

Carolyn E. Cocca. *Jailbait: The Politics of Statutory Rape Laws in the United States.* Albany: State University of New York Press, 2004. xiii + 228 pp. \$24.95 (paper), ISBN 978-0-7914-5906-5.



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Continuity and Change in U.S. Statutory Rape Law

"Sex with a minor is a major crime." So warned a billboard sponsored by California's Partnership for Responsible Parenting, an initiative sponsored by Governor Pete Wilson in the mid-1990s. As Carolyn E. Cocca explains in the introduction to *Jailbait*, "[s]tatutory rape laws prohibit sexual activity with an unmarried person under a certain age" in accordance with the view that underage youth are "incapable of giving valid consent" to sexual activity (p. 1). In the first book-length study of such laws, Cocca reflects on their historical context, and, more important, she documents and analyzes important changes that legislators have enacted in the last thirty years. Drawing from scholarship on law and society, Cocca inquires into the legal system's role in constructing and regulating "cultural narratives about gender and sexuality" through statutory rape law (p. 3). While preventing the sexual coercion of young people is "unquestionably a laudable goal," she writes, statutory rape laws actually do much more than that. They punish consensual sexual relationships that occur outside of marriage, thereby putting the weight of the law behind one particular form of sexual intimacy: marital heterosexuality. Of course, this bias is nothing new. As historians Mary Odem and Sharon Ullman have demonstrated, the movement to raise the age of consent in the late nine-

teenth century produced uneven results that disproportionately penalized unmarried, sexually active immigrant and working-class girls and young women.[1] Glancing back over one century of statutory rape laws, Cocca argues that such laws continue both to protect and to discipline youth. More significantly, however, she evaluates developments since the 1970s that have, in many ways, strengthened the regulatory elements of this body of law. The book follows three major policy changes that states have adopted over the past three decades: "(1) age-span provisions in which one partner must be a certain number of years older for the crime to be prosecuted at the felony level; (2) gender-neutral language to include females as perpetrators and males as victims; and (3) prosecuting the partners of pregnant female teens as a means to lower welfare rolls" (p. 6). In each of these discussions, Cocca assesses the relative influence of state legislators, interest groups, and public opinion.

Cocca is a political scientist, but she utilizes interdisciplinary methods to the book's advantage. She juxtaposes statistical evidence, studies of individual states, and illustrative criminal case material. By analyzing the political process at the state level, Cocca creates a comparative framework that illuminates the contingencies involved in legislative change. This framework, in turn, allows her to contest abstract theories about political be-

havior without rejecting the utility of moderately localized models. She navigates a productive middle ground on which political theory and particular legislative processes inform one another. In particular, she challenges the theory that morality policy is more directly informed, than other kinds of legislation, by public opinion: in several states, she confirms, public opinion did not favor the enacted changes to statutory rape laws.

Chapter 1 places statutory rape law in historical context. It covers familiar territory but provides background that the nonspecialist reader needs in order to appreciate changes to the laws since the 1970s. The chapter also sets up Cocca's critique: while the laws are technically based on age, several of their characteristics suggest that age is not the most salient operative category within them. First, underage youth who are married are exempt, both as victims and as perpetrators. Second, evidence suggests that prosecutors have disproportionately targeted male homosexual relationships. Third, same-age perpetrators are frequently charged, for either felonies or misdemeanors depending on the state. Finally, certain states continue (even today) to allow defendants to claim the "mistake-of-age defense," which was originally (but no longer) paired with the claim that the female victim was sexually experienced as a way for men to escape prosecution. Cocca points out that "the categories of victim and perpetrator have proved to be quite fluid as they have been drawn and redrawn throughout the history of the United States." She also suggests that "proscribing sex outside of marriage," rather than protecting youth, has most consistently guided statutory rape policy (p. 10).

Age-span provisions occupy Cocca in chapter 2. Between 1971 and 1999, forty-three states adopted such provisions, which effectively decriminalized sex between teens of similar ages (i.e., between two and six years apart in age, depending on the state) at the felony level. Cocca asks what prompted particular states to pass these provisions at particular times, what accounts for variation across the states, and what the enforcement of the provision actually looks like. Feminists who recognized that statutory rape laws were originally "structured around virginity" rather than coercion lobbied for age spans in order to distinguish between peer relationships that were likely to be consensual and acts between girls and older men that were likely to involve inequality. Religious conservatives opposed the provisions in order to continue to prohibit all sex between teens. By analyzing legislation in three states (New Jersey, Georgia, and California) and then creating a model of national legislation, Cocca forms certain hypotheses about the influence of interest groups.

To her credit, though, she then turns to the implementation of the laws to see whether they have operated as advocates intended.

Individual cases suggest that while the age spans "have accomplished the goals sought by some feminist reformers, [they] also live up to the fears expressed by others"—namely that they leave young people close in age unprotected. Unless a victim can prove forcible rape, she/he has no legal protection from an abuser who falls within the relevant age span. Cocca rightly points out the inherent shortcomings of legal constructions that try "to encompass a continuum of forcible to coercive to manipulated to consensual sexual relationships" (p. 61). In chapter 3, Cocca analyzes the processes through which statutory rape laws were made gender-neutral beginning in the 1970s. By 2000, all fifty states had adopted gender-neutral statutes. The U.S. Supreme Court declared *gender-specific* statutes constitutional in 1981, so Cocca asks why states changed their laws anyway and with what effects. Feminist lobbyists (especially from the National Organization for Women) urged legislators to implement gender neutrality in line with the larger feminist projects of formalizing gender equality and encoding legal recognition of female agency. Because the law would also protect young male victims of sexual coercion, Cocca points out, lobbyists hoped that "[p]eople would begin to think of statutory rape in terms of vulnerable teens, rather than in terms of a victimized female" (p. 65). Cocca does not mine this point for its full theoretical significance, however. In his article about campaigns to raise the age of consent at the turn of the twentieth century, historian Stephen Robertson argues that legal authorities' construction of teen girls as victims was not primarily a means of controlling female sexuality, but rather, part of an effort to extend the state's protection of *childhood*.^[2] In my view, the latter accomplishes the former; treating sixteen-year-old girls as children incapable of consenting to sex effectively denies them the full legal subjectivity that female sexual autonomy requires. Nonetheless, Cocca might have emphasized that by creating a universal category of sexually vulnerable teens, legislators revised legal and ideological understandings of *youth* itself. Not incidentally, including male victims also implied a revised legal conception of homosexuality: by specifying that certain kinds of same-sex acts (e.g., between adult and juvenile males) were illegal, legislators implied that other sexual relationships between men were legal. This revision assisted in the ultimately successful effort to overturn antisodomy statutes.

Once again, however, the implementation of the law

appears to undermine the progressive potential of legislative change. Using three specific examples of high-profile cases, Cocca concludes that in “nontraditional” statutory rape cases in which the perpetrator is female and the victim male, or in which both perpetrator and victim are male, legal discourse tends to reinforce stereotypes about gendered sexual agency. Female perpetrators are generally viewed as desperate seductresses whose male “victims” never fully deny sexual consent, while adult males are categorized as sexual predators and are punished especially harshly as a result. Even when the boys/young men in question refuse to press charges and insist that they were willing participants, the structure of the law denies their testimony’s significance. Cocca observes that young males in homosexual cases are feminized as victims, while young males in heterosexual cases are masculinized as sexual agents. Meanwhile, the very possibility of female perpetrators against female victims is foreclosed by the statutes’ exclusive criminalization of intercourse (p. 91). Cocca’s analysis of these intersections among age, gender, and sexuality reveals that institutions hold enormous power to perpetuate existing power relations, even when statutes provide alternative possibilities.

A compelling example of this power that Cocca does not discuss (probably because of publication timing) occurred in Kansas during 2000. A week after his eighteenth birthday, a young man named Matthew Limon performed consensual oral sex on a boy just over three years his junior. Kansas’ age-span provision explicitly applies only to heterosexual couples, so Limon was charged with criminal sodomy and sentenced to seventeen years in prison. A heterosexual teen with the same record would have received a maximum sentence of fifteen months. After the U.S. Supreme Court struck down sodomy laws in *Lawrence v. Texas* and vacated Limon’s conviction and remanded his appeal for reconsideration, the Kansas Court of Appeals upheld the conviction and the full sentence. Limon is scheduled for release in 2017, when he will be thirty-six years old. Kansas legislative and judicial authorities framed and interpreted revised statutory rape laws so as to maximize the punishment of adolescent homosexuality.^[3] Chapter 4 takes up the third trend in statutory rape legislation: targeting the partners of pregnant girls and young women. Ten states have revised their laws in this manner since 1996, largely in response to a 1995 report by the Alan Guttmacher Institute stating that “65 % of teen mothers had children by men who were 20 or older.” Further analysis revealed that this number was misleading: 62 percent of the young

women in the study were eighteen or nineteen years old, for example, and 28 percent were between fifteen and seventeen but had same-age partners. Statutory rape provisions, then, could be applied against the partners of only 8 percent of pregnant teen mothers in the United States (p. 96). Cocca shows that nonetheless, nearly every influential member of the resulting debates about the relationship between statutory rape and teen pregnancy cited the 62 percent figure.

Cocca identifies an important shift in the discourse of policymakers about teen pregnancy, which she characterizes as from “welfare queen” to “exploited teen.” By conflating teen pregnancy and statutory rape, legislators and religious conservatives cast pregnant young women as victims of manipulative, irresponsible, and ultimately criminal men. In the process, they have deflected attention and funds from poverty, sex education, and financial and social services. Stepped-up prosecutions of male partners of pregnant teens have disproportionately and negatively affected the very young women who policymakers claim to protect. In one poignant case, a fifteen-year-old responded to the conviction of her eighteen-year-old fiancé by stating, “Thanks to the court system, I have lost the love of my life and the father of my unborn baby” (p. 125). There is no evidence that prosecuting statutory rape reduces teen pregnancy, but “moral entrepreneurs,” as Cocca describes them, “defined adolescent sexuality and childbearing as threats to American moral and economic values, linked those activities to statutory rape and welfare dependency, and used statistics to bolster their claims.” Though public attention has moved on, she points out, implementation jeopardizes the civil rights of its target groups, produces no measurable positive results, and leaves many vulnerable youth unprotected (p. 127).

In her conclusion, Cocca reiterates that public authorities have, for the last century, attempted to address broad “cultural, social, political, and economic dislocations” by collapsing “the categories of child and adolescent into the emotionally resonant image of a very young innocent forced into sexual activity” (p. 129). She clearly sympathizes with the dilemma created by feminists’ efforts to minimize scrutiny of consensual teen sexuality through age-span provisions and to undermine stereotypes about gender difference through gender-neutral language: law enforcement tends to reinscribe existing patterns of privilege and disadvantage. Interest groups have very limited influence on the uses of revised laws, which have continued to penalize unmarried adolescent sex.

As this review's emphasis on Cocca's qualitative evidence may suggest, the author does not always tie together the statistical and interpretive analysis effectively. Her ambitious attempt to examine the scientific process of legislative change—as well as the contours, politics, and effects of such change—accounts for the disjointed feeling of the text, but it is admirable and productive nonetheless. There is also some tension between the concepts of change and continuity over time. While Cocca frames statutory rape law as an institution designed to regulate and penalize nonmarital adolescent sexuality, she also argues that “there is no continuum of statutory rape reform from the 1890s to the present; rather, the issue of statutory rape has been used for different purposes at different times by different groups” (p. 105). More thorough discussion of the relationship between the macro-level institutional context and the micro-level politics of statutory revision would reduce this tension and would also enhance the value of Cocca's analysis for scholars of law and society more broadly.

Finally, heavier emphasis in her critique of statutory rape law, for its refusal to consider teens' own formulations of consent, would heighten the book's relevance for

public policy discussion. The adoption of age-span provisions reflects sympathy for consensual heterosexual teen relationships, but the provisions address consent structurally rather than subjectively. This leaves many youths vulnerable to sexual coercion by their peers at the same time that it denies the relevance of consent outside of the age span. As long as age operates as a proxy for consent (or the lack thereof), statutory rape law will continue to fail at least as many youth as it protects.

Notes

[1]. Mary Odem, *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States, 1885-1920* (Chapel Hill: University of North Carolina Press, 1995); and Sharon Ullman, *Sex Seen: The Emergence of Modern Sexuality in America* (Berkeley: University of California Press, 1997).

[2]. Stephen Robertson, “Age of Consent Law and the Making of Modern Childhood in New York City, 1886-1921,” *Journal of Social History* 35, no. 4 (2002): 781-798.

[3]. American Civil Liberties Union, <http://www.aclu.org/lgbt/discrim/11940res20050908.html>.

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