completely ignored in legal narratives about youth or included only as agents of destruction. In this way the application of law to uphold Anglo-androcentric, middle-class norms not only had a powerful impact on supposed white girls who failed to obey such standards, but on those whose story did not fall in line with it.

Turning to contemporary practices, Part Three of this article focuses on the most recent round of panic around female pubescence in the urban domain. It explores how the phenomenon of criminalizing female adolescence is replaying itself in our newest emerging metropolis: the Internet. This Part explains how descriptions of and concerns about today's online world present striking similarities to those offered about the emerging unknowns of the industrial city at the turn of the last century.

This article goes on to examine the various ways in which youthful online actions and interactions, like pubescent urban activities from decades before, are being prohibited by emerging laws and orders. As Part Three explains, the Internet, as metropolis, confounds adults and their assumptions about their knowing stance and powers of control. Thus a new moral panic around girls is being naturalized through legal proscriptions, practices, and prosecution.

As during the Progressive Era, such efforts have intensified and become perverted over time. They started with claimed concerns about girls becoming victims of sexual abuse by venturing into the cyber-city. Here, too, the movement started with protecting girls from dangerous "others" they might encounter in the modern online world. Yet girls are now targets of policing and punishment for transgressing traditional norms through sexualized online activities. And racial hegemony, it appears, continues to serve as a motivation for such actions—even if it is unstated.

Part Four offers ideas for the days ahead. Instead of continually punishing the process of pubescence, we should take account of behavioral science suggestions about the normalcy of many teenage sexual tendencies. Acknowledging through law reform that teen sexuality is a normal part of growing up, without shrouding it in secrecy and shame, might help to empower all young women to take healthy ownership of their bodies and sexual selves. In addition, following the lead of youth, with their generally greater acceptance of difference and diversity, might improve modern society more generally.

This article goes on to argue that we should do more to meaningfully acknowledge youth as knowledgeable persons in the here-and-now of our real world. By following international norms that call for increased government engagement with youth, we might learn more about their views on privacy,

involve them in shaping policies that impact them, and actually tap their impressive technological abilities.

In the end this article concludes with a call to work with all young people—not against them—through respectful civic engagement. In this way we might begin to break through various historic identity binaries and cross long-held divides to arrive at more robust and shared understandings of community values and democracy in twenty-first century on- and off-line America.

## II.

### PROSECUTING FEMALE PUBERTY IN EARLY URBAN AMERICA

At the start of the twentieth century, the United States grappled with challenges to its most basic understandings of personhood, communities, and boundaries. Adult male property owners, usually of British extraction and rooted in a particular locality and church, had long been the touchstone for citizenship.<sup>2</sup> But a variety of changes threatened this largely Anglo-androcentric framework.

The first was the end of slavery and the infusion of “free” black Americans into daily life and the economy.<sup>3</sup> Next was the great influx of immigrants from Europe and elsewhere.<sup>4</sup> In addition, women from a variety of backgrounds suddenly sought to be part of conversations and conventions that had not been allowed previously.<sup>5</sup>

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2. *See, e.g.*, WILLIAM E. NELSON, *THE LEGALIST REFORMATION: LAW, POLITICS, AND IDEOLOGY IN NEW YORK, 1920–1980*, at 3–5 (2001) (recounting efforts by New York’s rural, middle- and upper-class white Anglo-Saxon Protestants to maintain political and social control despite an influx of Jewish immigrants and other religious, ethnic and racial minorities at the turn of the last century). Margaret R. Somers, *Citizenship and the Place of the Public Sphere*, 58 *AM. SOC. REV.* 587, 592 (1993) (describing the concept of landed gentry). *See also* PAUL BOYER, *URBAN MASSES AND MORAL ORDER IN AMERICA, 1820–1920*, at 3–21 (1978).

3. *See* CHERYL D. HICKS, *TALK WITH YOU LIKE A WOMAN: AFRICAN AMERICAN WOMEN, JUSTICE, AND REFORM IN NEW YORK, 1890–1935*, at 23–31 (2010) (describing the northern migration of southern African-Americans seeking a better life); KEVIN J. MUMFORD, *INTERZONES xvii–xviii* (1997) (mentioning the “Great Migration” of southern blacks to northern cities at the turn of the last century).

4. *See, e.g.*, NELSON, *supra* note 2, at 3 (describing early twentieth century “racist beliefs that certain ethnic and religious groups, notably WASPs, were better suited than others, especially southern and eastern European Catholics and Jews, to participate in American civic and economic life”). *See also* JENNIFER GUGLIELMO, *LIVING THE REVOLUTION: ITALIAN WOMEN’S RESISTANCE AND RADICALISM IN NEW YORK CITY, 1880–1945*, at 66–78 (2010) (noting that a high number of Italian women immigrated to New York City at the start of the 1900s).

5. *See generally* ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES 203–04* (2000) (describing how women of a variety of backgrounds sought access to the political sphere by pursuing the right to vote); *GENDER, CLASS, RACE AND REFORM IN THE PROGRESSIVE ERA* (NORALEE FRANKEL & NANCY DYE, EDs.) (1991) (collection of works describing how women of all race, class, and ethnic backgrounds began engaging in greater social, political, and other reform efforts during the Progressive Era). *See also* ELISABETH ISRAELS PERRY, *BELLE MOSKOWITZ: FEMININE POLITICS AND THE EXERCISE OF POWER IN THE AGE OF ALFRED E. SMITH xi* (1987) (“When women won the vote in 1920, they also won their first chance to reach for the tangible prizes of political power . . . but for the most part women failed to penetrate inner decision-making ranks or to receive nominations for major offices.”).

Not only were particular people and their identities seen as potentially destabilizing to the status quo, but new sites and spaces posed a threat to existing norms. Cities and emerging urban environments with multiunit buildings, industry-driven energies, and growing populations served to displace prior conceptions of home, family, and community.<sup>6</sup>

Another complicating and complicated construction also emerged during this time—adolescence.<sup>7</sup> Adolescents presented difficulties for dominant discourses about American society.<sup>8</sup> Young people's natural evolution came together with what was seen as the unnatural evolution of American life, frustrating and frightening many adults. It was in this context that the activities and behaviors of white adolescent girls became a central concern to parents, policy reformers, and the state. A wide range of laws and practices were established during this time that purported to protect these girls from harms, particularly those presented by the city.

But young women who did not conform to commonly understood notions of propriety ultimately came to be seen as dangers themselves. Their daily actions and interactions were policed. And many were prosecuted. In these ways, Progressive Era proscriptions were more concerned with perpetuating mainstream notions of the good life than ensuring the safety and success of individual girls. Moreover, top-down interventions did not stop adolescent identity exploration through sexual activity or otherwise. Those processes continue to this day.

#### A. *White Girls and the Construction of Innocence and Purity*

In her 1906 book, *FAIREST GIRLHOOD*, author and journalist Margaret E. Sangster captured then-popular notions about the symbolic and material importance of teenage girls in the United States.<sup>9</sup> “Our daughters,” she wrote, “are the most precious of our treasures, the dearest possessions of our homes and the

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6. See generally JANE ADDAMS, *THE SPIRIT OF YOUTH AND THE CITY STREETS* (1910) (lamenting the growth of industry and factory life in city centers); Florence Kelley, *Invasion of Family Life by Industry*, 34 *ANNALS AM. ACAD. POL. & SOC. SCI.* 90 (1909) (warning that modern industrial conditions were negatively impacting home and family life).

7. See SARAH E. CHINN, *INVENTING MODERN ADOLESCENCE* 3–6 (2009) (“[W]orking-class youths carved out an identity that was sui generis, a new kind of American identity that then traveled beyond the geographic boundaries in which it was formed.”); ELIZABETH EWEN, *IMMIGRANT WOMEN IN THE LAND OF DOLLARS* 99 (1985) (noting that “[a]dolescence was a time of work, responsibility and cooperation” for immigrant families, as compared to middle-class Americans who protected youth with “an extended childhood marked by schooling and leisure.”). See also Joe Austin & Michael Nevin Willard, *Introduction: Angels of History, Demons of Culture*, in *GENERATIONS OF YOUTH* 1 (Joe Austin & Michael Nevin Willard eds., 1989) (“‘Youth’ becomes a metaphor for perceived social change and its projected consequences . . .”).

8. See BETH L. BAILEY, *FROM FRONT PORCH TO BACK SEAT* 78 (1988) (arguing the category of “youth” threatened previously understood oppositional categories and posed a challenge to adult norms and authority); Austin & Willard, *supra* note 7, at 1 (describing adolescence as a “locus for displaced social anxieties”).

9. MARGARET E. SANGSTER, *FAIREST GIRLHOOD* (1906) (Brooklyn Historical Society Archives) [hereinafter SANGSTER, *FAIREST GIRLHOOD*].

objects of our most watchful love. Beyond this, they are to the family and the race as corner-stones on which depend the integrity and beauty of the social edifice.”<sup>10</sup>

This focus on protection and purity was largely rooted in white, middle- and upper-class Protestant thinking about respectability and a proper family life.<sup>11</sup> Just as the homestead was to be fortified, white girls needed to be protected and defended.<sup>12</sup> Their bodies were compared to property—buildings and fortresses that were to be built with care and defended with zeal.<sup>13</sup>

These girls were expected to spend their leisure time (including entertaining potential suitors) in the family home.<sup>14</sup> Their burgeoning intimate associations were to be kept in full view of family but concealed from strangers.<sup>15</sup> In many ways, young women came to be seen as one with their safe and orderly dwelling space.<sup>16</sup> It was expected that all respectable young women would go from that space—the home of their parents—to the home of a husband.<sup>17</sup> Those who failed to maintain purity threatened their chances for a marriage proposal.<sup>18</sup> Those

10. SANGSTER, FAIREST GIRLHOOD, *supra* note 9, at 5.

11. See Annette R. Appell, “Bad” Mothers and Spanish-Speaking Caregivers, 7 NEV. L. J. 759, 764 (2007) (describing Progressive Era child protection efforts as focused on “teach[ing] White, middle-class, Protestant values and work ethic”); Mary E. Odem, *Teenage Girls, Sexuality, and Working-Class Parents in Early Twentieth-Century California*, in GENERATIONS OF YOUTH, *supra* note 7, at 50, 51 (recounting how “bourgeois Protestant culture” placed an “emphasis on female sexual purity”). See also Nancy Lesko, *Making Adolescence at the Turn of the Century*, 2 CURRENT ISSUES IN COMP. EDUC. 182, 185 (2002) (“Promiscuous girls called forth prejudice against racial, ethnic, and class differences and concerns about inter racial/ethnic/class mixing.”).

12. See Kathleen R. Parker, *Women, Sexuality, and Morality in the U.S. in the Gilded Age and Progressive Era* (Nov. 1996), available at <http://www.h-net.org/~women/bibs/guild.html> (recounting Progressive Era “[p]reoccup[ation] with protecting white women’s sexual purity”). For examples of other texts from the time that appear to target middle-class “white” girls to engage in protection efforts, see, e.g., MARGARET E. SANGSTER, WINSOME WOMANHOOD: FAMILIAR TALKS ON LIFE AND CONDUCT 17–28 (1900) (Brooklyn Historical Society Archives) [hereinafter SANGSTER, WINSOME WOMANHOOD] (proclaiming the teenage girl “can nowhere else be as safe and as sheltered, as in the sweet seclusion of the home”); MARY WOOD-ALLEN, WHAT A YOUNG WOMAN OUGHT TO KNOW 169–70 (1913) (doctor-author advising that a girl’s parents should be her best friends, her mother her closest confidant, and secrets about the family kept within the home).

13. See, e.g., WOOD-ALLEN, *supra* note 12, at 27–28 (“Those who look at our bodily dwelling can gain a very good idea of what we are.”).

14. See, e.g., SANGSTER, FAIREST GIRLHOOD, *supra* note 9, at 171–72 (suggesting that although parents might turn a blind eye to boys who meet friends in the streets in the evening, girls should remain in the home and organize entertainment for their parents and grandparents).

15. BAILEY, *supra* note 8, at 15–16 (describing turn of the century courtship norms including “calling on” a girl within the family home).

16. See MARY R. MELENDY, THE IDEAL WOMAN 45 (1915) (“If it be the man’s part to lay the foundation and erect the building, it is woman’s to beautify and enshrine music and the kindly arts within them. It is his to build and hers to beautify.”); Elsie Clews Parsons, *Feminism and Conventionality*, 56 ANNALS AM. ACAD. POL. & SOC. SCI. 47, 49 (1914) (critiquing the convention of women as sheltered “home bodies”). Cf. MARJORIE GARBER, SEX AND REAL ESTATE 58, 76–77 (2000) (recounting the historic “symbolic association between houses and women”).

17. BAILEY, *supra* note 8, at 88–91. See also MELENDY, *supra* note 16, at 39–53 (introductory materials describing the book as one “giving full information on all the mysterious and complex matters pertaining to women,” including how best to obtain a marriage proposal).

18. BAILEY, *supra* note 8, at 88–89 (recounting information from advice columns intent on

outwardly marked by way of impregnation faced further social ostracism as a result of their deviation from the standard narrative about family and an orderly life.<sup>19</sup>

The value of female purity carried even greater significance outside the context of marriage. In her turn-of-the-century advice manual to young women, Dr. Mary Wood-Allen asked her readers—white middle- and upper-class Christian girls<sup>20</sup>—to consider the question, “What are you worth?”<sup>21</sup> In responding to her own query, Dr. Wood-Allen saddled young women with a heavy burden:<sup>22</sup> like Sangster, she described her readers as not only central to the maintenance of healthy American home life, but responsible for future morality and integrity of the entire “race.”<sup>23</sup>

At the same time, others warned about “race suicide” through mixing of ethnicities and cultures.<sup>24</sup> Even President Theodore Roosevelt held such concerns, which may have (in part) prompted his establishment in 1912 of the federal Children’s Bureau to help press for “normal” childhood and family relations.<sup>25</sup>

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helping unengaged women negotiate intimate relationships in a way to preserve marriage prospects); WILLIAM J. ROBINSON, *WOMAN: HER SEX AND LOVE LIFE* 27 (1917) (“[T]he mere finding out . . . [of a girl’s] illicit experience deprives her of social standing, or makes her a social outcast and entirely destroys or greatly minimizes her chances of ever marrying.”).

19. ROBINSON, *supra* note 18, at 26–27 (claiming that a boy who “indulges in illicit sexual relations,” at worst, would be stricken with venereal disease; for girls such actions had more dire consequences, including the “catastrophe” of premarital pregnancy and the “disgrace of an illegitimate child”).

20. Dr. Wood-Allen was the National Superintendent of the Purity Department of the Women’s Christian’s Temperance Union; her book was “commended” by various “eminent” white Christian preachers and other public figures, including Elizabeth Cady Stanton. *See* WOOD-ALLEN, *supra* note 12, at introductory pages. It was first published in 1899 but reissued in 1905 and again in 1913. *Id.*

21. WOOD-ALLEN, *supra* note 12, at 21.

22. *Id.* at 25 (“[Y]ou cannot measure your value to the human race until you begin to think that the young people of to-day are creating the condition of the world in fifty or one hundred years to come.”). *See also* SANGSTER, *FAIREST GIRLHOOD*, *supra* note 9, at 5 (“[Our daughters] are to the family and the race as corner-stones on which depend the integrity and beauty of the social edifice.”); WOOD-ALLEN, *supra* note 12, at 235 (chapter entitled “Effects of Immorality on the Race,” describing how shame and disease impact not only the “transgressor” but their “descendants”).

23. Although neither Sangster nor Wood-Allen fully defined the term “race” or “racial integrity,” women’s advice literature was replete with admonitions for white middle- and upper-class girls to find marriage mates from the proper station, which presumably did not include racial or other “undesirable” minorities. *See, e.g.*, MELENDY, *supra* note 16, at 40–41, 47–48 (providing advice on how to “make yourself worthy of a good husband,” one who “under any given combination of circumstances, would . . . feel and act as we ourselves would”). *See also* SANGSTER, *WINSOME WOMANHOOD*, *supra* note 12, at 83–85; WOOD-ALLEN, *supra* note 12, at 209.

24. William Z. Ripley, *Race Progress and Immigration*, 34 *ANNALS AM. ACAD. POL. & SOC. SCI.* 130, 131–32 (1909) (Harvard Professor of Economics warning about the “[r]elative submergence of the domestic Anglo-Saxon stock” and “race suicide” taking place due to the increase in “[r]acial heterogeneity” from immigration and decrease in pure white births).

25. KRISTE LINDENMEYER, “A RIGHT TO CHILDHOOD”: THE U.S. CHILDREN’S BUREAU AND CHILD WELFARE, 1912–46, at 16, 145 (1997) (recounting that President Theodore Roosevelt’s support for the federal Children’s Bureau may have been tied to his own nativist fears about the demise of the white middle class through “race suicide” and describing the Bureau’s emphasis on a “normal life” for children). *See also* Nicole Huberfeld, *Three Generations of Welfare Mothers Are*

And while such warnings were intended to maintain the purity of white families,<sup>26</sup> conversations about sexual promiscuity and morality were not limited to white middle- and upper-class homes.

Young women generally became carriers of familial standing as they engaged in their day-to-day activities.<sup>27</sup> Their moral influence held significance not only for the family unit but for the larger community, particularly as sexual purity was seen as a means of demonstrating worth and ensuring social uplift for nondominant groups.<sup>28</sup> Thus elites and nonelites, whites and nonwhites, saw young women as possessing power to uphold traditional American social structures and shape the future through the ways in which they communicated, communed, and carried themselves in the present.<sup>29</sup> But as the next section describes, purity in white girls—both moral and racial—became a central concern of law and enforcement.<sup>30</sup>

### B. City Living as Deviancy

Many girls resisted such traditional expectations. In part, their defiance grew out of the emerging feminist movement.<sup>31</sup> The urban setting also provided a

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*Enough: A Disturbing Return of Eugenics in Recent "Workfare" Law*, 9 UCLA WOMEN'S L.J. 97, 115–16, n.93 (1998) (referring to Roosevelt's claim that the "prime duty" of the "good citizen of the right type" was to "leave his or her blood behind . . . in the world").

26. See Huberfeld, *supra* note 25, at 112–116 (describing the early 1900's eugenics movement and its focus on maintaining purity of bloodlines in white middle- and upper-class families). See also J. Douglas Smith, *The Campaign for Racial Purity and the Erosion of Paternalism in Virginia, 1922–1930: "Nominally White, Biologically Mixed, and Legally Negro"*, 68 J. S. HIST. 65, 66, 89 (2002).

27. Many working-class white, ethnic, immigrant, and black families were likewise concerned about the sexual behaviors of their daughters. EWEN, *supra* note 7, at 226–29 (describing marriage arrangements in Jewish and Italian immigrant families); HICKS, *supra* note 3, at 194–200 (providing examples of black families expressing concern about daughters who might undermine the respectability of the rest of the family); ODEM, *supra* note 11, at 51–52 (noting that Catholic working-class immigrants saw premarital sex as sinful for daughters).

28. See, e.g., Catherine Cocks, *Rethinking Sexuality in the Progressive Era*, 5 J. GILDED AGE & PROGRESSIVE ERA 93, 108 (2006) (describing how, while not "Victorian" in their approaches, some African-Americans "insisted on a particularly stringent version of gender, class, and sexual respectability as a central element in their campaigns for social justice").

29. See Lesko, *supra* note 11, at 188–89 (noting that "[t]he turn-of-the-century focus on girls invoked racial, gender, and national concerns" that were largely future focused"). Cf. BAILEY, *supra* note 8, at 87–88 (noting the irony of both trying to control young women's sexuality while conveying that young women were the gatekeepers of sex).

30. Here again, race being a constructed concept, the following section demonstrates how Italian and Jewish girls often were (although not always) protected like girls of British extraction, while Italian and Jewish men were largely scorned. See, e.g., Lawrence Veiller, *Room Overcrowding and the Lodger Evil*, 3 AM. J. PUB. HEALTH 11, 12 (1913) (complaining that "the Italians, the Poles and Russians," as well as the "Slavonic races" are more greedy and problematic than other migrants); Ripley, *supra* note 24, at 130–31, 136 (criticizing new immigrant groups for being "densely ignorant, yet dull and superstitious withal; lawless, with a disposition to criminality; servile for generations, without conception of political rights").

31. See FEMINIST LEGAL HISTORY 5–8 (Tracy A. Thomas & Tracey Jean Boisseau eds., 2011) (describing the rise of first-wave feminism and efforts of women to achieve civic participation

powerful counter-narrative to the standard story about home, life, and station. Girls exposed to the city, with its more diverse living, work, and social spaces, came away with new ideas about privacy, social engagement, sexuality, and identity. These concepts were incorporated into their own emerging identities.

Reformers declared that girls who lived citified lives ran the risk of jeopardizing their own security and wellbeing. But adults also worried about the power young women wielded through their bodies. As modern girls passed into womanhood, many adults feared they would disrupt existing hierarchies and social structures through their embodiment of urban activities and lifestyles.<sup>32</sup>

### 1. Worries About Shared Sites

Infamous Chicago Juvenile Court Judge Julian W. Mack warned that girls living in “dingy, overcrowded” urban apartment buildings were exposed to a wide range of moral hazards; the squalor and overcrowding would drive the girls into “gaudy palaces of vice and shame” because of a lack of “decent places of amusement,”<sup>33</sup> with no other place to go.<sup>34</sup> So-called experts and religious figures further questioned whether girls could “have that privacy which modesty demands” when raised in small units with numerous people living in just a few rooms.<sup>35</sup> The “social problem” of “congestion” and its impact on family life so worried reformers in New York that a working group, *The Committee on the Congestion of the Population*, was formed in 1905 to study the issue.<sup>36</sup> Even the powerful social reform group known as the Committee of Fifteen advised against the evil of raising young women in tenement apartments, declaring that “[w]here a whole family, adults and children of both sexes, is crowded together in a single room, moral degradation is almost inevitable.”<sup>37</sup>

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through the vote and otherwise). See also Olund, *supra* note 1, at 486–87 (noting how the “new woman” phenomenon, which may have started with university-educated women, spread across the country and across class status).

32. See Lesko, *supra* note 11. See also Annette Ruth Appell, *The Pre-Political Child of Child-Centered Jurisprudence*, 46 Hous. L. Rev. 703, 750–51 (2009) (“No matter who this child is or from whence she or he comes, this same child is expected to become the white, male, middle-class, adult liberal subject upon reaching adulthood.”).

33. Julian W. Mack, *Prevention of Delinquency*, in TRENDS AND ISSUES IN JEWISH SOCIAL WELFARE IN THE UNITED STATES, 1899–1952, at 110–11 (Robert Morris & Michael Freund eds., 1966) (N.Y.C. Municipal Archives).

34. *Id.*

35. W.M. Polk, *The Practical Methods for the Prevention and Control of the Social Evil, What Are They?*, in 1911 ELEVENTH NEW YORK STATE CONFERENCE OF CHARITIES AND CORRECTION 256, 269 (N.Y.C. Municipal Archives) (responding remarks of Rev. Dr. William J. White).

36. See V.G. Simkhovitch, *Report of the Committee on Congestion of Population*, in ELEVENTH NEW YORK STATE CONFERENCE OF CHARITIES AND CORRECTION, *supra* note 35, at 114–21. See also Robert W. Heberd, *The Work of the State Commission on Distribution of the Population*, in ELEVENTH NEW YORK STATE CONFERENCE OF CHARITIES AND CORRECTION, *supra* note 35, at 121–22.

37. THE COMMITTEE OF FIFTEEN, *THE SOCIAL EVIL* 128 (1912). For further information about the history and work of the Committee of Fifteen and its more famous successor group, the Committee of Fourteen, see, e.g., Mae C. Quinn, *Revisiting Anna Moscowitz Kross’s Critique of*

Beyond contending with on-looking family members, reformers worried that apartment-dwelling girls had to shield themselves from unrelated males brought into the home as boarders.<sup>38</sup> These lodgers were characterized by commentators as “strange men” from foreign lands who were taken in not only for economic reasons but also in radical acts of “racial solidarity.”<sup>39</sup> Reformers feared these men were likely to damage the purity of the city’s daughters.<sup>40</sup> Commentators like Sangster urged at least some small sanctuary within buildings for the teenage girl—if only a space under the stairs or a closet—where she would be provided with privacy.<sup>41</sup> Others warned that young women who did not conceal themselves while dressing, grooming, and otherwise caring for their bodies would likely “go astray.”<sup>42</sup>

Some of these efforts reflected real concern for the wellbeing of poor immigrants and others forced to live in substandard housing.<sup>43</sup> But such campaigns were also rooted in a desire to manage growing urban, ethnic, working-class neighborhoods and those who lived there—individuals largely seen as less morally and intellectually developed.<sup>44</sup> They sought to prevent these populations from negatively impacting traditional social structures and community values.<sup>45</sup>

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*New York City’s Women’s Court: The Continued Problem of Solving the “Problem” of Prostitution with Specialized Criminal Courts*, 33 FORDHAM URB. L.J. 101, 107 n.21 (2005) (describing the Committee of Fifteen as a powerful group of social reformers, including many well-known businessmen, who sought to end the practice of prostitution in New York City).

38. See PERRY, *supra* note 5, at 38 (quoting Moskowitz’s writings highlighting the plight of a mother who took in boarders and retreated to the fire escape as a space for privacy); Heberd, *supra* note 36, at 126 (documenting that families lived in two or three room apartments along with several boarders to help pay the rent).

39. See generally Stefan H. Krieger, *A Clash of Cultures: Immigration and Housing Code Enforcement on Long Island*, 36 HOFSTRA L. REV. 1227, 1229–31 (2008) (describing the narrative of the “lodger evil,” which shaped housing code development at the turn of the last century); Veiller, *supra* note 30, at 12–14 (decrying the “evil” practice of allowing, as an act of “racial solidarity,” “strange men into family life”).

40. See Veiller, *supra* note 30, at 12–14.

41. SANGSTER, WINSOME WOMANHOOD, *supra* note 12, at 25–26.

42. Polk, *supra* note 35 (responding remarks of Rev. Dr. William J. White); Veiller, *supra* note 30, at 14.

43. See, e.g., PERRY, *supra* note 5, at 42–43 (noting the sensitivity Belle Israels Moskowitz had for the plight of “working girls in the modern city”). See generally HOWARD MARKEL, QUARANTINE! EAST EUROPEAN JEWISH IMMIGRANTS AND THE NEW YORK CITY EPIDEMIC OF 1892 (1997) (describing problem of overcrowding within immigrant housing and problem of diseases like tuberculosis).

44. See, e.g., Ripley, *supra* note 24, at 130 (calling certain new immigrant groups “densely ignorant,” “dull and superstitious” and “lawless”). See also TIMOTHY J. GILFOYLE, CITY OF EROS: NEW YORK CITY, PROSTITUTION, AND THE COMMERCIALIZATION OF SEX, 1790–1920, at 222 (1992) (quoting a police officer who declared that a particular Brooklyn neighborhood, “like nearly all colonies of negroes, does not possess the quality of morality that would be expected of white people”); Victoria Getis, *Experts and Juvenile Delinquency, 1900–1935*, in GENERATIONS OF YOUTH, *supra* note 7, at 29 (recounting how one study found that feeble-minded persons and certain immigrant groups were morally blameless because their delinquent acts were the result of societal influences).

45. See BOYER, *supra* note 2, at 234 (noting that beyond altruistic motivations, there was “also a determination to influence the moral and social values of the urban poor”). See also Heberd, *supra*

As part of this phenomenon, urban adolescent girls frequently straddled the line between insiders and outsiders.<sup>46</sup> As immigrants, Jewish and Italian men were generally met with suspicion and concern.<sup>47</sup> But their daughters were framed as innocent, white, and in need of protection.<sup>48</sup> As will be further discussed, however, this identity construction was not immutable; immigrant girls might be racialized based on a variety of factors including their own behaviors and relationship with the city.<sup>49</sup>

Reformers worried about girls not only in urban apartments, but also in city workplaces.<sup>50</sup> Turn-of-the-century teens frequently embraced these spaces as providing potential for freedom, anonymity, and empowerment.<sup>51</sup> But many

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note 36, at 127 (judge calling for limits on immigration to urban areas); Florence Kelley, Benjamin C. Marsh, Lawrence Veiller, Robert W. Heberd, William J. White, John R. Shillady & John Martin, *Removal of Factories and Charities as a Means of Distribution of Population*, in ELEVENTH NEW YORK STATE CONFERENCE OF CHARITIES AND CORRECTION, *supra* note 36, at 139–143.

There were, of course, some exceptions to this kind of thinking. *See, e.g.*, George E. Johnson, *Play and Recreation*, 67 ANNALS AM. ACAD. POL. & SOC. SCI. 107, 108 (1916) (calling for “social mingling of the different racial groups” among youth). *Cf.* Mae C. Quinn, *Feminist Legal Realism*, 35 HARV. J.L. & GENDER 1, 45 (2012) (arguing that the methods of many well-intentioned early feminist reformers can be seen as both positive and negative from more contemporary perspectives, offering “tensions, inconsistencies, and less-than-flattering features”).

46. *See* CHINN, *supra* note 7, at 80–84 (describing how youth served as translators for their parents and established community norms). *See also* GUGLIELMO, *supra* note 4, at 102–09 (children of Italian immigrants often assisted in the family’s assimilation process). EWEN, *supra* note 7, at 73, 94–97 (immigrant mothers relied upon their children to learn about American culture).

47. *See supra* notes 1, 30. *See also, e.g.*, GUGLIELMO, *supra* note 4, at 96–97 (contrasting early twentieth century social construction of Italian immigrant women as victims of their husbands, Italian men, who were seen as “lazy and violent”); James R. Barrett & David Roediger, *Inbetween Peoples: Race, Nationality and the “New Immigrant” Working Class*, 16 J. of American Ethnic History, Spring 1997, at 3, 21–28 (describing how some “white men’s [labor] unions” “excluded Italians, Jews and other new immigrants”).

48. GUGLIELMO, *supra* note 4, at 89–91 (recounting how Italian immigrant women were frequently seen as “racially inferior yet still white”); Mack, *supra* note 33, at 110 (lamenting the city’s influence on Jewish girls who were losing their “virtue”); Olund, *supra* note 1, at 487 (explaining that “white or almost-white female bodies” were of greatest concern to reformers). *See also* CHINN, *supra* note 7, at 18–20 (documenting concerns of reformers who sought to “save” the daughters of immigrant parents); E.N. Clopper, *Children on the Streets of Cincinnati*, 32 ANNALS AM. ACAD. POL. & SOC. SCI. 113, 113 (1908) (declaring that Jewish and German-American immigrants, compared to others, were “home-loving, law-abiding and thrifty, who almost invariably provide good homes and educational facilities for their offspring”).

49. *See* Kari E. Hong, *Parens Patri[archy]: Adoption, Eugenics, and Same-Sex Couples*, 40 CAL. W. L. REV. 1, 20 (2003) (describing how after a “shift in defining whiteness” immigrant women from Europe were acknowledged as white and able to raise their children). *See also* Barrett & Roediger, *supra* note 47, at 5–6 (explaining how race was not seen as a static feature in immigrants at the turn of the last century and that “whiteness” could be earned or lost).

50. Odem, *supra* note 11, at 53 (by the twentieth century “the context of women’s labor had changed dramatically . . . daughters now worked in department stores, offices, factories, canneries, and restaurants” as well as in the entertainment industry).

51. *See, e.g.*, Odem, *supra* note 11, at 53–55 (listing the various new indoor and outdoor venues that appealed to young people in the city). *See also* Mae C. Quinn, *Access to Justice: Evolving Standards of Juvenile Justice: From Gault to Graham and Beyond*, 38 WASH. U. J.L. & POL’Y 1, 1 (2012) (describing the ways in which justice standards for juveniles—who themselves are still evolving—may always remain in a “state of transformation”).

adults expressed concern for young white girls entering such diverse and integrated environments.<sup>52</sup> According to reformers like Kelley, Addams, and Sangster, the danger was not to the girl alone, but to the social structures and framework that she was responsible for maintaining.<sup>53</sup>

## 2. “Our Daughters” Publically Performing Pleasure and Play

With their new economic freedom, working girls began buying clothing from department stores in an effort to look more “glamorous.”<sup>54</sup> Many adults saw this as wasteful and out of step with social conventions.<sup>55</sup> Anxieties elevated as girls stayed out late wearing their new clothes and socializing with new friends from diverse backgrounds. Female youthful instincts and energies, reformers warned, needed to be channeled and managed.<sup>56</sup>

Commentators like Sangster acknowledged the need for young women to enjoy leisure activities and “social companionship” as they passed through adolescence.<sup>57</sup> But she encouraged interactions with a “pleasant neighborhood circle . . . from families established on a plan of approximate worldly circumstances.”<sup>58</sup> Church and school friends were also acceptable.<sup>59</sup> For working-class families, she recommended the Young Woman’s Christian Association or

52. CHINN, *supra* note 7, at 65–66 (noting that “a large number of workplaces employed both women and men”); EWEN, *supra* note 7, at 15 (“While . . . Jewish and Italian women came from radically different circumstances, once they arrived in the new urban world they shared a similar history: they came to the same neighborhoods of the Lower East Side, they worked in the same factories, their daily lives were shaped by the same social forces.”); ODEM, *supra* note 11, at 53 (describing how native white, immigrant, and Black women entered “new urban environments” both to “live and work”).

53. LINDENMEYER, *supra* note 25, at 9–10 (quoting Kelley as declaring “the Republic suffers the penalty of every offense against childhood”); KELLEY, *Invasion of Family Life*, *supra* note 6, at 95 (“Personally, I do not believe that the family can be effectively defended until we give a part of the responsibility for its defense to the mothers and the older daughters of the family. I do not think that the men in this country have protected the home adequately.”). *See also* ADDAMS, *supra* note 6, at 8; SANGSTER, WINSOME WOMANHOOD, *supra* note 12, at 64.

54. CHINN, *supra* note 7, at 25, 85.

55. CHINN, *supra* note 7, at 25 (describing how new attire and behaviors of working-class girls troubled more traditional adults who saw these signifiers as cheap and dangerous).

56. Indeed, another Settlement worker suggested such venues could serve another useful purpose for the city’s adolescent girls: “The girls and young women may be induced to spend two or three evenings each week in learning the essential qualifications of a successful working man’s wife.” THOMAS EVANS, *The Christian Settlement*, 30 ANNALS AM. ACAD. POL. & SOC. SCI. 55, 60 (1907).

57. SANGSTER, WINSOME WOMANHOOD, *supra* note 12, at 44. *See also* LUTHER GULICK, *Popular Recreation and Public Morality*, 34 ANNALS AM. ACAD. POL. & SOC. SCI. 33, 36 (1909) (describing the normal tendency for youth to want to engage socially and have fun); EVANS, *supra* note 56, at 55 (“The social instinct or desire for companionship is strong in human nature.”); JOHNSON, *supra* note 45 at 114 (1916) (referring to need for schools and other agencies to ensure youth experience recreational activities).

58. SANGSTER, WINSOME WOMANHOOD, *supra* note 12, at 44–45.

59. *Id.*

Settlement Houses as resources.<sup>60</sup> Sangster claimed that working girls attending such programs would be able to put their jobs behind them and mingle with middle-class volunteers, which would help both groups.<sup>61</sup>

In reality, however, many young women headed to evening movie theaters, amusement parks, and dance halls.<sup>62</sup> These new, dark, urban spaces were considered dangerous because they allowed adolescent anonymity and privacy for the experience of pleasure.<sup>63</sup> And like the workplace, they presented opportunities for public interactions between the sexes, as well as exposure to ethnic, racial, class, and other identity differences.<sup>64</sup>

For instance, Jane Addams, who ran Chicago's Hull House Settlement and was one of Kelley's collaborators in helping to establish the federal Children's Bureau,<sup>65</sup> railed against modern theater.<sup>66</sup> In her 1909 book, *THE SPIRIT OF YOUTH AND THE CITY STREETS*, she declared: "[g]oing to the show" is an unhealthy "escape" from "the actual world" that could mentally and physically damage youth.<sup>67</sup> The theater apparently had the "strange power to forecast life for the youth" as their "impressionable minds" become filled with "absurdities" that challenged moral standards.<sup>68</sup>

According to Addams, the theater had the tendency to drive girls to extremes. This included stealing in order to attend<sup>69</sup> and living a lifestyle inconsistent with

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60. *Id.* at 23, 73. "American social reformers began founding settlement houses in the late 1880's to respond to growing industrial poverty." *Settlement House Movement, Immigration to the United States, 1789-1930*, HARVARD UNIVERSITY LIBRARY OPEN COLLECTIONS PROGRAM, <http://ocp.hul.harvard.edu/immigration/settlement.html>. These social services venues sought to "help to assimilate and ease the transition of immigrants into the labor force by teaching them middle-class American values." *Id.* Often run by white, middle-class social workers and social reformers, they offered a range of classes and supportive services. *Id.*

61. *Id.* at 73 (asserting that when the banker's child and the laborer's child interacted at such locations the focus was not on class difference but "reciprocity . . . in a service of love").

62. See Gulick, *supra* note 57, at 36 (reporting on the number of moving picture theaters and saloon-affiliated dance halls, and mentioning other dangerous outdoor events frequented by New York City youth).

63. BOYER, *supra* note 2, at 207 (cities were seen as "vast places of concealment where men and women could pursue their pleasure safe from prying eyes").

64. See Julie Malnig, *Apaches, Tangos, and Other Indecencies: Women, Dance, and New York Nightlife of the 1910s*, in *BALLROOM, BOOGIE, SHIMMY SHAM, SHAKE* 72, 79-81 (Julie Malnig ed., 2009) (painting the diverse scene of urban dance clubs in the 1910s).

65. LINDENMEYER, *supra* note 25, at 15-16 (describing Addams's Hull House work and visit to President Roosevelt in 1905 to endorse the establishment of the Children's Bureau).

66. ADDAMS, *supra* note 6, at 75-80.

67. *Id.* at 75-77, 103.

68. *Id.* at 77-80.

69. *Id.* at 80-81. See also *id.* at 91-92 (recounting the story of an immigrant father who said that if he did not provide his four daughters with the cost of theater tickets they would simply steal it from the till of his shop).

biblical teachings.<sup>70</sup> The movie theater’s “very darkness” encouraged youthful “love making.”<sup>71</sup>

Amusement parks met similar resistance; for example, social reformers Belle Moskowitz Israels and her husband Charles Israels campaigned against amusement parks like Brooklyn’s Coney Island.<sup>72</sup> At such locations, girls in pairs might walk the boardwalk until dark looking for boys who would “treat” them to beers and dancing.<sup>73</sup> By the end of the evening, “little girls of fifteen, sixteen, seventeen, in the beginning of their womanhood” would be seen on trolleys “riding home at midnight in the arms of a young man who is seeing them home”—allegedly exposing themselves to a range of dangers as a result of exchanges involving sexual favors, or the pregnant “quid pro quo.”<sup>74</sup>

### 3. *Prohibition of the Actualized Adolescent Self*

Addams, the Israels, and others joined together to address the most troubling of the Progressive Era leisure “evils”: dance halls.<sup>75</sup> Many sold liquor, which was believed to have the dangerous capacity to weaken a young woman’s will to resist sexual advances,<sup>76</sup> and most allowed ragtime dancing, which was viewed as a threat to individual girls, wholesome womanhood, and the greater good.<sup>77</sup>

70. *Id.* at 84–85. See also ANDREA FRIEDMAN, PRURIENT INTERESTS: ANTI-OBSCENITY CAMPAIGNS IN NEW YORK CITY, 1909–1945, at 61 (2000) (describing how New York City Mayor McClellan sought to revoke licenses of nickelodeons in part to protect “children’s morals and physical safety”).

71. ADDAMS, *supra* note 6, at 86.

72. See, e.g., Charles H. Israels, *Vacation Opportunities for Older Girls*, in PROCEEDINGS OF THE FIRST NEW YORK CITY CONFERENCE OF CHARITIES AND CORRECTION at 173–176 (1910); Belle Lindner Israels, *The Way of the Girl*, 22 SURVEY 486 (1909). See also PERRY, *supra* note 5, at 46–47 (describing the dance hall reform work of Belle and Charles Israels and referring to their various publications on the subject).

73. See Israels, *supra* note 72, at 174–75. See also PERRY, *supra* note 5, at 46–47.

74. Israels, *supra* note 72, at 174–75. See also BAILEY, *supra* note 8, at 18–22 (examining assumptions behind “treating” as a potential exchange for sexual favors). CHINN, *supra* note 7, at 16, 116–17 (analyzing “treating” as informal sex trade or “pleasurable quid pro quo”). But see Cocks, *supra* note 28, at 109 (arguing that “turn-of-the-century ‘treating’ culture hardly represented a radical break with the past” as bargaining around sex had long existed).

75. See, e.g., ADDAMS, *supra* note 6, at 11–13 (recounting the dangers of dance hall culture, including “young fellows of evil purpose” and “doctored” drinks); PERRY, *supra* note 5, at 44 (reporting on a study conducted by Charles H. Israels involving visits to seventy-three New York City dance halls); Mack, *supra* note 33, at 110–12 (warning that urban youth were dangerously drawn to “gaudy palaces of vice and shame” to gamble and dance). But see FRIEDMAN, *supra* note 70, at 156 (describing how some reformers, like Belle Moskowitz, were not in favor of state-based regulation of the film industry).

76. CHARLES STELZLE, WHY PROHIBITION! 20 (1918) (calling for prohibition and noting in particular that “the saloon is a city problem”); Gulick, *supra* note 57, at 36 (lamenting that nearly all of the 200 dance halls operating in New York City were connected to saloons). See also PERRY, *supra* note 5, at 42 (describing the fear of Belle Israels and others that alcohol contributed to promiscuity and therefore prostitution); Malnig, *supra* note 64, at 80 (describing dance halls that were “annexed to drinking establishments” as being among the most reviled by reformers).

77. Malnig, *supra* note 64, at 74–75 (“the rag dance phenomenon . . . swept the country from 1908 through the early 1910s”). See also Nadine George-Graves, *Just Like Being at the Zoo:*

White, middle-class reformers were familiar with well-lit church events and other chaperoned functions where young couples might enjoy a few controlled waltzes.<sup>78</sup> They were shocked by practices that emerged in dark and more dynamic Progressive Era city dance halls.<sup>79</sup> These commercial venues encouraged high-energy mingling and social interaction in close quarters.<sup>80</sup> With their dark nooks, they also allowed young people a level of privacy beyond the general anonymity of city life.<sup>81</sup>

The dances themselves—many with animalistic names like the Turkey Trot and Grizzly Bear<sup>82</sup>—involved young women rhythmically thrusting their hips, holding on to male partners, and being dipped and bent on the dance floor for all to see.<sup>83</sup> Worse, such practices were moving from urban clubs to middle- and upper-class ballrooms and other social events.<sup>84</sup>

These emerging leisure practices allowed young women—otherwise perceived as white—to repeatedly cross accepted gender and sexual boundaries<sup>85</sup> and blur class, ethnic and racial lines.<sup>86</sup> Rag dances, described as “tough” and “primitive,” were framed as practices of blacks and foreigners.<sup>87</sup> And racially

*Primitivity and Ragtime Dance*, in BALLROOM, BOOGIE, SHIMMY SHAM, SHAKE, *supra* note 64, at 55, 61 (arguing that “dancers of the time were using dance to push boundaries of sexual politics and decorum” as well as perceived racial boundaries); Lesko, *supra* note 11, at 188 (recounting how “precocious girls” were seen as “contribut[ing] to social degeneration, racial suicide, and imperial decline”).

78. PERRY, *supra* note 5, at 43 (comparing Progressive Era dances to the more subdued waltzes and polkas practiced at Settlement Houses and other supervised settings); Malnig, *supra* note 64, at 73 (recounting the emergence of the waltz during the 19<sup>th</sup> century as new but controversial “closed-couple” dance).

79. Gulick, *supra* note 57, at 36 (warning about the hazards of “the future mothers of American children” attending immoral dance halls).

80. PERRY, *supra* note 5 at 51 (discussing the term and practice of “tough” dancing); Malnig, *supra* note 64, at 75 (Progressive Era dance halls were known for “dimly lit chandeliers, postage-stamp-size dance floors, and closely moving bodies”).

81. See CHINN, *supra* note 7, at 125 (describing the “balconies and dark corners” of dance venues); BOYER, *supra* note 2 at 207 (noting that such venues served as “place[s] of concealment where men and women could pursue their pleasure safe from prying eyes”).

82. George-Graves, *supra* note 77, at 61 (other popular dances included the “Pigeon Wing,” the “Fish Bone,” “Snake Hips,” and the “Mosquito Dance”).

83. *Id.* (providing a detailed description of the Turkey Trot and Grizzly Bear, with the former involving the man “holding the woman tightly around the waist” and then “snuggl[ing] up behind her”).

84. PERRY, *supra* note 5, at 50–51 (“At society balls, debutantes slipped out into the corridors to learn the forbidden steps”); Malnig, *supra* note 64, at 83 (noting that New York society pages reported on three couples who “invaded” the Plaza Hotel ballroom to perform the Turkey Trot).

85. George-Graves, *supra* note 77, at 61 (“[I]t is clear that the dancers of the time were using dance to push the boundaries of sexual politics and decorum.”).

86. Malnig, *supra* note 64, at 75 (“rag dances evolved from both black and white working-class dance halls”). See also Carol Martin, *Reality Dance: American Dance Marathons*, in BALLROOM, BOOGIE, SHIMMY SHAM, SHAKE, *supra* note 64, at 93–95 (noting that dance marathons of 1920s Harlem were “racially mixed”).

87. George-Graves, *supra* note 77, at 63–65 (noting that African-American dance steps were seen by many whites as having a crude or “primitive” quality).

mixed urban dance clubs, known as “Black and Tans,” allowed limited interracial couples’ dancing.<sup>88</sup> Thus, through their dancing, city girls challenged Anglo-androcentrism and homogeneity.<sup>89</sup> They publically performed the process of identity formation, boldly giving birth to amalgamated personhoods that contested projected notions of the clearly bounded and properly lived lives.<sup>90</sup> As historian Julie Malnig has aptly noted, “[t]he dance floor licensed such experimentation with the presentation of self, and *this*, of course, was one of the moralists’ greatest concerns.”<sup>91</sup>

Jane Addams acknowledged as much at the end of *SPIRIT OF YOUTH*, which ultimately described the city’s teens as full of “youthful ardor,” new ideas, and a strong desire to change the world in which they lived.<sup>92</sup> Young immigrants, in particular, carried with them “a new cargo of democratic aspirations” and “impatience with the world’s inheritance of wrong and injustice.”<sup>93</sup> Addams suggested there could be “inestimable value” in joining with young people to tap their energies and brave new insights.<sup>94</sup> On the other hand, she warned that without discipline and direction from more knowledgeable adults, youthful desire to create a unique American experience was dangerous to existing democratic values and the future of morality.<sup>95</sup>

### C. Failed Efforts to Arrest Female Development

To stem the tide of theaters, amusement parks, and dance halls, reformers called for wholesome leisure alternatives for young people.<sup>96</sup> Nationwide

88. MUMFORD, *supra* note 3, at 30–35 (describing the spread of “Black and Tan” mixed race dance clubs in New York and Chicago during the early 1900s).

89. BOYER, *supra* note 2, at 191 (describing “Progressive-era crusades” focused on creating a “purified, morally homogeneous city”). Yet it should be noted that most accounts of the dance hall craze, both then and now, offer heteronormative assumptions about the dancers and their desires. *See, e.g.*, Israels, *supra* note 72, at 495 (assuming heterosexual attraction between young women and men as dancers). I recognize by focusing on these accounts, this project may itself contribute to further obscuring lived experiences where the heterosexual “physical act of coitus may or may not be the most important thing about ‘sex’”. *See* Cocks, *supra* note 28, at 116. *See also* Barbara Fedders, *Coming Out for Kids: Recognizing, Respecting and Representing LGBTQ Youth*, 6 NEV. L.J. 774 (2006).

90. Malnig, *supra* note 64, at 74 (“the so-called dance craze” permitted girls from “different classes and ethnic backgrounds” to use their bodies for “enhancing, exploring, and solidifying identity in a time of deliberation over their status as so-called New Women”). MUMFORD, *supra* note 3, at 5–6 (describing amalgamation theory).

91. Malnig, *supra* note 64, at 77.

92. ADDAMS, *supra* note 6, at 142–45.

93. *Id.* at 146.

94. *Id.* at 152 (“To permit these young people to separate themselves from the contemporaneous efforts of ameliorating society and to turn their vague hopes solely toward an ideal commonwealth of the future, is to withdraw from an experimental self-government founded in enthusiasm . . .”).

95. *See, e.g., id.* at 159 (“Thousands of young people in every great city are either frankly hedonistic, or are vainly attempting to work out for themselves a satisfactory code of morals.”).

96. ADDAMS, *supra* note 6, at 92 (“This testimony of a physician that the conditions [relating to youthful theater attendance] are actually pathological, may at last induce us to bestir ourselves in

committees and agencies formed to consider ideas for providing safe spaces where youth could enjoy themselves in a manner consistent with traditional values and morals.<sup>97</sup> This took place at about the same time as the establishment of the federal Children's Bureau, which formed in part to gather greater knowledge about the needs of young people.<sup>98</sup> The movement was also contemporaneous with Addams's calls to listen to the voices of youth.<sup>99</sup> However, adolescents were not directly or meaningfully engaged to play a role in these efforts. Reforms were unilaterally driven by adults who purported to understand the desires, interests, and needs of young people.<sup>100</sup>

For example, Belle Moskowitz Israels and her Committee on Amusements called for dance hall regulation. Her goal was to stop liquor sales and sexualized dances.<sup>101</sup> Reformers also tried to prevent racial mingling by closing interracial dance halls.<sup>102</sup> In addition to pressing for state and local reforms,<sup>103</sup> Israels

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regard to procuring a more wholesome form of public recreation.”); Johnson, *supra* note 45, at 108 (Harvard professor of education noting the need to focus on “wholesome play and recreation” for both young people, and adults).

97. See Gulick, *supra* note 57, at 33–36 (describing his concerns as Chairman of the Playground Extension Committee of the Russell Sage Foundation, New York City and criticizing the moral environment of New York City's dance halls); Johnson, *supra* note 45 (documenting how various governmental, philanthropic, and other organizations came together around the issue). See also BOYER, *supra* note 2, at 240 (discussing the “municipal park movement” of the 1920s, which reflected some of the Gilded Era ideas of Frederick Law Olmstead coupled with emerging conception of the park as “an urban social-control instrument”).

98. As part of his message to Congress urging the creation of the Children's Bureau on February 15, 1909, President Roosevelt declared: “There are few things more vital to the welfare of the nation than accurate and dependable knowledge of the best methods of dealing with children, especially with those who are in one way or another handicapped by misfortune . . . .” See IT'S YOUR CHILDREN'S BUREAU, SOC. SEC. ADMIN., <http://www.ssa.gov/history/childb2.html> (last visited Sept. 12, 2013).

99. ADDAMS, *supra* note 6, at 161 (“We fail to understand what he wants or even to see his doings, although his acts are pregnant with meaning . . .”).

100. See, e.g., Ella Gardner, *Public Dance Halls: Their Regulation and Place in the Recreation of Adolescents 2*, in UNITED STATES DEPARTMENT OF LABOR CHILDREN'S BUREAU PUBLICATIONS (U.S. Children's Bureau, 1929) (“The opinions and experience of persons closely in touch with the boys and girls—teachers, juvenile-court officials, and other social workers—were sought as to the success of the existing program and as to needs which had not been adequately considered.”). See also PERRY, *supra* note 5, at 57 (recounting that Belle Moskowitz Israels “never invited working girls to serve on her [Committee on Amusement],” thus like other reformers largely ‘matronized’ those she wished to help”).

101. PERRY, *supra* note 5, at 43–57.

102. See MUMFORD, *supra* note 3, at 32 (referencing the movement to close interracial “Black and Tan” clubs). Cf. Gardner, *supra* note 100, at 32 (noting the problem of young people encountering “all sorts of people”); Linda N. Espana-Maram, *Brown ‘Hordes’ in McIntosh Suits—Filipinos, Taxi Dance Halls and Performing the Immigrant Body in Los Angeles, 1930–1940’s*, in GENERATIONS OF YOUTH, *supra* note 7 (recounting how attendance of young Filipino men at Los Angeles dance halls in later years was framed in terms of racialized fears of “white girls” being “sold” to “Oriental” men for price of a dance).

103. See, e.g., Gardner, *supra* note 100, at 30–32 (describing examples of age limit ordinances). Cf. *id.* at 9 (noting “a steady increase in [dance-hall legislation] in the past 15 years”); *To Bar Turkey Trot from Their Ballrooms*, N.Y. TIMES, Feb. 3, 1912, at 20 (reporting on meetings involving Tammany Hall officials, dance hall proprietors, and Israels, which led to the passage of a resolution

convinced elite financial backers to help establish “alternative” dance spaces.<sup>104</sup> In these halls, some apparently affiliated with settlement homes,<sup>105</sup> music was played by a more formal orchestra and a “supervisor” remained “on the floor at all times to see that the young people [did] not indulge in any objectionable features.”<sup>106</sup>

Such initiatives, virtually devoid of youthful input, did not take hold.<sup>107</sup> Dance hall culture continued to spread.<sup>108</sup> Thus more desperate, panic-driven narratives about adolescent girls and the dangers of city life emerged,<sup>109</sup> with the most powerful storyline relating to forced prostitution.

Stepping up their advocacy, reformers argued that girls not only risked their virtue by attending dance halls, but could also easily become unwitting victims of “the white slave trade.”<sup>110</sup> During this time, claims ran rampant about young white women being lured unwittingly into prostitution by foreigners affiliated with dance halls and related hotels.<sup>111</sup>

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requiring the posting of placards reading: “Immoral dancing, turkey trot, grizzly bear, shiver dance, Boston dip, &c., shall not be allowed in this hall: by order of the Commissioner of Licenses”).

104. Interestingly, while the dance halls were considered a benevolent enterprise and an alternative to commercial establishments, Israels asked \$1,000 of each supporter, promising a return of 33% on the investment. See PERRY, *supra* note 5, at 49 (“Asking supporters for \$1000 for each dance hall, she promised them a 33<sup>1</sup>/<sub>3</sub> percent profit in six months.”); *Model Dance Halls Here*, N.Y. TIMES, Feb. 17, 1909, at 9.

105. See *supra* note 61 and accompanying text (describing the settlement house movement); CHINN, *supra* note 7, at 121 (dances thrown by the Henry Street Settlement and other clubs now had more political meaning); *Plan to Wipe Out White Slave Evil*, N.Y. TIMES, Jan. 25, 1910, at 16 (Israels telling press that she “would not say where these model dance halls were, because the girls who patronize them do not know they are model halls”); *Plans Model Dance Halls*, N.Y. TIMES, Oct. 1, 1912, at 9 (talking about training social settlement workers in appropriate dance steps).

106. PERRY, *supra* note 5, at 49–50. See also *Plans Model Dance Halls*, N.Y. TIMES, Oct. 1, 1912, at 9.

107. See PERRY, *supra* note 5, at 54 (“In the end, dance hall reform proved disappointing. After the initial excitement, enthusiasm for enforcement waned.”); *Id.* at 56–57 (describing an interpretation of Israels’s dance-hall reform efforts as a “last, futile gasp of an outdated Victorian sensibility” that while perhaps well-intended was largely unsuccessful in effectuating long-term social control); Gardner, *supra* note 100, at 18, 30–32 (describing lax enforcement against dance-hall proprietors and practical difficulty in keeping young girls out of the dance halls).

108. See Gardner, *supra* note 100, at 45 (describing difficulty in controlling high-school dances, with one observer reporting “much worse dancing at affairs held by high-school students at a community clubhouse” than at commercial dance halls).

109. See Malnig, *supra* note 64, at 76 (“[T]he ‘rhetoric of moral panic’ of the period” suggested that young women were now “out of control” and a threat to traditional American life).

110. *Plan to Wipe Out White Slave Evil*, *supra* note 106, at 16. See *White Slavery Fight*, 2 WOMEN LAW. J. 39 (1912) (reporting on the participation by Jane Addams in the “American Vigilance Association” in New York, Chicago, and Washington, D.C. to engage in a “vigorous campaign against the white slave trade”).

111. See BOYER, *supra* note 2, at 209 (recounting how “pimps” or brothel owners were painted in ethnic terms, including “the acute and unscrupulous Jewish type of mind”); Olnud, *supra* note 9, at 487 (“Lurid headlines played up fears of immigrant mobility and intimated that young women were being caught up in an internationally organized traffic in white or almost-white female bodies.”). See also THE COMMITTEE OF FIFTEEN, *supra* note 37, at 183–84 (describing how a young working “shop-girl” might be lured to a “Raines Law” hotel by a “cadet,” drugged in her drink, and

Such racialized narratives about “white slavery” offensively minimized the country’s long and horrific history of legally enslaving black persons and the sexual degradation and rape of black girls in particular.<sup>112</sup> They also overlooked the victimization of minority girls at that time.<sup>113</sup> Even so, such panic-laden accounts about the capture of white girls for forced prostitution captured the American imagination.<sup>114</sup> They also resulted in a range of prohibitive legislation on the state and federal levels.<sup>115</sup>

All of this may have been driven, in part, by concerns about harms to individual youth. But it also reflected overblown fears about the potential downfall of American society due to actions of young white women who, through “treating” and otherwise, might enter the underworld through the dance hall door.<sup>116</sup> At the outset, “slave traders”—dark and dangerous strangers—were the primary menace. Over time, however, the story shifted. Young white girls went from being seen as endangered, because they could be lured or “fall” into the sex trade,<sup>117</sup> to becoming community dangers themselves.<sup>118</sup>

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forced to become “an inmate of a house of prostitution”).

112. See, e.g., Adrienne Davis, “Don’t Let Nobody Bother Yo’ Principle”: *The Sexual Economy of American Slavery*, in *SISTER CIRCLE: BLACK WOMEN AND WORK* 105 (2002) (“The political economy of slavery systematically expropriated black women’s sexuality and reproductive capacity for white pleasure and profit.”); Evelyn M. Hammonds, *Toward a Genealogy of Black Female Sexuality: The Problematic of Silence*, in *FEMINIST GENEALOGIES, COLONIAL LEGACIES, DEMOCRATIC FUTURES* 172–73 (1997) (describing the “colonization” of black women’s bodies during slavery).

113. See Jo Doezenia, *Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women*, 18 *GENDER ISSUES* 23 (2000) (critiquing the framing of the potential victims during by reformers during the historic “white slavery” and modern trafficking movements). See also Hammonds, *supra* note 112, at 171 (noting that to date “there has been no full-length historical study of African American women’s sexuality in the United States” despite narratives of the black female as embodiment of sex).

114. BOYER, *supra* note 2, at 195 (recounting extensive coverage of “white slavery” by journalists, editors, moviemakers, and publishers); GILFOYLE, *supra* note 44, at 275 (“The white-slave image was so compelling that even the newest entertainment medium, the movies, consistently employed it.”). See also Olnud, *supra* note 1, at 487–88 (recounting support for the release of the 1913 Universal Studios film, *Traffic in Souls*, which sought to depict the problem of “white slavery”).

115. See BOYER, *supra* note 2, at 191–95 (describing reform efforts around “white slavery,” including the passage of the federal Mann Act in 1910).

116. See, e.g., *Plan to Wipe Out White Slave Evil*, *supra* note 106 (Cornell professor and federal commission member claiming that American life was being threatened by condemnable relationships of foreigners and that “high civilization” called for protecting young women from the “‘white slave’ evil”). See also CHINN, *supra* note 7, at 98 (“A new narrative about the incorrigibility of adolescents and their impulsive sexuality dovetailed with government attempts to police teenage sexuality through legislation and incarceration.”).

117. See THE COMMITTEE OF FIFTEEN, *supra* note 37, at 153 (talking about the range of “young girls who have fallen into evil ways, or who are in danger of falling”). See also GILFOYLE, *supra* note 44, at 270 (describing the “fallen woman” image and stereotype of becoming a “white slave”).

118. See THE COMMITTEE OF FIFTEEN, *supra* note 37, at 176 (“The minors who are engaged in prostitution constitute at once the most dangerous and most pitiable element in the problem of the Social Evil.”); Frederick H. Whitin, *The Women’s Night Court in New York City*, 52 *ANNALS AM. ACAD. POL. & SOC. SCI.* 181, 183 (1914) (citing Probation Officer Alice Smith of the Women’s Night

This trope had long been used to describe girls of color.<sup>119</sup> But as panic took hold, racial, ethnic, and class distinctions around the problem of the adolescent female seemed to hold less significance.<sup>120</sup> This may have been because those who reformers and the state previously framed as white were now seen as crossing racial lines through their dark behaviors.<sup>121</sup> As World War I unfolded, concern for protecting “innocent” American soldiers from sexually transmitted diseases turned all girls into the enemy.<sup>122</sup> In any event, protection of youthful purity gave way to pathologizing and policing for the so-called greater good.<sup>123</sup> Young women generally became targets of prosecution and imprisonment in the name of health, hygiene, and the future integrity of white American society.<sup>124</sup>

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Court as claiming even first time prostitution arrestees might be a “hardened offender” who had no desire to leave “the life”). *See generally* RUTH ALEXANDER, *THE GIRL PROBLEM: FEMALE SEXUAL DELINQUENCY IN NEW YORK, 1900–1930* (1995).

119. *See* HICKS, *supra* note 3, at 117 (“[W]hite reformers generally believed that [black] women were more dangerous to society than endangered within that society”); Cheryl Nelson Butler, *Blackness as Delinquency*, 90 WASH. U. L. REV. 1342, 1385 (2013) (describing how black girls at the turn of the last century were often framed by the law and juvenile system as “Jezebels”).

120. *See, e.g.*, MICHAEL A. REMBIS, *DEFINING DEVIANCE: SEX, SCIENCE, AND DELINQUENT GIRLS, 1890–1960*, at 35 (2011) (noting that in Illinois, social reformers seemed to focus on native-born girls rather than immigrants or the rural poor); Mack, *supra* note 33, at 110–11 (warning about the decreasing virtues of Jewish girls and congestion in “ghetto districts”); Malnig, *supra* note 64, at 86 (suggesting that young women of working and middle classes became united under the banner of pleasure seeking).

121. *See* MUMFORD, *supra* note 3, at 93 (“The newspaper discourse helped to circulate the conception that all white women involved with black men were prostitutes.”). *Cf.* Kim Taylor-Thompson, *Girl Talk—Examining Racial and Gender Lines in Juvenile Justice*, 6 NEV. L.J. 1137, 1140 (2005–06) (“The girl who is different by virtue of race and/or sexual experience continues to be the focus of our intervention.”).

122. *See, e.g.*, *Raid Open Dives Run for Soldiers*, N.Y. TIMES, Dec. 3, 1917, at 22 (describing concerns for young soldiers being lured into immoral misconduct at dance halls). *See also* ESTELLE B. FREEDMAN, *MATERNAL JUSTICE: MIRIAM VAN WATERS AND THE FEMALE REFORM TRADITION* 259 (1996) (noting that “wartime propaganda posters” depicted young women as threats to wartime secrets); REMBIS, *supra* note 120, at 61–64 (recounting fears about “khaki mad” girls who sought to engage in sexual activities with soldiers and potentially endanger them). *Cf.* THE COMMITTEE OF FIFTEEN, *supra* note 37, at 156 (“[A] system of moral control cannot overlook the fact that venereal disease is frequently transmitted to innocent persons,” where it often moved from infected husbands of all races and social classes to their wives); PERRY, *supra* note 5, at 60 (describing the Isreals’s “family tragedy” that in part motivated her social reform work to fight prostitution—Charles’s sister being stricken with a deadly venereal infection by her husband).

123. *See* BOYER, *supra* note 2, at 200–01 (noting that the initial concerns about American prostitution related to a desire to maintain the social purity of young women, but that focus then moved to social hygiene); THE COMMITTEE OF FIFTEEN, *supra* note 37, at 58–75 (describing two different motivations behind fighting prostitution—moral and sanitary).

124. *See* CHINN, *supra* note 7, at 98 (explaining that at some point Progressives turned away from private groups to the state to intervene through “the police and the courts to enforce their authority over their daughters”); HICKS, *supra* note 3, at 194–97 (citing examples of black working-class families turning to the courts to try to address behaviors of their daughters); ODEM, *supra* note 11, at 54 (describing how immigrant and working-class families turned to the courts to try to control their daughters). *See also* Elizabeth Lunbeck, *A New Generation of Women: Progressive Psychiatrists and the Hypersexual Female*, 13 FEMINIST STUD. 513, 513 (1987) (documenting how many “new women” of the working class came to be feared as “hypersexual psychopaths,” particularly female juvenile delinquents, charged with immoral behavior).

Consequently, as the preventative work of Israels and others wound down, efforts to contain and incarcerate young girls for alleged “morals” violations ramped up. For instance, in 1915 Illinois passed its “involuntary commitment law,” which permitted the arrest and “treatment” of “feeble-minded” youth at a state institution.<sup>125</sup> The law was used largely to detain young girls who were seen as “sexually delinquent” from engaging in inappropriate sexualized activity.<sup>126</sup> A few years later, New York passed its Wayward Minors’ Act, allowing for the prosecution of any person between the ages of sixteen and twenty-one for “habitually associating with dissolute persons,” including prostitutes or pimps, or for being “in danger of becoming morally depraved.”<sup>127</sup> Although not gender-specific by its terms, New York’s law was understood to be “concerned chiefly with the sexually promiscuous girl.”<sup>128</sup> If convicted, such girls could be committed to a religious, charitable or reformatory institution for up to three years.<sup>129</sup>

To enforce these sweeping laws, vice officers conducted raids at dance halls and other public locations across the country.<sup>130</sup> In many instances, girls were arrested without direct substantiating evidence.<sup>131</sup> Across the country it became unclear what actions actually counted as crimes of vice. Indeed, one account of the New York City’s Women’s Night Court demonstrated its goal to find, screen, and detain girls who were considered mentally deficient, “social evil[s],” or who carried communicable diseases, with little concern for the weight of the evidence to support the charges.<sup>132</sup> These practices resulted in the processing and

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125. See REMBIS, *supra* note 120, at 2–3.

126. *Id.* at 2–3, 34.

127. See Mae C. Quinn, *The Modern Problem-Solving Court Movement: Domination of Discourse and Untold Stories of Criminal Justice Reform*, 31 WASH. U. J. L. & POL’Y 57, 70–71, n.63 (2009) (citing the New York Wayward Minors’ Act, Title VII-A, Code of Criminal Procedure, Section 913-a). For more on the history of New York’s Wayward Minor Statute, see PAUL TAPPAN, *DELINQUENT GIRLS IN COURT* 44–56 (1947).

128. BERNARD C. FISCHER, *JUSTICE FOR YOUTH: THE COURTS FOR WAYWARD YOUTH IN NEW YORK CITY* 21–31 (1955). See Quinn, *Domination of Discourse*, *supra* note 127, at 70 (describing how Wayward Minors’ Court for Girls primarily dealt with young women charged with acts of prostitution and other “sexual misconduct”).

129. Quinn, *Domination of Discourse*, *supra* note 127, at 70–71 n.63.

130. *E.g.*, *Quick Indictments for Impairing Army*, N.Y. TIMES, Dec. 4, 1917, at 6; *Raid Open Dives Run for Soldiers*, N.Y. TIMES, Dec. 3, 1917, at 22.

131. See, *e.g.*, Whitin, *supra* note 118, at 181–82 (1914) (General Secretary of the Committee of Fourteen reporting that “solicitation” was supposed to be supported by direct evidence but “loitering” could be shown by “circumstantial evidence of the witnesses, with but few exceptions a police officer in citizen clothes”); *Dancing Hall Raided*, N.Y. TIMES, March 7, 1910, at 18 (reporting on raid where police acted in collaboration with Children’s Society agents where the manager was arrested on a charge of “impairing the morals of minors,” and eleven girls—ages 11 to 17—were taken into custody for alleged “improper guardianship”). See also Quinn, *Revisiting Anna Moscovitz Kross’s Critique*, *supra* note 37, at 680–81 (describing the problem of young women being improperly arrested and convicted without sufficient evidence).

132. Whitin, *supra* note 118, at 181, 186. See also TAPPAN, *supra* note 127, at 49 (“[T]hough there is no evidence of direct sexual misconduct,” during the 1920s and 1930s girls were adjudicated as wayward minors and placed on probation or committed); Bertha Rembaugh, *Problems of the New*

prosecution of countless teenage girls for amorphously acting out and threatening the future of good order.

Interestingly, a variety of historical accounts—with many still emerging—seek to describe the various populations of girls who were ensnared by systems of state control and containment during this time. For instance, Kriste Lindenmeyer’s history of the federal Children’s Bureau claims that across the country, juvenile court prosecutions against black girls in the 1920s and 1930s were dismissed more often than cases against white girls.<sup>133</sup> And Michael Rembis’s new history of North Carolina’s sex delinquency efforts indicates that native-born, working-class, white girls were legally certified as sexual delinquents more frequently than girls of color.<sup>134</sup>

But Kevin Mumford has powerfully suggested that during this same period, young black women in New York City were targeted by police as alleged prostitutes more than young white women.<sup>135</sup> Similarly, Cheryl Hicks has argued that black girls were both hypersexualized and desexualized by Progressive Era justice system narratives, and more likely to be seen as violent offenders in need of imprisonment, as opposed to probation.<sup>136</sup> Kim Taylor-Thompson has also written that the state used more punitive methods against black girls than against white girls at this time.<sup>137</sup>

Meaningfully quantifying and reconciling this data in hindsight—particularly across different geographic domains—may prove impossible. But desires to maintain the purity of a white race—both morally and genetically—clearly served as a touchstone for these legal movements.<sup>138</sup>

Additionally, the policing of sexually “wayward” girls drove reformatory efforts, whereas boys were more often prosecuted for nonsexual transgressions.<sup>139</sup> For instance, a 1912 study of the Los Angeles court system study indicated that

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*York Night Court for Women*, 2 WOMEN L.J. 45 (1912) (reporting on “the ease with which women are accused and convicted of violations of the law governing prostitution”).

133. LINDENMEYER, *supra* note 25, at 150. This, of course, could suggest that juvenile courts saw white girls as more worthy of “help” and rehabilitation than black girls. See Robin Walker Sterling, *Fundamental Unfairness: In Re Gault and the Unfinished Due Process Revolution in Juvenile Justice*, 72 MD. L. REV. 607, 623–24 (2013) (claiming the “child saver” account used in *Gault* to justify and perpetuate juvenile court practices is rooted in a history of “saving” white children only).

134. REMBIS, *supra* note 120, at 34–35 (“[R]eformers in Illinois focused their campaign for eugenic commitment on young, native-born, working-class women who actively participated in the burgeoning urban industrial culture . . .”).

135. See MUMFORD, *supra* note 3, at 94.

136. HICKS, *supra* note 3, at 126–28, 188–89.

137. Taylor-Thompson, *supra* note 121, at 1159–60.

138. A full account of the wide range of systemic extra-legal racist prejudices and practices which persisted to punish all blacks and other minorities in daily life—not only in cities but nearly all corners of American society—is obviously beyond the scope of this paper, which is focused on urban policing and prosecutions efforts relating to female adolescent purity and promiscuity.

139. That is not to say that black males were not framed as a sexual threat to white women during this time. Instead, policing the morality of black teenage boys did not seem to be a concern.

nearly sixty-four percent of all girls with active juvenile court cases faced charges of “being lewd and dissolute”—compared to boys who overwhelmingly faced theft and burglary charges.<sup>140</sup> In 1913, news reports described a crisis in New York’s Bedford Hills State Reformatory, which was flooded with “wayward girls” for whom there was no room.<sup>141</sup> A 1916 study of Chicago’s juvenile court indicated that while only 21% of charged boys were placed outside of their homes, 51% of the charged girls were sent to institutions.<sup>142</sup> And by 1920, nineteen new reformatories had to be established across the country to handle the explosion of young women being taken into custody and placed outside of their homes.<sup>143</sup>

It has been well documented that such prohibitions and punitive efforts were largely unsuccessful in changing young people’s behaviors over the long term.<sup>144</sup> Historians have thus referred to these “moral-reform crusades” as general failures in law reform and enforcement.<sup>145</sup> And today’s adolescents, resentful of top-down mandates about how they should enjoy themselves,<sup>146</sup> continue to develop their identities concurrent with the evolution of modern life.<sup>147</sup>

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140. Emory S. Bogardus, *A Study of Juvenile Delinquency and Dependency in Los Angeles County for the Year 1912*, 5 J. CRIM. L. & CRIMINOLOGY, 387, 393–94 (1914–15).

141. *No Room to House Wayward Girls*, N.Y. TIMES, Apr. 27, 1913, at 13 (reporting that while the facility was built for no more than 320 girls, it housed more than 500 inmates).

142. REMBIS, *supra* note 120, at 40–41 (analyzing results of studies conducted by Edith Abbott and Sophonisba Breckinridge; “Experts asserted that the disparity between the percentage of girls who were incarcerated and the percentage of boys who were incarcerated existed, in part, because adolescent boys’ crimes were not as serious as those committed by teenage girls.”).

143. *See, e.g.*, Marlon Candy Dodd & Helen Worthington Rogers, *Tabulation of Laws Establishing Reformatories for Women in the United States*, 13 J. CRIM. L. & CRIMINOLOGY 408 (1922–23) (documenting the establishment of new women’s reformatories in 19 states, the majority of which housed girls as young as sixteen). *See also* HICKS, *supra* note 3, at 274 (describing how paroled Black women were employed as domestic servants without any choice); *No Room to House Wayward Girls*, N.Y. TIMES, Apr. 27, 1913, at 13 (citing an example of a reformatory so crowded that it released many girls on parole).

144. *See, e.g.*, BOYER, *supra* note 2, at 217–18 (describing “inherent futility of [the] drive to reimpose earlier patterns of social conformity by force of law . . .”). CHINN, *supra* note 7, at 123 (discussing failure of dance-hall reform); PERRY, *supra* note 5, at 54–57 (“In the end, dance hall reform proved disappointing.”).

145. BOYER, *supra* note 2, at 217–18; PERRY, *supra* note 5, at 56 (“When the association took violators to court, juries acquitted them. Police regularly ignored violations of fire, sanitation, and ventilation codes. They might interfere in fights, but since they were usually outnumbered they did so rarely. . . . Belle Israel’s dance hall reform was thus only partially successful.”).

146. *See, e.g.*, PERRY, *supra* note 5, at 56–57 (noting that youth resented the controls being placed on their activities); Malnig, *supra* note 64, at 83 (recounting that women simply “defied the restrictions or found alternative means and sources of dancing”). *See also* A. H. Fromenson, *East Side Preventive Work*, in TRENDS AND ISSUES IN JEWISH SOCIAL WELFARE IN THE UNITED STATES, 1899–1958, at 118–23 (Robert Morris and Michael Freund eds., 1966) (describing a feeling among youth that reform workers were working too closely with police, and the youth resented their “sit-up-straight-and-be-good social rooms”).

147. Indeed, descendants of the Turkey Trot and dance-hall culture are alive and well today as young people continuing “clubbing” in a range of ways. *See* Melena Ryzik, *Starter Clubs*, N.Y. TIMES, Jan. 15, 2006, available at <http://www.nytimes.com/2006/01/15/fashion/sundaystyles/15TEEN.html> (describing the teen club scene in New York City, including an underage dance club in Chelsea, as well as efforts by teens to get into 21-and-over clubs); *Protect Your Children From*

## III.

APPREHENDING FEMALE ADOLESCENT ROAMING IN OUR NEWEST URBAN  
DOMAIN: CYBERSPACE

One hundred years after the Progressive Era, we find ourselves in the midst of another era of modernization, one that presents remarkable parallels to the rise of the industrial city at the turn of the last century. This most recent development involves what many see as our newest emerging urban environment: the digital domain.<sup>148</sup> This new city space—cyberspace, and the interconnectivity provided by the Internet—presents many of the same features and characteristics of the physical urban centers that developed at the turn of the last century.

Some urban studies scholars describe cities as having particularized population, economic, and social features.<sup>149</sup> Cities are also described as common grounds that work to support and stimulate inhabitants.<sup>150</sup> Regardless of which definition is applied, by now it is almost passé to view the Internet, with its many highly populated communities, various avenues of communication, and array of public and private addresses as a city-space.<sup>151</sup> Video games, cell phones, and other modern technologies are part of the landscape of this continually expanding metropolis.<sup>152</sup>

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*Raunchy 'Teen Nights' Hosted in City Clubs*, FOX NEWS, Dec. 19, 2007, available at <http://www.foxnews.com/story/0,2933,317530,00.html> (warning of a “club full of teenagers, as young as 13 years old, bumping and grinding up against each other” and where some nineteen year olds might be present).

148. RIENHOLD NIEBUHR, *THE IRONY OF AMERICAN HISTORY* 11 (1952) (discussing America’s efforts to fight against Communism, Niebuhr noted “[c]ontemporary history . . . offers ironic refutation of some of our early hopes and present illusions about ourselves”). For purposes of this project, it is perhaps a further irony that Niebuhr describes the United States as an “adolescent nation, with illusions of childlike innocence.” *Id.* at 109.

149. William H. Frey & Zachary Zimmer, *Defining the City in HANDBOOK OF URBAN STUDIES* at 26–27 (Ronan Paddison ed., 2001) (suggesting that cities or urbanism may be defined by three key features: ecological or population density, economic function, and social features).

150. Paul Goldberger, *Cities, Place and Cyberspace*, Lecture at the University of California, Berkeley, (Feb. 1, 2001), <http://www.paulgoldberger.com/lectures/18> (“the role of the city, the role of any city, to put it as bluntly as possible, is to be a common place, to be a common ground, and as such to support and stimulate us”). Cf. David J. Barron, *The Promise of Tribe’s City: The Constitution and a New Urban Age*, 42 TULSA L. REV. 811, 818 (2007) (noting the concept of city under the law is always “up for grabs”).

151. Stephen Graham, *Cyberspace and the City*, 64 TOWN AND COUNTRY PLANNING 198, 198 (1995) (“Remarks about ‘cybercities’, ‘virtual cities’, ‘virtual communities’, ‘virtual shopping malls’ and ‘cybervilles’ are increasingly common.”); Stephen Graham & Alessandro Aurigi, *Virtual Cities, Social Polarisation and the Crisis in Urban Public Space*, 4 J. OF URBAN TECH. 19, 35–36 (1997) (describing the online world as an “urban cyberspace”). See also danah boyd, *White Flight in Networked Publics? How Race and Class Shaped American Teen Engagement with MySpace and Facebook*, in RACE AFTER THE INTERNET 203, 204 (Lisa Nakamura and Peter A. Chow-White eds., 2011) (comparing moves from MySpace to Facebook to “white flight” seen in American cities); Mike Crang, *Cyberspace as the New Public Domain in URBAN DIVERSITY: SPACE, CULTURE, AND INCLUSIVE PLURALISM IN CITIES WORLDWIDE* 99–122 (Caroline Wanjiku Kihato, Meigan Massoumi, Blair A. Ruble, & Allison M. Garland eds., 2010) (noting how our physical cities and the online environments are mutually constitutive and reinforce each other).

152. See MIZUKO ITO, HEATHER HORST, MATTEO BITTANTI, DANAH BOYD, BECKY HERR-

Given the similarities between the Internet and actual cities at the turn of the last century, it is not surprising that reactions to their emergence are also similar. Adult concerns about industrial urban centers are being echoed today in complaints about the Internet. The Internet is met with trepidation by adults afraid of its various unknowns and potential challenges to the existing world order.<sup>153</sup> Many see it as a dangerous domain for young people, especially girls.

In addition, while terms like “racial integrity” are no longer openly used, today’s adult-driven legal initiatives suggest continuing concern for the purity of white girls—“our daughters.” Thus contemporary reformers are reenacting earlier panic-based policing efforts around female pubescence on the internet in ways that reinforce traditional understandings of, and hierarchies relating to, gender, sex, sexuality, and race.<sup>154</sup>

Although the potential for some online harm is real, this most recent round of arresting urban adolescents may present the most futile set of efforts yet. They demonstrate the need to abandon outdated and ineffectual interventions that seek to restrict and criminalize identity formation in youth. Instead, adults should challenge themselves to embrace aspects of adolescent development that they tend to see as different from (and therefore threatening to) their own ideas about “normal” adult lifestyle choices.

Rather than simply restraining youth, we could try to learn from their intuitions of inclusivity and creativity, demonstrated by their actions on the Internet. In fact, drawing on international norms, we might empower young people to play a role in reshaping our communities in the days ahead. In the end, they may help us create a more egalitarian world with fewer constructed hierarchies, unnecessary boundaries, and limiting binaries.

#### *A. Virtual Youth and the Deconstruction of Boundaries*

Today’s youth flock to the Internet as an exciting new domain with fresh opportunities for exploration and self-discovery, just as they flocked to Chicago, Los Angeles, and New York in the early 1900s.<sup>155</sup> Again seeking out “a place of

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STEPHENSON, PATRICIA G. LANGE, C.J. PASCOE, & LAURA ROBINSON, *LIVING AND LEARNING WITH NEW MEDIA: SUMMARY OF FINDINGS FROM THE DIGITAL YOUTH PROJECT 1* (John D. and Catherine T. MacArthur Foundation 2008) (describing how iPods, cell phones, and other electronic devices are fixtures in the online world for youth).

153. See SHERRY TURKLE, *LIFE ON THE SCREEN: IDENTITY IN THE AGE OF THE INTERNET* (1995) [hereinafter *LIFE ON THE SCREEN*] (“[P]arental panic about the dangers of cyberspace is often linked to their unfamiliarity with it . . . the Internet is the new unknown.”). See generally Graham, *Cyberspace and the City*, *supra* note 151, at 198 (“Debates on cyberspace tend to be simplistic, taking either a utopian or a dystopian (or anti-utopian) form. Cyberspace is seen to be either totally liberating and all good or totally dangerous and all bad—a vision of heaven or a vision of hell.”).

154. See Graham & Aurigi, *supra* note 151, at 28–29 (observing that elite hierarchies and power structures replicate themselves in the virtual world).

155. ITO, HORST, BITTANTI, BOYD, HERR-STEPHENSON, LANGE, PASCOE & ROBINSON, *supra* note 152, at 1 (“Social network sites, online games, video-sharing sites, and gadgets such as iPods and mobile phones are now fixtures of youth culture. They have so permeated young lives that it is hard

their own” where they can socialize, interact, and create norms, youth across the country have mastered the use of the Internet.<sup>156</sup>

Through Internet use, today’s youth have begun to claim their own space where traditional societal boundaries such as those of race, class, and gender are deconstructed.<sup>157</sup> Like urban youth at the turn of the last century, today’s online youth appear to be more accepting of differences than their adult counterparts, as seen in the websites they visit and the ways that they “friend” and “like” each other on social media sites.<sup>158</sup> It is not uncommon for young people to have lists of acquaintances on their webpages, crossing over lines of gender, race, class, and geography.<sup>159</sup> Based on the interactions of teenagers in various online chat rooms, one modern study has found, that “we are approaching . . . a time where diversity is valued and a common topic of discussion” for teens.<sup>160</sup>

Their tendency towards openness in the virtual world breaks from mainstream American leanings towards firm boundaries.<sup>161</sup> These developments, more than any alleged dangers or misbehaviors, may be at the root of adult anxiety about youth on the web.

The electronic world has also allowed youth to seek out groups and organizations not available in their geographic communities.<sup>162</sup> For example, teens who are not “actual” city dwellers become exposed to urban culture through

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to believe that less than a decade ago these technologies barely existed.”).

156. *Id.* (“Online spaces enable youth to connect with peers in new ways. . . . The majority of youth use new media to “hang out” and extend existing friendships in these ways.”). See BRETT ELIZABETH BLAKE, *A CULTURE OF REFUSAL: THE LIVES AND LITERACIES OF OUT-OF-SCHOOL ADOLESCENTS* 28 (2004) (asserting marginalized youth sometimes take “their voices, their cultural spaces, and their literacies underground”).

157. Susannah Stern, *Producing Sites, Exploring Identities: Youth Online Authorship*, in *YOUTH, IDENTITY, AND DIGITAL MEDIA* 95, 107 (David Buckingham ed., 2008).

158. ITO, HORST, BITTANTI, BOYD, HERR-STEPHENSON, LANGE, PASCOE & ROBINSON, *supra* note 152, at 15–19.

159. *Id.* at 19 (discussing how youth maintain ties with other young people they have met in a wide range of settings, from school, to sporting events, to church, to summer camps).

160. Brandesha Tynes, Lindsay Reynolds, & Patricia Greenfield, *Adolescence, Race, and Ethnicity on the Internet: A Comparison of Discourse in Monitored vs. Unmonitored Chat Rooms*, 25 *APPLIED DEVELOPMENTAL PSYCHOLOGY* 667, 681 (2004).

161. See danah boyd & Alice Marwick, *Social Privacy in Networked Publics: Teens’ Attitudes, Practices, and Strategies* 9, OXFORD INTERNET INSTITUTE (Sept. 22, 2011), <http://ssrn.com/abstract=1925128> (“While teens use Facebook and MySpace as communication channels, they also use them as networked publics, relishing the opportunity to connect to a broader community of people.”); danah boyd, *MySpace vs. Facebook: A Digital Enactment of Class-Based Social Categories Amongst American Teenager* (May 2, 2009), <http://www.danah.org/papers/talks/ICA2009.html> (recounting that youth replicated class and race-based stereotypes online in terms of social media network choices in 2006–07—as happened in the mass exodus from MySpace to Facebook in part driven by white parental fears about difference and “dangers” of the MySpace community).

162. ITO, HORST, BITTANTI, BOYD, HERR-STEPHENSON, LANGE, PASCOE & ROBINSON, *supra* note 152, at 1 (“Online groups enable youth to connect to peers who share specialized and niche interests of various kinds, whether that is online gaming, creative writing, video editing, or other artistic endeavors.”).

their existence in the Internet's cityscape. Additionally, young people may test and construct new personality choices and identities for themselves by way of the Internet without ever opening their mouths or leaving their own neighborhoods.<sup>163</sup>

### B. Computerized Conurbation as Delinquency

Many adults would prefer that the virtual world simply mirror our physical domain.<sup>164</sup> They fear that youth are rejecting community norms, losing touch with reality, and crossing a range of boundaries while online.<sup>165</sup> The crux of such anxieties may lie in the power youth have in the cyber city to challenge dominant adult, heteronormative, and Anglo-centric visions of the future.<sup>166</sup> And white girls, with their continuing symbolic and material value to certain social norms and structures, would appear central to maintaining such conventions.

#### 1. Anxiety About Internet Access

Girls between the ages of twelve and seventeen have become the "fastest growing group in terms of online participation" in this country.<sup>167</sup> As of 2002, their use of the web grew "five times faster than the overall online population" nationwide.<sup>168</sup> And unlike boys, who spend more time gaming online, girls are using the Internet to educate themselves about a wide range of topics and connect with others.<sup>169</sup> A recent study demonstrated that while boys tend to see cellular telephones as restrictive devices that allow them to be contacted wherever they go,

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163. See generally *id.*

164. See Stern, *supra* note 157, at 95 (recounting how many adults are apprehensive about youthful self-creation and representation on the Internet).

165. Stephen Balkam & Nancy Gifford, *Calming Parental Anxiety While Empowering Our Digital Youth*, FAMILY ONLINE SAFETY INSTITUTE 3 (Sept. 2012), <http://www.fosi.org/images/stories/resources/calming-parental-anxiety-while-empowering-our-digital-youth.pdf> (when it comes to social media and youth many adults are "focused on the negative" but are "misguided because the negative risks we are focusing on are based on myths, misconceptions and not on research"). See also Janice D'Arcy, *New Fears Over Teen Online Activity*, WASH. POST, Nov. 20, 2012, [http://www.washingtonpost.com/blogs/on-parenting/post/new-fears-over-teen-online-activity/2012/11/20/dd61b7bc-333a-11e2-9cfa-e41bac906cc9\\_blog.html](http://www.washingtonpost.com/blogs/on-parenting/post/new-fears-over-teen-online-activity/2012/11/20/dd61b7bc-333a-11e2-9cfa-e41bac906cc9_blog.html) (recounting parents' "oft-cited worry, how a teen's use of social media today will affect his future").

166. If there is any question about the continued fear of racial "mixing" in this country by way of sexual intimacy, one need look no further than the controversy spurred by the recent television advertisement for Cheerios that featured a biracial family. See, e.g., Megan Hatcher-Mays, *I'm Biracial, and that Cheerios Ad is a Big Fucking Deal. Trust Me.*, JEZEBEL (May 31, 2013, 5:10 PM), <http://jezebel.com/im-biracial-and-that-cheerios-ad-is-a-big-fucking-dea-510740851>. Neal Lester, *Cheerios Ad Touches Racial Nerve*, TEACHING TOLERANCE (June 4, 2013), <http://www.tolerance.org/blog/cheerios-ad-touches-racial-nerve>; Carrie Healey, *Kids React to Controversial Cheerios Commercial*, THE GRIO (July 16, 2013, 10:18 AM), <http://thegrio.com/2013/07/16/kids-react-to-controversial-cheerios-commercial/>.

167. *More Than an Internet Hangout*, GIRLS INC. (Aug. 1, 2002), <http://www.girlsinc.org/news/press-releases/p2-1-27.html>.

168. *Id.*

169. *Girls and Internet Technology*, GIRLS INC., <http://www.girlsinc.org/downloads/GirlsandIT.pdf> (comparing internet use of boys and girls).

girls see them as a tool of liberation, providing autonomy and freedom.<sup>170</sup> By communicating across cyberspace without embodied presentations, boys and girls alike are able to interact without sex, race, or class being apparent. These identity features, therefore, do not serve as a barrier to connection.<sup>171</sup>

In these and other ways, the public (and yet anonymous) features of the Internet and electronic devices resemble the dark corners of public dance halls and movie theaters of the Progressive Era. They allow youth to feel more liberated and empowered than they do in their “actual” lives.<sup>172</sup> By embracing this, they have begun to break down barriers that continue to exist in the real world, such as the assumed qualities embedded within sex, race, and class.

But adult responses to this virtual breakthrough largely track reactions to young girls who sought to challenge boundaries in corporeal cities during the Progressive Era: adults’ fear and concern lead to attempts to control young people’s behavior, under the banner of “for their own good.” Some critics worry about the possibility of “computer cross-dressing” where “age, gender, ethnicity are all seen as reconstructable,”<sup>173</sup> claiming such practices skew natural sensibilities about identity and can lead to mental disorders.<sup>174</sup> The computer world is seen as the same kind of threat to “normal” family and lifestyle choices as dance halls and movie theaters were during Jane Addams’ time. It offers an alternative set of realities and identities for youth to consider, which adults perceive as threatening.<sup>175</sup>

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170. See Shiela Henderson, Rebecca Taylor & Rachel Thomson, *In Touch: Young People, Communication, and Technologies*, 5 INFORMATION, COMMUNICATION, AND SOCIETY 494, 503–04 (2002).

171. See Tynes, *supra* note 160, at 675–76 (describing how some youth, more than in the corporeal world, go out of their way to embrace biracial and other nondominant identity traits while online). This ability to shed material embodiment while online may help address Judith Butler’s concern in her book *Bodies that Matter* that having a “sex” is “one of the norms by which the ‘one’ becomes viable at all, that which qualifies a body for life within the domain of cultural intelligibility.” JUDITH BUTLER, *BODIES THAT MATTER: ON THE DISCURSIVE LIMITS OF “SEX”* 2 (1993).

172. ITO, HORST, BITTANTI, BOYD, HERR-STEPHENSON, LANGE, PASCOE & ROBINSON *supra* note 152, at 30 (“These online groups provide an opportunity for youth to exercise adult-like agency and leadership that is not otherwise available to them.”). See also Joanne Addison and Michelle Comstock, *Virtually Out: The Emergence of a Lesbian, Bisexual, and Gay Youth Cyberculture*, in GENERATIONS OF YOUTH 367, 368–69 (noting that many gay, lesbian, bisexual, questioning, and transgender youth have found the internet to be a safe space in which to disclose or discuss their identity).

173. Mike Featherstone, *The Citizen and Cyberspace*, THE HEDGEHOG REVIEW 63, 67 (1999), available at <http://www.iasc-culture.org/THR/archives/Identity/1.1JFeatherstone.pdf>.

174. *Id.* Featherstone notes that some argue online exploration of the self may result in a “lack of a strong identity, the possibility of fragmentation, and splitting into multiple selves, formerly regarded as a pathology.” *Id.* at 68.

175. Well-known technology and psychology expert Sherry Turkle also warns about the dangers of teenage virtual practices. In a trilogy of books about computerized conurbation, Turkle has moved from a place of relative optimism about the online world to one of concern. See generally SHERRY TURKLE, *ALONE TOGETHER: WHY WE EXPECT MORE FROM TECHNOLOGY AND LESS FROM EACH OTHER* (2011) [hereinafter *ALONE TOGETHER*]; *LIFE ON THE SCREEN*, *supra* note 153; SHERRY

As in the Progressive Era, when young girls began attending films and dance halls, concerns about “abnormal” female identities are driving modern public information campaigns and law reform movements. In fact, researchers have found that a modern moral panic appears to have taken hold around the ideas of girls online, even while at home.<sup>176</sup> Approximately eighty-five percent of parents believe that “the internet is the medium that poses the most risk for teens.”<sup>177</sup> Most of the concern centers on our nation’s daughters—not its sons.

For example, the television show “To Catch a Predator” has captured the American imagination, sending strong messages that young women who use computers face a great danger of being sexually victimized.<sup>178</sup> Such narratives also suggest that young women are extremely naïve, easily prone to accepting invitations from those who may do them harm, and essentially lack any agency whatsoever.<sup>179</sup> Moreover, they tend to depict potential online perpetrators as an unknown “other.”<sup>180</sup> This framing is repeated in news headlines and legislative debates as well, feeding fears about the threats to the sanctity of the traditional American family.<sup>181</sup>

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TURKLE, *THE SECOND SELF: COMPUTERS AND THE HUMAN SPIRIT* (1984). Her earlier work called for open-mindedness about young people on the net; she now worries about impersonal nature of electronic communications and the boundaries they may challenge. In particular, she now argues that widespread text messaging may be unhealthy as it allows vast numbers of youth to be in touch with many people at the same time, while also tending to “keep them at bay.” *ALONE TOGETHER, supra*, at 15 She further laments today’s youth are reinventing conceptions of intimacy by taking traditionally private activities into a public space. *Id.* at 172.

176. See Justine Cassell & Meg Cramer, *High Tech or High Risk: Moral Panics about Girls Online*, in *DIGITAL YOUTH, INNOVATION, AND THE UNEXPECTED* 53–76 (John D. and Catherine T. MacArthur Foundation Series, MIT Press 2008).

177. *Id.* at 54.

178. See, e.g., *id.* at 54–55.

179. *Id.* See also Michele Oberman, *Turning Girls Into Women: Re-Evaluating Modern Statutory Rape Law*, 8 *DEPAUL J. OF HEALTH CARE L.* 109, 116 (2004) (claiming that “for girls, adolescence is a time of acute crisis, in which self-esteem, body image, academic confidence, and the willingness to speak out decline precipitously” suggesting a lack of capacity to make consensual decisions). Cf. Linda McClain, *Irresponsible Reproduction*, 47 *HASTINGS L.J.* 339, 358 (1996) (interrogating claims that teenage mothers necessarily embody “moral incapacity, immaturity, and lack of moral agency.”).

180. Cassell and Cramer, *supra* note 176, at 53–55. One popular public service announcement had the predator as an unknown stranger and the potential victim a blond white girl from a middle-class, two parent household. *Id.* at 54. See also Mary Madden, Sandra Cortesi, Urs Gasser, Amanda Lenhart, & Maeve Duggan, *Parents, Teens, and Online Privacy*, Pew Foundation (Nov. 14, 2012), <http://pewinternet.org/Reports/2012/Teens-and-Privacy.aspx> (“‘stranger danger’ worries parents”).

181. Vic Kanwar, *Capital Punishment as “Closure”: The Limits of a Victim-Centered Jurisprudence*, 27 *N.Y.U. REV. L. & SOC. CHANGE* 215, 231 (2001–02) (modern “laws are named after prominent sentimentalized victims—white female children as in ‘Megan’s Law’ who constitute the public’s preferred image of a ‘victim’ and consequently determine the expressive function of this victim-centered legislation”); Kristen M Zgoba, *Spin Doctors and Moral Crusaders: The Moral Panic Behind Child Safety Legislation*, 17 *CRIMINAL JUSTICE STUDIES: A CRITICAL JOURNAL OF CRIME, LAW AND SOCIETY* 385, 386 (2006) (describing the headlines surrounding the abduction and abuse of children around the country, most of which have focused on white girls, that feed the “fear factor” around “child predation”).

A similar phenomenon can be seen when we compare the level of the news coverage and

Like the immigrant boarders infiltrating tenement apartments or foreigners running dance halls at the turn of the last century, such “outsiders” are feared as having the potential to sexually victimize pure young girls who enter the cyber city. But in the same way dangers of the “white slave trade” were skewed and overstated, potential dangers for young girls who roam the Internet while at home are similarly exaggerated today.<sup>182</sup> In fact, studies have repeatedly shown that most girls who are sexually assaulted are victims of people they know.<sup>183</sup> Beyond this, child sexual abuse has actually decreased in recent years.<sup>184</sup>

As outlined above, computer engagement provides many positive benefits for youth. This is not to say that no dangers exist and that youth should be wholly unsupervised in their online activities. Rather it appears fear of negative possibilities overwhelmingly haunt certain adults. And, as described below, young white girls may be at the heart of these extreme reactions.

## 2. “Our Daughters” Posting Provocative (Re)presentations

Fear-driven campaigns, much like the ones seen at the turn of the twentieth century, have ramped up in response to continued computer engagement by girls. Beyond terrorizing tales of improper interactions with individual strangers online, we now hear more about web-based domestic child trafficking rings and widespread conspiracies luring young girls into lives of forced prostitution.<sup>185</sup>

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number of visual depictions provided for the young white victims whose lives were tragically taken during the Newtown, Connecticut, shooting this year to the coverage provided for the youth regularly shot and killed urban areas. See, e.g., Ross Douhat, *The Loss of the Innocents*, N.Y. TIMES, Dec. 16, 2013, at 13. See also *Newtown Tragedy: Unbearable Loss, Enduring Love—Portraits of Precious Lives*, PEOPLE (Dec. 19, 2012), [http://www.people.com/people/package/article/0,,20656736\\_20657637,00.html](http://www.people.com/people/package/article/0,,20656736_20657637,00.html). The victims of the latter are usually youth of color. See David Boroff, *Petition Urges President Obama to Visit Chicago in Wake of Hadiya Pendleton Murder*, N.Y. DAILY NEWS, Feb. 7, 2013 (Chicago’s Black Youth Project called on President Obama to return home to Chicago after the shooting of Hadiya Pendleton, a black teenage girl, just like he visited Newtown).

182. Janis Wolak, David Finkelhor, Kimberly J. Mitchell, & Michele L. Ybarra, *Online “Predators” and their Victims: Myths, Realities, and Implications for Intervention and Treatment*, 63 AM. PSYCHOLOGIST 111, 111 (2008) (“The publicity about online ‘predators’ who prey on naïve children using trickery and violence is largely inaccurate.”). See also ITO, HORST, BITTANTI, BOYD, HERR-STEPHENSON, LANGE, PASCOE & ROBINSON, *supra* note 152, at 19 (noting that most youth studied refuse to communicate with unknown adults who seek to contact them online, recognizing such interactions as inappropriate and “creepy”).

183. See Henry Jenkins & danah boyd, *Discussion: MySpace and Deleting Online Predators Act*, MIT TECH TALK (May 26, 2006), <http://www.danah.org/papers/MySpaceDOPA.html> (describing how online child protection legislation distracts from the fact that most children are victimized by people in their homes or communities). See also Cortney Lollar, *Child Pornography and the Restitution Revolution*, 103 J. CRIM. L. & CRIMINOLOGY 1, 30–33 (2012) (debunking the “stranger danger” myth, explaining that child sexual abuse is most often perpetrated by family members and persons known to victims).

184. Cassell & Cramer, *supra* note 176, at 56.

185. Doezema, *supra* note 113, at 24 (suggesting that despite claims of reformers from both the white slave trade and trafficking movements that they are interested in protecting potential victims, their shared motivations were and are rooted in regulating sex and sexuality norms). See also *Media*

It is true that young girls can become the unwitting victims of pimps who run sex trade rings from the Internet. But recent accounts are being framed in such a way as to exaggerate the risks to young white girls in particular and play to Anglo-centric middle class fears about the disruption of family life and the home front.<sup>186</sup>

Reminiscent of the admonitions of Sangster and Wood-Allen, one recent legal scholar, Cheryl Hanna, warned that “our daughters” are extremely vulnerable to being pulled into sex trafficking schemes while online.<sup>187</sup> She began her powerful plea by telling the story of Christal Jean Jones, a “blond and beautiful” domestic trafficking victim, who was ultimately killed after being lured into the sex trade.<sup>188</sup> Hanna recounted how the girl had been moved from the South to live in New York City’s Harlem with her pimp—Jose “Richie” Rodriguez.<sup>189</sup> Tragically, she was found dead in his apartment some time later. The place of her death was described as a location where scantily clad girls had been seen in the past, well-dressed men came and went, and “loud hip hop music” often could be heard.<sup>190</sup>

While Christal’s case did not involve online trafficking efforts, later the author warned about such dangers. In a section entitled, “Could It Be My Daughter?,” the author explained: “Some [girls] are lured over the Internet. They come from middle-class homes and are targeted because they can often bring in premium prices for their pimps.”<sup>191</sup> Indeed, Hanna warns, “advances in technology, such as the Internet, have fueled the commercial sex industry, creating greater demand among men for younger and younger girls.”<sup>192</sup> Hanna also relies on an NGO report claiming that “[i]n New York, the demand for the ‘high class escort’—youth with breeding, looks and education—are the prostitutes most favored by the customers from the upper-end of the socio-economic scale.”<sup>193</sup>

The horrific victimization and death of Christal Jones obviously warrants our sympathy, concern, and heightened awareness around forced sex trafficking of

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*Under Fire for Missing Persons Coverage*, NBC NEWS (Jun. 5, 2005, 7:25 PM), <http://www.nbcnews.com/id/8233195/from?ET/> (noting that media reports about missing persons involve “uneven emphasis on attractive white girls” who are often depicted as the “virginal, pure, blond princess”).

186. See Doezeema, *supra* note 113. See also JESSICA VALENTI, *THE PURITY MYTH: HOW AMERICA’S OBSESSION WITH VIRGINITY IS HURTING YOUNG WOMEN* 77 (2010) [hereinafter VALENTI, *PURITY MYTH*] (noting how in contemporary debates about sexuality of young women of color, particularly when poor, are framed differently from white girls in the United States); Karen Bravo, *The Role of the Transatlantic Slave Trade in Contemporary Anti-Human Trafficking Discourse*, 9 SEATTLE J. FOR SOC. JUST. 555, 580 (2011) (noting that “[w]hile the transatlantic slave trade analogy is used to invoke the image of enslaved blacks in order to inspire taking action against modern trafficking in humans, the subordination of blacks, blackness, and the colored ‘other’ is viewed as more ‘natural’ than the enslavement of whites and whiteness”).

187. Cheryl Hanna, *Somebody’s Daughter: The Domestic Trafficking of Girls for the Commercial Sex Industry and the Power of Love*, 9 WM. & MARY J. WOMEN & L. 1, 4–5 (2002).

188. *Id.* at 3.

189. *Id.* at 1–2.

190. *Id.* at 9.

191. *Id.* at 23.

192. *Id.*

193. *Id.*

youth in this country. But Hanna's account works to suggest that young white girls are the most sought after and vulnerable of potential victims.<sup>194</sup> Although Hanna in fact noted her conscious effort to avoid overstating the potential problem of trafficking or replicating the same kind of moral panic rhetoric as was used during the "white slave trade" campaign,<sup>195</sup> her beautifully written tribute and passionate warning seems to fall prey to those very traps.

An additional cause of the "moral panic" phenomenon is adults' concern about the lack of control over young girls' sexuality once they go online.<sup>196</sup> As a result, girls who use the Internet and other electronic media to explore their identities and sexual personas by way of posting provocative messages and pictures are now being seen as the "problem."<sup>197</sup>

For example, the practice of "sexting"—sending "sexual" photographs or texts by way of email or phone messaging systems—has become a phenomenon practiced by people of all ages.<sup>198</sup> A study conducted by National Campaign to Prevent Teen and Unplanned Pregnancy and Comsogirl.com in 2009 claimed that about twenty percent of teenage girls admit to having sent nude or seminude photos.<sup>199</sup> This study received widespread press coverage and generated a great deal of public concern, resulting in calls to action by a range of commentators.<sup>200</sup> Following this report, reformers referred to the sexting phenomenon as self-

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194. Jonathan Todres, *Law, Otherness and Human Trafficking*, 49 SANTA CLARA L. REV. 605, 606–07 (2009) (critiquing how the antitrafficking movement, including a popular film that portrayed mostly white victims, has worked to create a framework that overlooks potential minority victims as "others").

195. Hanna, *supra* note 187, at 16.

196. Dr. Laura Markham, *Staying Close to Your Tween Daughter*, AHA!PARENTING.COM, <http://www.ahaparenting.com/ages-stages/tweens/staying-close> ("As tween girls begin to lose interest in pretend play and the other games that occupied their earlier years, many of them begin to spend more time on the computer, and it isn't unusual for them to fall into the grip of a computer addiction.")

197. *See supra* Part II. *See generally* RUTH M. ALEXANDER, *THE GIRL PROBLEM: FEMALE SEXUAL DELINQUENCY IN NEW YORK, 1900–1930* (1995).

198. Kimberlianne Podlas, *The "Legal Epidemiology" of the Teen Sexting Epidemic: How the Media Influences a Legislative Outbreak*, 12 U. PITTSBURGH J. L. & TECH. 1, 3 (2011) (claiming sexting is a phenomenon that is now a part of American culture).

199. Eamonn O'Donovan, *Sexting and Student Discipline*, DISTRICT ADMINISTRATION (Mar. 2010), <http://www.districtadministration.com/article/sexting-and-student-discipline>.

200. *See, e.g.*, Christopher Houck, *Youth Sexting: Balancing Media Representations and Emerging Data*, BROWN UNIV. CHILD & ADOLESCENT DEV. LETTER (Dec. 17, 2012), <http://www.childadolescentbehavior.com/sample-articles/youth-sexting-balancing-media-representations-and-emerging-data.aspx>.

destructive,<sup>201</sup> a major public health risk,<sup>202</sup> and even an “epidemic” that required legal intervention.<sup>203</sup>

But the Pew Foundation estimates that only four percent of teens have engaged in “sexting” practices.<sup>204</sup> Beyond this, a group of pediatrics researchers announced this year that only one percent of the youth they studied had actually sent what they considered to be “sexually explicit[]” photos of themselves.<sup>205</sup> Thus, similar to the way in which subjective and malleable terms such as “lewd” and “wayward” were used to try to regulate the activities of Progressive Era girls, the term “sexting” may be used to demonize a wide range of pubescent behaviors.<sup>206</sup>

### 3. Prosecution of Pubescent (S)exploration

Also reminiscent of the Progressive Era’s movement to arrest female individuality and sexuality by actually arresting the females themselves, many girls are now being prosecuted under a variety of statutes,<sup>207</sup> ranging from specialized youth sexting laws<sup>208</sup> to felony child pornography laws for producing

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201. Susan Duncan, *A Legal Response is Necessary for Self-Produced Child Pornography: A Legislator’s Checklist for Drafting the Bill*, 89 OREGON L. REV. 645, 654 (2010) (comparing sexting to underage drinking and drug use).

202. Eric Rice, Harmony Rhoades, Hailey Winetrobe, Monica Sanchez, Jorge Montoya, Aaron Plant & Timothy Kordic, *Sexually Explicit Cell Phone Messaging Associated With Sexual Risk Among Adolescents*, 130 PEDIATRICS 667, 667 (2012). The release of this PEDIATRICS report also received tremendous press and online attention with various sources announcing that “another” report shows that sexting leads to sex. *See, e.g.*, Julielynn Wong, *Sexting Linked to Increased Sexual Activity in Teens*, ABC NEWS (Sept. 17, 2012), <http://abcnews.go.com/Health/Wellness/sexting-linked-sexual-activity-teens/story?id=17236909&page=2>.

203. Podlas, *supra* note 198, at 1. *See also Sexting Girls Facing Porn Charge Sue D.A.*, CBS NEWS (Mar. 27, 2009, 10:17 AM), <http://www.cbsnews.com/stories/2009/03/27/early-show/main4896577.shtml>.

204. Amanda Lenhart, *Teens and Sexting*, PEW FOUNDATION (Dec. 15, 2009), <http://pewresearch.org/assets/pdf/teens-and-sexting.pdf> (placing estimates at about four percent of teens).

205. Kimberly J. Mitchell, David Finkelhor, Lisa M. Jones & Janis Wolak, *Prevalence and Characteristics of Youth Sexting: A National Study*, 129 PEDIATRICS 13 (2011).

206. *Cf.* Steven Schlossman & Stephanie Wallach, *The Crime of Precocious Sexuality: Female Juvenile Delinquency in the Progressive Era*, 48 HARV. ED. REV. 65, 72 (1978) (recounting that “an extraordinarily wide range of conduct was included under the label of immorality,” and that enforcement allowed the state to “instruct ethnic girls that their Yankee counterparts upheld higher standards of sexual propriety”).

207. *See, e.g.*, HAW. REV. STAT. § 712-1215.6 (1993 & Supp. 2012) (providing for a misdemeanor finding if a “minor commits the offense of promoting minor-produced sexual images”). *See also* Matthew H. Birkhold, *Freud on the Court: Re-interpreting Sexting & Child Pornography Laws*, 23 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 897, 906 (2013) (cataloguing juvenile arrests around the country for “sexting”); Henry F. Fradella & Marcus A. Galeste, *Sexting: The Misguided Penal Social Control of Teenage Sexual Behavior in the Digital Age*, 47 CRIM. L. BULL. (2011) (summarizing legislative efforts across the country that allow for prosecution of teen sexting).

208. *See, e.g.*, LA. REV. STAT. ANN. § 14:81.1.1 (2013) (“sexting” law targeting youth under seventeen years of age, allowing for up to ten days’ imprisonment for a first offense and six months’

and sharing all kinds of images of their bodies.<sup>209</sup> Some of these cases begin as school-related matters, where girls face in-school disciplinary sanctions if caught engaging in such behaviors.<sup>210</sup> But school administrators, fearful of criminal sanctions themselves for mishandling such evidence, now frequently involve the police to protect staff from claims of alleged impropriety.<sup>211</sup>

Beyond codified law, some juvenile courts are taking steps to control allegedly sexualized communications by those youths under their jurisdiction. For instance, one Missouri juvenile court has gone so far as to ban juvenile probationers from engaging in any electronic communications “involving . . . sex or nudity.”<sup>212</sup> This standing probation condition applies to any kind of case—sex-related or not, felony or misdemeanor.<sup>213</sup> Not only are actual photographs of nudity banned with this language, but even sharing written messages relating to such images or acts—such as song lyrics—appear to be prohibited.<sup>214</sup>

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incarceration for subsequent offenses); S.D. CODIFIED LAWS § 26-10-33 (2013) (Juvenile sexting prohibited—violation as misdemeanor).

209. *See, e.g.*, FLA. STAT. ANN. § 847.0141 (LexisNexis 2013) (creating a noncriminal violation of sexting for first-time offending youth, carrying a penalty of community service or a fine; for subsequent offenses youth may be prosecuted for misdemeanors or felonies); NEB. REV. STAT. § 28-320.02 (2013) (allowing for felony prosecution for possessing “any visual depiction of sexually explicit conduct”, with some affirmative defenses allowed to minors based on mitigating circumstances); TENN. CODE ANN. § 39-17-1003 (2010 & Supp. 2013) (possessing material that shows a minor engaged in “sexual activity” or “simulated sexual activity that is patently offensive” is a class D felony, even if committed by a minor); Marsha Levick & Krisina Moon, *Prosecuting Sexting as Child Pornography*, 44 VAL. U. L. REV. 1035 (2010) (recounting efforts by the Juvenile Law Center to counter the possible prosecution of teenage girls under felony child pornography statutes for taking pictures of themselves in brassieres).

210. O’Donovan, *supra* note 199.

211. *Id.* *See also* Fradella & Galeste, *supra* note 207 (describing the work of Marsha Levick and the Juvenile Law Center in challenging the actions of a Pennsylvania prosecutor who threatened an entire high school assembly that they could be charged with child pornography for sexting, and then seeking to prosecute two teen girls for such alleged activity). *See also* Miller v. Skumanick, 605 F. Supp. 2d 634 (M.D. Pa. 2009).

212. St. Louis County, Missouri has established the following default rules of juvenile court probation for any child under court supervision that, if violated, could result in further prosecution: “I will not post on the Internet or send/text on a cell phone, by e-mail or any other electronic device any pictures, videos, or content involving . . . nudity or sexual activity.” St. Louis County Rules of Juvenile Probation (on file with author). This action was taken although the state legislature has decided against criminalizing teen sexting. *See* Roseann Moring, *Update: “Sexting” Could Become a Misdemeanor for Minors*, ST. LOUIS POST-DISPATCH (May 13, 2009), <http://www.stltoday.com/blogzone/political-fix/political-fix/2009/05/sexting-could-become-a-misdemeanor-for-minors/>.

213. *See* St. Louis County Rules of Juvenile Probation (on file with author).

214. This author is the Director of a Juvenile Law Clinic in St. Louis that is in the process appealing the constitutionality of these rules. In our initial petition to juvenile court administration we explained how the condition as drafted is so broad that it could be read to prohibit electronic distribution of popular song lyrics (on file with author). That document, drafted primarily by law students J. Benjamin Rosebrough and William Waller, has also been highlighted as a best practices document by the National Juvenile Defender Center. *See* Emily Pelletier, *2012 Juvenile Defender Resource Guide*, NAT’L JUVENILE DEFENDER CTR. 7 (Oct. 26–28, 2012), [http://www.njdc.info/pdf/2012\\_resource\\_guide/NJDC\\_ResourceGuide12.pdf](http://www.njdc.info/pdf/2012_resource_guide/NJDC_ResourceGuide12.pdf). Yet as of the writing of this article the default condition continues as a “standing” rule of juvenile probation in St. Louis County.

As with the move during the early 1900s from paternalistic protection to prosecution, what began as an attempt to preserve so-called traditional family values may be turning into a prohibition effort where the victims have become perceived as a danger themselves.<sup>215</sup> In addition, while steeped in the maintenance of white middle class values, girls of all races and ethnicities now may be ensnared by stepped-up efforts to police morality and to impose the moral views of certain adults upon adolescents.<sup>216</sup>

But, much like the Turkey Trot dancing of the Progressive Era, sexting may reflect little more than the convergence of ordinary exploration of a young individual's identity—including sexual exploration—with the emergence of new domains in which to experiment and test boundaries.<sup>217</sup>

Like urban girls of the Progressive Era who sought to develop their own individuality and sexuality in the new public spaces offered by the city,<sup>218</sup> young girls who inhabit our new technological “urban” spaces are doing the same. They, too, are now being prosecuted and penalized for normal youthful identity development processes, simply because these processes threaten some adults' notions of propriety.<sup>219</sup>

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215. Stephen Dushko, *Criminalizing Pubescent Exploration or Curtailing Dangerous Behavior?—How Should Child Pornography Laws Apply to Teenagers Engaged in the Practice of Sexting?*, ALBANY GOV'T L. REV. FIREPLACE BLOG (Nov. 9, 2009, 7:13 AM), <http://glrfireplace.albanygovernmentlawreview.org/2009/11/09/criminalizing-pubescent-exploration-or-curtailing-dangerous-behavior-%e2%80%93-how-should-child-pornography-laws-apply-to-teenagers-engaged-in-the-practice-of-sexting/> (“While laws covering child pornography were aimed at protecting minors from predatory activities by adults, the laws do not exempt minors themselves from criminal liability for possessing or distributing ‘pornographic material.’”)

216. Interestingly, this author has not found a single news account, study, or article cataloging sexting prosecutions that has explicitly addressed the issue of racial impact of such cases. *See, e.g.*, Janis Wolak, David Finkelhor & Kimberly J. Mitchell, *How Often Are Teens Arrested for Sexting? Data From a National Sample of Police Cases*, 129 PEDIATRICS 4 (2012) (providing extensive data on arrests around the country without discussing race); John A. Humbach, *Sexting and the First Amendment*, 37 HASTINGS CONST. L.Q. 433 (2010) (recounting the details of several prosecutions of girls without mentioning their race).

217. *See* Levick & Moon, *supra* note 209, at 1038–39 (comparing today's sexting activities to landline phone calls from years past, which were similarly used by teens to flirt and explore sexual boundaries and possibilities in a non-face-to-face manner). *See also* Cassell & Cramer, *supra* note 176, at 59–60 (recounting that during the late 1800s young girls were kept from using the telegraph because it was assumed they lacked “technical competence,” were “vulnerable to losing their virtue,” and could be negatively impacted of the “vice” of the new device).

218. *See supra* Part II.

219. Laina Y. Bey-Cheng, *The Trouble of Teen Sex: The Construction of Adolescent Sexuality Through School-Based Sexuality Education*, 1 SEX EDUC. 61, 62 (2003) (“Since Hall's . . . ‘discovery’ of adolescence, sexuality has been habitually recognized and treated as one of the inherent, essential features of being a teenager,” even if many adult constructions of teen sex influence and/or fail to account for their actual experiences); Mark A. Schuster, Robert M. Bell & David E. Kanouse, *The Sexual Practices of Adolescent Virgins: Genital Sexual Activities of High School Students Who Have Never Had Vaginal Intercourse*, 86 AM. J. OF PUB. HEALTH 1570, 1575 (1996) (“Adolescence is typically a period of sexual development and discovery” with exploration presenting itself in a wide range of activities, including for youth who are not engaged in heterosexual intercourse).

And given the racialized elements running through this ongoing history it is worth considering whether particular kinds of “on-lookers” may be contributing to the fears of some adults.<sup>220</sup> That is, modern policing efforts still may be driven by unstated fears of white adults that “their daughters”—white girls—may be interacting with and viewed by unknown, dark strangers.<sup>221</sup>

### C. Future of Juvenile Prosecution as Social (Media) Control

Initiatives to police female adolescent activities in our new online urban domain—beyond potentially violating constitutional and statutory law<sup>222</sup>—harken back to panic-driven interventions seen during the Progressive Era. They remain largely focused, even if not expressly, on the purity and innocence of girls as a way of maintaining and sustaining societal standards and traditional familial structures.<sup>223</sup>

Examining these practices shows that in criminalizing many ordinary adolescent female behaviors—even under the guise of protecting such girls from themselves—we may be really trying to use criminal law to halt social change. The power to virtually procreate a new world with different norms and boundaries threatens the status quo. And such youth are being penalized for adults’ fears about the future—a future where the white heterosexual andro-centric dominant class may have less control.<sup>224</sup>

If we continue with overly harsh online legal restrictions that focus upon particular youthful communities, we are contributing to continuing disparities in

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220. See bell hooks, *The Oppositional Gaze*, in *BLACK LOOKS: RACE AND REPRESENTATION* 118 (1992) (describing historic “real life public circumstances wherein black men were murdered/lynched for looking at white womanhood,” including the tragic murder of fourteen-year-old Emmitt Till for allegedly flirting with a white woman, demonstrating that “the black male gaze” has “always subject to control and/or punishment by the powerful white Other”). See also boyd, *White Flight*, *supra* note 151, at 217 (describing how in 2006–07 “[t]he media helped produced a technopanic, often by leveraging adult fears of urban black signals such as bling and hip-hop” on MySpace, causing “some parents [to] fear[] that the presence of and potential exposure to different and, presumably, deviant practices might corrupt their children” and pressing such youth to move to Facebook).

221. See, e.g., Erica Chito Childs, *Listening to the Interracial Canary: Contemporary Views on Interracial Relationships Between Blacks and Whites*, 76 *FORDHAM L. REV.* 2771, 2777 (2008) (stating that in one recent study “[m]ost whites explicitly stated they did not harbor negative views of African-Americans, yet they also recounted reasons why African-Americans were not suitable mates, or at least why black–white relationships did not work”); Chuck Hadad, *Interracial Dating Exposes Divide Between Teens and Parents*, CNN (Apr. 5, 2012), <http://www.cnn.com/2012/04/05/us/ac360-interracial-dating> (noting that, according to one contemporary researcher, “parents’ ultimate fear is often that their children will marry another race”).

222. See *supra* notes 207 and 209.

223. VALENTI, *PURITY MYTH*, *supra* note 186, at 47 (describing how even contemporary protection and purity movements around young girls continue to focus on “young white women” as “the sexuality of young women of color . . . is never framed as ‘good girls gone bad’; rather they’re depicted as having some degree of pathologized sexuality from the get-go”).

224. See generally Appell, *supra* note 32.

the opportunities, skill sets, and life chances afforded these groups.<sup>225</sup> The direct and collateral consequences of juvenile prosecutions for such actions have a significant negative impact on young peoples' futures.<sup>226</sup> And gender-based disempowerment and disenfranchisement are perpetuated by negative messages being sent about sex, sexuality, intimacy, and the female body.<sup>227</sup>

Contrary to Progressive Era instincts about disgracing young girls for outside-of-the-home intimacy exploration, prosecuting girls for failing to maintain their purity in the virtual world actually may undermine the healthy development of personhood, community, and democracy in our real world.<sup>228</sup>

#### IV.

#### MOVING PAST PANIC, BEYOND BINARIES, AND TOWARDS EMPOWERMENT FOR YOUTHFUL PERSONS

As we look ahead, we should more carefully consider modern social scientific discoveries about the adolescent evolution process.<sup>229</sup> In a recent series of Eighth Amendment cases relating to the sentencing of juveniles, even the Supreme Court of the United States has acknowledged that adolescents are in the process of developing their identities.<sup>230</sup> Relying on well-supported medical, psychological,

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225. Cassell & Cramer, *supra* note 176, at 65 (“It is no surprise, then, that parents’ panic over girls’ growing connection to a network outside the family, and their own nascent sexuality, is bound to obscure those same parents’ desire to encourage girls’ confidence and interest in the computing technological fields.”). *See also* Crang, *supra* note 151, at 330 (“This creates an entangled pattern where advantages and disadvantages from the social world are ramified by the affordances and distributions of new digital spaces and capabilities.”).

226. Levick & Moon, *supra* note 209, at 1047–50.

227. VALENTI, PURITY MYTH, *supra* note 186, at 65 (“The virginity movement is fighting sexualization with *more* sexualization—we just don’t always recognize it as such because it is shrouded in language about modesty, purity, and protection.”). *See id.* at 83 (arguing that contemporary purity reformers may claim they are seeking to protect girls but really “[t]hey care about maintaining the sexual status quo: Men are men, women are subservient and chaste, and sexuality is shameful”).

228. VALENTI, PURITY MYTH, *supra* note 186, at 213 (noting that the “purity myth” “denies our value as whole human beings”).

229. *See, e.g.*, JEFFREY A. BUTTS, GORDON BAZEMORE & AUNDRASAA MEROE, POSITIVE YOUTH JUSTICE: FRAMING JUSTICE INTERVENTIONS USING THE CONCEPTS OF POSITIVE YOUTH DEVELOPMENT 9–10 (2010) (noting that “[a]dolescent development’ describes a topic of scientific investigation in which researchers generate knowledge about the process of individual growth and maturation” for adolescents as a distinct group); ELIZABETH S. SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 120–23 (2008) (“The use of binary categories under which adolescents are either children or adults has contributed to simplistic understandings of adolescent criminal responsibility.”); Levick & Moon, *supra* note 209, at 1038; Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547, 556 (2000) (“Although lawmakers have occasionally recognized the distinctive characteristics of adolescence, more typically this transitional stage is invisible, and adolescents are incorporated into the binary categories of childhood or adulthood.”).

230. *Miller v. Alabama*, 132 S. Ct. 2455, 2460 (2012) (categorically prohibiting mandatory life without parole sentences for juveniles, even those who killed or intended to kill, and requiring factors relating to a juvenile defendant’s youthfulness to be taken into account at sentencing); *Graham v. Florida*, 560 U.S. 48, 74 (2010) (categorically prohibiting life without parole sentences for juveniles

and common-sense principles, the Court found that youthful offenders are categorically less culpable than adults for wrongdoing.<sup>231</sup> During adolescence, youth are more prone to peer pressure and “impetuous” behaviors than adults—including not-always-fully-considered practices like “sexting.”<sup>232</sup>

Implicit in these findings is the idea that some level of heightened supervision and protection of young people (as compared to fully formed adults) might be warranted. But it does not follow that enactment of normal adolescent development processes should be met with criminalization and prosecution when they veer too far afield from what such adults might do themselves.<sup>233</sup>

Nor should we assume that all youthful risk taking and nontraditional thinking is dangerous and devoid of value. The literature to date has focused on the limits of adolescent capacities.<sup>234</sup> But as demonstrated through youthful online activities, young people passing through adolescence are extremely creative, inventive, and open to new ideas and ways of thinking. Indeed, dances like the Turkey Trot and Grizzly Bear, largely invented by youth, were prohibited decades ago. But they ultimately spread throughout the nation and are now viewed with romantic reminiscence and still enjoyed today.<sup>235</sup>

More than this, the bravery—or brazenness—of Progressive Era youth who ventured into and embraced city spaces helped make such lifestyle choices an acceptable part of the mainstream. City living has become part of the American

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who did not kill or intend to kill); *Roper v. Simmons*, 543 U.S. 551, 578 (2005) (categorically banning death sentences for juveniles).

231. See Miller, 132 S. Ct. at 2464 (“Our decisions rested not only on common sense—on what ‘any parent knows’—but on science and social science as well.” (citations omitted)).

232. See Levick & Moon, *supra* note 209, at 1038. See also Quinn, *Evolving Standards*, *supra* note 51, at 12 (noting that the Supreme Court took into account adolescents’ “still maturing and developing brains” in finding death sentences for juveniles unconstitutional).

233. See Miranda Jolicoeur & Edwin Zedlewski, *Much Ado About Sexting*, NAT’L INST. OF JUST. 13 (Jun. 2010), <https://www.ncjrs.gov/pdffiles1/nij/230795.pdf> (“Given the large number of youths participating in sexting, and the general belief that their behaviors are more foolish than criminal, law enforcement and prosecution should not be the first response.”). See also Kristen Henning, *Juvenile Justice After Graham v. Florida: Keeping Due Process, Autonomy, and Paternalism in Balance*, 38 WASH. U. J.L. & POL’Y 17, 36 (2012) (warning that the recent turn towards finding youth to be categorically less culpable should not open the door to “unconstrained paternalism” by the government).

234. E.g., Sarah Jane Forman, *Countering Criminalization: Toward a Youth Development Approach to School Searches*, 14 SCHOLAR 301, 359–60 (2011) (offering assessment of how limited youthful capacities should be taken into account in school search policies and practices); Oberman, *supra* note 179, at 250 (suggesting that during adolescence young women may lack sufficient inner strength and self-awareness to engage in important decision-making processes); LINDENMEYER, *supra* note 25, at 11–12 (quoting Felix Adler, president of the National Child Labor Committee, as declaring that “[i]n ten or fifteen years the children of today would be American citizens”—implying that youth should not be seen as members of the contemporary political community). See also Levick and Moon, *supra* note 209, at 1038.

235. *Dances of the Ragtime Era, 1910–1920* (2008), YOUTUBE, <http://www.youtube.com/watch?v=LCKkOqXUaZo> (last visited Sept. 20, 2013) (recounting the history of such dance steps and demonstrating moves such as the “Grizzly Bear”); “*Antiquated Vernacular Dances*” Demo, YOUTUBE, <http://www.youtube.com/watch?v=ygc2Fj5-ing> (last visited Sept. 20, 2013) (demonstrating the “Turkey Trot” and other dances from that era).

dream; today more than eighty percent of the nation's population lives in or around urban areas.<sup>236</sup>

Therefore, rather than singularly viewing adolescence as a period of ignorance and dangerous impetuosity, as adults we should see this as a time of growth and opportunity—not only for young people but for ourselves, our communities, and the nation as a whole.

In doing so, we could work to foster youthful ingenuity, creativity, and empowerment. At this historic moment, this could be accomplished, in part, by tapping young peoples' superior digital era insights. Rather than imposing adult-driven, top-down dictates as we did in decades past, we could work more closely and collaboratively with youth to shape societal norms through the Internet. Instead of assuming our own omniscience as adults, we would do well to better understand their thinking and motivations as we consider legal prohibitions and policies. To do so, we should actively include youth in civic processes to help inform such practices.

#### A. *Looking Past Our Bodies to Our (Whole) Selves*

Although allegedly sexualized online activities by adolescent girls are seen by some as tarnishing the girls' reputations, they may not be entirely harmful.<sup>237</sup> In fact, since our technology and Internet explosion, the teen pregnancy rate in this country has decreased significantly.<sup>238</sup> At least one source suggests that we are at a three-decade low, having dropped by forty percent since 1990.<sup>239</sup> While this is not clearly attributable to the Internet,<sup>240</sup> it is nonetheless possible that, along with greater access to birth control and school-based sex education classes, the cyber

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236. Alidad Vassigh & Tann vom Hove, *Urban Population Growth Between 1950 and 2030*, CITY MAYORS STATISTICS (Aug. 7, 2012), <http://www.citymayors.com/statistics/urban-population-intro.html>.

237. Houck, *supra* note 200 (“[Clinicians’] helping to reduce alarmist responding by parents, school personnel, or other professionals may be important. For some youth, sexting may represent a 21st century form of flirting that receives extra attention from adults because of its visibility when discovered. For others it may be a marker of further risk . . .”).

238. *Preventing Teen Pregnancy 2010–2015*, NAT’L CTR. FOR CHRONIC DISEASE PREVENTION & HEALTH PROMOTION, [http://www.cdc.gov/TeenPregnancy/PDF/TeenPregnancy\\_AAG.pdf](http://www.cdc.gov/TeenPregnancy/PDF/TeenPregnancy_AAG.pdf).

239. Darshak Sanghavi, *Why Have Teen Pregnancy Rates Dropped?*, SLATE (July 31, 2012, 11:30 AM), [http://www.slate.com/articles/health\\_and\\_science/medical\\_examiner/2012/07/preventing\\_unwanted\\_pregnancies\\_forget\\_sex\\_ed\\_and\\_compare\\_the\\_pill\\_to\\_iuds\\_.html](http://www.slate.com/articles/health_and_science/medical_examiner/2012/07/preventing_unwanted_pregnancies_forget_sex_ed_and_compare_the_pill_to_iuds_.html) (suggesting that at least some of the change has to do with the use of additional birth control methods beyond a condom).

240. Joseph A. Dake, James H. Price & Lauren Maziarz, *Prevalence and Correlates of Sexting Behavior in Adolescents*, 7 AM. J. SEXUALITY EDUC. 1, 5–6 (2012) (describing study results showing “a constellation of sexual behaviors, substance use behaviors, and emotional health issues . . . associated with sexting,” while also noting that “two out of five (39%) students who reported sexting reported not engaging in sexual intercourse”); Levick & Moon, *supra* note 209, at 1039 (describing how technologies, including text messaging, allow teenagers to “explor[e] their sexual identity while avoiding the embarrassment of doing so face-to-face”).

city and its “alternatives” may be helping to protect youth from unwanted pregnancies and sexually transmitted diseases.<sup>241</sup>

What is more, from the perspective of the state, publically presenting pictures of body parts is far less of a social harm than the actual physical manifestations of disease and unplanned pregnancy. Since we do not criminalize the latter, it is puzzling why we do so with the former.

This point is made even more salient when we consider that such body parts and images have little significance unto themselves.<sup>242</sup> Instead they have been exceptionalized—largely by adults—to represent sexual memes that have deep cultural and legal meaning.<sup>243</sup> When in fact, what might be frightening most protesters is the idea of white girls crossing racial and other constructed boundaries in virtual performance of culturally sexualized acts.<sup>244</sup>

For some youth, such acts may not be understood as particularly sexual or sexy at all. That is, they are merely doing something playful or seemingly forbidden and bold as a way of challenging adult limits and rules. Yet, they become sexualized through the eyes and various constructed understandings of adults.<sup>245</sup> This is a world that has spent a lot of time sexualizing young girls in advertising and the like.<sup>246</sup> The messages sent to young girls about their bodies,

241. See Dake, *supra* note 240, at 6–13; C.J. Pascoe, *Resource and Risk: Youth Sexuality and New Media Use*, 8 SEX. RES. SOC. POL’Y 5, 11–12 (2011) (describing how young people turn to the internet to learn about sexual health and safe sex). See also LIFE ON THE SCREEN, *supra* note 153, at 226 (one thirteen-year-old girl informed researchers that she preferred “to do her sexual experimentation online” with boys from her school because, in person, they were too “grope-y” and did not talk enough).

242. See VALENTI, PURITY MYTH, *supra* note 186, at 214 (arguing that “all young women across the country” should be seen as “more than the sum of [their] sexual parts, that [their] ability to be moral and good people has to do with [their] kindness, compassion, and social engagement—not [their] bodies”).

243. See Jean L. Cohen, *Is There a Duty of Privacy? Law, Sexual Orientation, and the Construction of Identity*, 6 TEX. J. WOMEN & L. 47, 102 (1996) (describing Judge Richard Posner’s argument that sexual choices and acts “neither define us nor carry any intrinsic moral weight”). Cf. Saru M. Matambanadzo, *Embodying Vulnerability: A Feminist Theory of the Person*, 20 DUKE J. GENDER L. & POL’Y 45, 72 (2012) (“The body is not an objective pre-cultural representation of the ‘natural.’ Instead, it is, like the concept of the person itself, culturally constructed and historically contextual.”)

244. See VALENTI, PURITY MYTH, *supra* note 186, at 47.

245. See generally Sarah Camille Conrey, *Hey, What About Me? Why Sexual Education Classes Shouldn’t Keep Ignoring LGBTQ Students*, 23 HASTINGS WOMEN’S L.J. 85, 92–93 (2012) (describing the prevalence of heteronormative messaging in sexual education curriculums and the pernicious effects of this messaging on LGBTQ youth); Stern, *supra* note 157, at 95–96 (“Adults look at the intimate thoughts youths disclose and the cultural symbols they appropriate, and they decode them according to their own standards of evaluation . . . . My goal [in this chapter] is neither to celebrate nor to critique youth online expression, but rather to illuminate the ways in which it is a meaningful form of cultural production . . . .”).

246. JESSICA VALENTI, FULL FRONTAL FEMINISM: A YOUNG WOMAN’S GUIDE TO WHY FEMINISM MATTERS 42–45 (2007) [hereinafter VALENTI, FULL FRONTAL FEMINISM] (describing confusing messages about sexuality offered to young girls in the United States, including the production and distribution of padded bras designed for six-year-olds); Susan Ekberg Stiritz, *Cultural Cliteracy: Exposing the Contexts of Women’s Not Coming*, 23 BERKELEY J. GENDER L. & JUST. 243, 264 (2008)

when they can be exhibited, and who controls their exhibition is confusing at best—and dehumanizing at worst.

Other teenage girls, however, may be embracing electronic media as place to display their bodies—in various shapes and sizes—as a form of teen sex-positivity.<sup>247</sup> Such self-assuredness, rather than being seen as disgraceful or illegal, might be seen as a form of youthful feminist empowerment.<sup>248</sup> In fact, medical studies have shown that “women who received sex-negative, cautionary parental messages engaged in more high-risk sexual behaviors” than those “who received sex-positive and instructional messages from their parents.”<sup>249</sup> Similarly, “adolescents who express more sex-positive attitudes have been found to be more responsible users of contraception.”<sup>250</sup>

Therefore, if we want girls to grow up to be healthy and strong women who are not ashamed of their sexuality, sexual selves, and sexual desires, we should not reflexively stigmatize their voluntary decisions to expose their own body parts—particularly when they are sharing such images with peer partners.<sup>251</sup> Rather than focus solely on reputational impacts, purity considerations, and morally driven agendas, research and analysis should focus on whether such activities may, in fact, be helping young girls to overcome a history of shame and stigma relating to their bodies.<sup>252</sup>

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(describing ways in which young girls are sexualized through consumer goods and otherwise).

247. VALENTI, FULL FRONTAL FEMINISM, *supra* note 246, at 54–55 (quoting feminist sex columnist Rachel Kramer Bussel, who argues that some young women have turned to public displays of sexuality as a form of subversion and empowerment). *See also, e.g.*, SCARLETEEN, <http://www.scarleteen.com/> (a website dedicated to providing “inclusive, comprehensive and smart sexuality information and help for teens and 20s”).

248. *See* Laina Y. Bay-Cheng, *The Trouble of Teen Sex: The Construction of Adolescent Sexuality Through School-Based Sexuality Education*, 3 SEX EDUC. 61, 66 (2003) (“The silence of [school-based sexuality education] around issues of desire and pleasure risks not only missing the opportunity to foster sexual agency, but also implicitly shaming teens’ private experiences of these embodied sensations and emotions, and alienating those who rightfully perceive the failure to acknowledge the positive and gratifying aspects of sexuality as disingenuous.”).

249. *Id.* For whatever reasons, this study was limited to white women.

250. *Id.*

251. The complex issue of whether youth should be legally prohibited from sharing such images with adults or as a means of self-commodification is beyond the scope of this paper. For two thoughtful discussions relating to these subjects, see Joseph J. Fischel, *Per Se or Power? Age and Sexual Consent*, 22 YALE J.L. & FEMINISM 279 (2010), and Bridget J. Crawford, *Toward a Third-Wave Feminist Legal Theory: Young Women, Pornography and the Praxis of Pleasure*, 14 MICH. J. GENDER & L. 99 (2007).

252. *See, e.g.*, COURTNEY E. MARTIN, PERFECT GIRLS, STARVING DAUGHTERS: THE FRIGHTENING NEW NORMALCY OF HATING YOUR BODY (2007) (discussing the widespread problem of eating disorders among women and girls, driven in significant part by media depictions of the “perfect” body and the shame generated when girls do not fit these glorified images). An alternative finding might be that such activities tend to glorify particular bodily forms, presentations that might encourage life-threatening dieting, purging, and the like to produce more “perfect” images in teen girls. *See id.* at 17–20. This, too, is an area worth of further study and examination—rather than automatic prohibition and prosecution.

*B. Rejecting Childism for Competence-Based Participation*

Beyond this, recent accounts demonstrate that young people are far more computer literate than the adults around them.<sup>253</sup> This alone may demonstrate the futility of adult actors attempting to completely regulate online actions of young people.<sup>254</sup> Youth have not only used electronic media to passively communicate with others or more actively explore their identities, but have fully embraced the power of electronic media as a way of life.<sup>255</sup> They have demonstrated inventiveness and forward-thinking in its possibilities, often serving as family technology “experts.”<sup>256</sup>

Thus, rather than thinking of youth as “future” autonomous agents who will someday attain capacity,<sup>257</sup> the online space—like the Progressive Era’s city experience—helps us to see that many young people already demonstrate high levels of specialized capability that should be celebrated, encouraged, and perhaps even harnessed.<sup>258</sup> This assessment applies to girls as well as boys.<sup>259</sup>

For example, the Federal Communications Commission (FCC) is currently investing \$200 million, in part to create a “digital literacy corps” to help educate parents and other adults who are lagging behind young people in their knowledge

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253. See Matt Richtel, *Wasting Time is New Divide in Digital Era*, N.Y. TIMES, May 29, 2012, <http://www.nytimes.com/2012/05/30/us/new-digital-divide-seen-in-wasting-time-online.html>. See also ALONE TOGETHER, *supra* note 175, at 174–75 (recounting how many youth need to teach their parents how to use the instant-message features on their computers and cell phones); LIFE ON THE SCREEN, *supra* note 153, at 227–28 (urging parents to become as knowledgeable as their children about computer usage); *Commonly Used Acronyms Online & on Cell Phones*, WEB WISE KIDS (2008), <http://www.webwisekids.org/pdf/COMMONLYUSEDACRONYMS.pdf> (a list of over one hundred common texting abbreviations used by youth but not generally known by adults).

254. Cf. TURKLE, *THE SECOND SELF*, *supra* note 175, at 234–235 (offering accounts of the computer hacking activities of young people, including one incident involving four thirteen-year-olds from Manhattan’s Dalton Preparatory School who managed to break into the computer systems of twenty-one different corporations here and abroad; one individual referred to the effort as a kind of “children’s crusade”).

255. ITO, HORST, BITTANTI, BOYD, HERR-STEPHENSON, LANGE, PASCOE & ROBINSON, *supra* note 152, at 13–34.

256. *Id.* at 20.

257. See Forman, *supra* note 234, at 359–60.

258. See generally Henning, *supra* note 233, at 45 (“[A]dolescent capacity is not a binary construct. Context matters, and reasoned decision-making is a skill that varies according to experience, context, and instruction.”); Vivian E. Hamilton, *Immature Citizens and the State*, 2010 BYU L. REV. 1055, 1095 (2010) (“The immature have an [autonomy-related] interest in exercising those specific liberties of which they are capable.”); Jonathan Todres, *Maturity*, 48 HOUS. L. REV. 1107 (2012) (urging a more cohesive construction of maturity that accounts for legal and cultural considerations). See also ITO, HORST, BITTANTI, BOYD, HERR-STEPHENSON, LANGE, PASCOE & ROBINSON, *supra* note 152, at 2 (“New media allows for a degree of freedom and autonomy for youth that is less apparent in a classroom setting. Youth respect one another’s authority online, and they are often more motivated to learn from peers than from adults.”).

259. See, e.g., Laura Donnelly Gonzalez, *Despite the Digital Divide, Latinas Are Empowered by the Internet*, NEWS TACO (Nov. 9, 2011), <http://www.newstaco.com/2011/11/09/despite-digital-divide-latinas-are-empowered-by-the-internet/>.

about the Internet.<sup>260</sup> To date, the organization has partnered with private corporations like Comcast and other adult-run entities to deliver these services.<sup>261</sup> But, the FCC could also recruit the very youth who are outpacing adults in their online knowledge to assist in this endeavor. This is a far better government investment in young people than virtual policing followed by actual prosecution for natural pubescent practices.

In addition, adults can learn a great deal from the less exclusionary approaches enacted by young people on the web, and apply them in deconstructing structural impediments and social hierarchies that work to marginalize certain populations. We should more carefully examine the means by which young people seem to be working online to try to create an environment where greater equality over time may be possible.

Young people's insights also should be considered in mainstream education programs and their viewpoints taken into account in legislation and policymaking.<sup>262</sup> By doing so, legal actors and institutions may avoid the uninformed and ultimately futile top-down approaches that have been directed towards youth in this country over the last hundred years.<sup>263</sup>

Again, this is not to suggest that youth should be left wholly unsupervised or that we should not educate them about potential dangers that may flow from certain online activities. In fact, a good number of organizations and groups are now sharing such information in caring and productive ways.<sup>264</sup> For instance, some groups have begun meeting youth where they are—in classrooms and afterschool programs—to learn how they are using the Internet and share ideas with them for maintaining privacy to avoid disclosing personal details they may not want others to know.<sup>265</sup> The most productive conversations would appear to

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260. Richtel, *supra* note 253.

261. Wailin Wong, *Chicago City to Be Test City in Push for Wider, Cheaper Internet*, CHICAGO TRIBUNE, Apr. 16, 2013, available at [http://articles.chicagotribune.com/2013-04-16/business/chicago-to-be-test-city-in-push-for-wider-and-cheaper-internet-20130416\\_1\\_internet-essentials-chicago-residents-freedompop](http://articles.chicagotribune.com/2013-04-16/business/chicago-to-be-test-city-in-push-for-wider-and-cheaper-internet-20130416_1_internet-essentials-chicago-residents-freedompop).

262. It seems that youthful creativity and capacity has been more fully embraced and supported in the literary than legal and political domains. *See, e.g.*, THE BEST AMERICAN NONREQUIRED READING 2012 (Dave Eggers ed., 2012) (collection of suggested “nonrequired readings” that in part were selected by a group of high school students from California and Michigan as part of an annual program to engage creative youth); SARA SHANDLER, OPHELIA SPEAKS: ADOLESCENT GIRLS WRITE ABOUT THEIR SEARCH FOR SELF (1999) (a collection of personal essays, stories, and poems by adolescent girls).

263. ELIZABETH YOUNG-BRUEHL, CHILDISM: CONFRONTING PREJUDICE AGAINST CHILDREN 7 (2012) (noting that “the huge human population under the age of eighteen . . . is now close to a third of the population worldwide, and in some places more than half”).

264. *See, e.g.*, *What Do Teenangels Do?*, TEENANGELS, [http://teenangels.org/about/what\\_do\\_teenangels\\_do.html](http://teenangels.org/about/what_do_teenangels_do.html) (last visited Sept. 25, 2013) (describing a program in which teens ages 13–18 provide peer training about the risks of certain online behaviors and promote best practices for youth).

265. My legal clinic colleague, Kathryn Pierce, developed a program to creatively engage young people about Internet use and abuse. With law students she has presented this program in a number of youth-focused settings. Its goal is to help young people to think about how information

be collaborative in nature, without warnings about impurity or threats of imprisonment.<sup>266</sup> Instead, as with most meaningful adult exchanges, they are rooted in respect.<sup>267</sup> Otherwise we risk continuation of youthful resentments that emerged in American cities over one hundred years ago.

### C. Adopting Global Norms for All American Youth

International norms, including the Convention on the Rights of the Child, have long called for greater youthful participation in governance and civic activities.<sup>268</sup> In fact, the United Nations Conference on Human Settlements recently reiterated its position on the unique circumstances of urban youth in particular, and their need to participate in local governance decisions.<sup>269</sup>

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they post online might be used against them by law-enforcement officials. The presenters come away more knowledgeable about the actual online activities of young people, and the young people learn more about maintaining privacy settings and potential pitfalls of oversharing while online. Information about this program was recently shared at the 2012 National Association of Counsel for Children conference in Chicago. *Civil Justice Clinic Faculty Present at Prominent National Family Law Conference*, WASH. U. L. NEWS, <http://law.wustl.edu/news/pages.aspx?id=9469> (last visited Sept. 25, 2013).

266. See Henderson, *supra* note 170, at 523–24 (“While parents can learn more about the relevant issues, and schools can help students develop a savvy, critical attitude toward technology, communication between generations will need to be an important strategy for coping with . . . rapid technological change.”). See also Levick & Moon, *supra* note 209, at 1035 n.1 (describing one district attorney’s threats to prosecute teenage girls who refused to participate in an education program).

267. Cf. YOUNG-BRUEHL, *supra* note 263, at 18–58 (describing prejudices against children that result in their being treated as different from, and with far less respect than, adults).

268. See, e.g., United Nations Convention on the Rights of the Child art. 12, Nov. 20, 1989, 1577 U.N.T.S. 3 (“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”). See also *Fact Sheet: The Right to Participation*, UNICEF, 1, <http://www.unicef.org/crc/files/Right-to-Participation.pdf> (“Participation is one of the guiding principles of the Convention, as well as one of its basic challenges. Article 12 of the Convention on the Rights of the Child states that children have the right to participate in decision-making processes that may be relevant in their lives and to influence decisions taken in their regard—within the family, the school or the community.”); THE UNESCO YOUTH FORUM: CELEBRATING A DECADE OF YOUTH PARTICIPATION (Golda El-Khoury et al. eds., 2011), available at <http://unesdoc.unesco.org/images/0021/002156/215607e.pdf> (reporting on United Nations norms that seek input from youth each year on international issues under consideration).

More recently, juvenile justice scholars have turned to procedural justice teachings as a source of possible youthful engagement. Tamar R. Birchead, *Toward a Theory of Procedural Justice for Juveniles*, 57 BUFF. L. REV. 1447, 1483–84 (considering ways the juvenile justice system might account for youthful preferences and understandings of fairness). And emerging positive-youth-development strategies similarly seek to tap youthful capacities rather than focus on their deficits. JEFFREY A. BUTTS, GORDON BAZEMORE & AUNDRA SAA MEROE, *supra* note 229, at 7 (arguing that such strategies “offer valuable guidance for the design of interventions for youthful offenders”).

269. “The needs of children and youth, particularly with regards to their living environment, have to be taken fully into account. Special attention needs to be paid to the participatory processes dealing with the shaping of cities, towns and neighborhoods; this is in order to secure the living conditions of children and of youth and to make use of their insights, creativity and thought on their environment.” UNITED NATIONS SETTLEMENT PROGRAM (UN-HABITAT), YOUNG PEOPLE,

The United States is one of only three United Nations countries that have failed to ratify the Convention on the Rights of the Child, which is some evidence that the United States is out of compliance with international norms on children's rights.<sup>270</sup> Additionally, the online world—the newest urban domain populated by youth—presents a new and potentially promising location for deploying practices to engage youthful knowledge and creativity. Yet to date the United States continues to replicate century-old policy practices—purporting to speak for youth, instead of speaking with youth—that fail to account for the capacities and citizenship of youth in this sphere.

For example, in 2010 the federal government convened the Online Safety and Technology Working Group (OSTWG) to study the issue of online practices and safety of youth. Issuing the 150-page report, its numerous authors provided this description of their knowledge base:

The OSTWG was fortunate to have representatives from nearly every facet of the child online safety ecosystem represented. Members came from the Internet industry, child safety advocacy organizations, educational and civil liberties communities, the government, and law enforcement communities. Collectively, we brought to our work more than 250 years of experience in online safety from a spectrum of varying perspectives. We hope the set of recommendations we are delivering to you here will leave an indelible mark on the online experiences of our country's children as they evolve into adults in this digital century.<sup>271</sup>

But before seeking to leave a mark on the evolution of youth, government officials would be well served to actually ask young people—in all of their diversity—what they think about such a plan. In the days ahead, lest we continue down the exclusionary, and overly paternalistic, path set by Addams and other

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PARTICIPATION, AND SUSTAINABLE DEVELOPMENT IN AN URBANIZING WORLD 3 (2011), available at <http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3355> (describing protocols developed in 1996). Cf. Andrew Rehfield, *The Child as Democratic Citizen*, 633 ANNALS AM. ACAD. POL. & SOC. SCI. 141, 142 (2011) (suggesting that the U.N. Convention on the Rights of the Child gives more importance to welfare rights than to participation rights).

270. See Appell, *supra* note 32, at 730 (“No discussion of children’s rights can ignore the United Nations Convention on the Rights of the Child (CRC), even in the United States, which has not adopted it . . . [T]he CRC contemplates a slightly more public child than the private child of the United States, which leaves all but the most fundamental needs in parents’ hands. Nevertheless, the CRC also assumes children’s privacy and dependency.”). See also UNICEF, THE STATE OF THE WORLD’S CHILDREN 2012, at 16 (2012), available at [http://www.unicef.org/sowc2012/pdfs/SOWC%202012-Main%20Report\\_EN\\_13Mar2012.pdf](http://www.unicef.org/sowc2012/pdfs/SOWC%202012-Main%20Report_EN_13Mar2012.pdf) (noting that only the United States, Somalia, and South Sudan have failed to ratify the CRC).

271. ONLINE SAFETY & TECH. WORKING GRP., YOUTH SAFETY ON A LIVING INTERNET 1 (2010), available at [http://www.ntia.doc.gov/legacy/reports/2010/OSTWG\\_Final\\_Report\\_060410.pdf](http://www.ntia.doc.gov/legacy/reports/2010/OSTWG_Final_Report_060410.pdf). See also *Youth Internet Safety Task Force*, WASH. STATE OFFICE OF THE ATT’Y GEN., <http://www.atg.wa.gov/YISTF.aspx> (last visited Sept. 28, 2013) (listing the name of a task force consisting of nearly fifty members as representatives of the computer industry, government, education, and other sectors—but apparently failing to include a single teen participant).

Progressive Era reformers, we should be sure to involve young people in these conversations rather than simply speaking to and for them about such things as privacy, sexuality, and the law.<sup>272</sup>

## V. CONCLUSION

Whether adults like it or not, our world is evolving. The novel, youth-driven trends of today will become the mainstream culture of tomorrow. Cyber-city-dwelling adolescents—regardless of sex, sexual orientation, gender, race, location or socioeconomic status—may be well situated to help lead the way in navigating this new urban terrain. With their powers of creativity, superior computer skills, and openness to challenging traditional boundaries, they can help adults see cyberspace as a place in which to reimagine our understandings of community and values. Given the chance to exercise these considerable capacities, they may fundamentally alter our aging and outdated notions of democracy—for both our on- and off-line worlds.

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272. A number of civic participation programs for youth do exist in this country and merit study and consideration for possible replication and expansion. For instance, on the federal Internet policy front, the WiredKids Summit has been convened in Washington, D.C. to provide lawmakers and industry professionals with the opportunity to engage with youth. See *WiredKids Summit—May 27, 2010*, TEENANGELS (last visited Sept. 30, 2013), <http://teenangels.org/events/summit/2010/index.html>.

At least twelve states currently maintain Youth Advisory Councils to permit teens to influence government decision-making. They include: Alabama, Colorado, Indiana, Iowa, Louisiana, Maine, Maryland, Nevada, New Hampshire, New Mexico, North Dakota, and Washington. *Statewide Legislative Youth Advisory Councils*, NAT'L COUNCIL OF STATE LEGS. (Aug. 5, 2009), [http://www.ncsl.org/Portals/1/documents/cyf/Councils\\_grid.pdf](http://www.ncsl.org/Portals/1/documents/cyf/Councils_grid.pdf).

On the local level, places like Kirkland, Washington, reserve seats for teens on local government boards and commissions. See KIRKLAND, WASH., MUN. CODE § 3.08.110 (2007) (“The city council has added a youth-specific seat on certain citizen advisory boards and commissions.”).