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Making Right a Girl's Ruin: Working-Class Legal Culture and Forced Marriage in New York City, 1890-1950

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In August 1931, less than two weeks before her sixteenth birthday, Elizabeth Tedesco, having decided that her family was being too strict with her, ran away from her Brooklyn home. Several days later, she saw a sign for the Strand Dance Roof, a taxi-dance hall, and, after dancing there all night, applied for a job as one of the hostesses. With a photograph paid for with money borrowed from the woman in whose house she was staying, and wearing a gown loaned by one of the other hostesses, Elizabeth started work the next day. Several days later, a patron of the taxi-dance hall, Angelo Bonelli, a twenty-year-old assistant cutter from Long Island, and his friend Marty, asked Elizabeth and Angelina Guida, another runaway girl working at the Strand she had befriended, to go out with them. After the two couples had had a meal, Bonelli and his friend invited the girls back to a hotel to play cards and have some fun. Since the men promised they "wouldn't touch" them and "weren't a bit fresh," the girls thought they would be safe, and agreed.

Elizabeth and Angelina had misjudged the men. Once in the hotel rooms, Bonelli dragged Elizabeth into one room and locked the door. When she resisted his efforts to

have intercourse, he threatened to punch her in the jaw, chased her around the room, and fought her until he got her down. At this point Elizabeth fainted, and Bonelli "ruined" her. During the night, Bonelli had intercourse with Elizabeth several more times, leaving her "sore all over." Next door, after Angelina "put [her] legs together" and resisted his repeated efforts, Marty eventually gave up trying to have intercourse with her. In the morning the men told the girls to keep their mouths shut about what had happened, and gave them ten cents so they could get back to their rooms.[1]

Up to this point Elizabeth Tedesco's story follows the outlines of the story, first told by Kathy Peiss and Joanne Meyerowitz, about the pleasures and dangers encountered by the young working-class women, who, by pursuing the possibilities for autonomy and sexual expression offered by urban life, helped usher in modern sexuality.[2] But as it continues Elizabeth's story moves beyond the usual parameters of the modern tale of pleasure and danger to become a story of forced or 'shotgun' marriage. Two days after Bonelli assaulted her, Elizabeth's married brother Paul found her at the Strand Dance Roof. After he urged her to "tell the truth" about her time away from home, she told him what Bonelli had done. Paul took Elizabeth and Angelina home with him, but the following evening all three returned to the dance hall together with some of Paul's friends. They waited outside until Bonelli emerged, whereupon Paul confronted him and asked him if he was "willing to do right by [Elizabeth]." Having talked the matter over with Paul and the others at Elizabeth's family home, Bonelli agreed to marry Elizabeth the next morning. However, when they reached City Hall, Bonelli told the clerk he had been kidnapped and forced to come there. The clerk called the police, who arrested Bonelli,

and put Elizabeth in the custody of the New York Society for the Prevention of Cruelty to Children. There is no evidence that the couple's marriage ever took place: Bonelli maintained his refusal to marry Elizabeth even after being prosecuted for statutory rape, pleading guilty to misdemeanor assault, and being sentenced to one year in the New York City Reformatory. Elizabeth's fate is unknown.[3]

Instances in which working-class families like the Tedescos sought to pressure a man to marry a teenage girl with whom he had sexual intercourse, or to provide support for the child that resulted from such sexual activity, rarely appear in accounts of the efforts made, in the early twentieth century, to police female sexuality. Historians, such as Rickie Solinger, have noted, though without elaborating the point, that marriage was the most common response of Americans to the pregnancy of an unmarried woman.[4] Mary Odem found a small number of instances in which families in Alameda County, California, tried to use a charge of rape to prompt men to agree to such marriages, but those families' attempts left too few traces in the court records to command more than passing attention in her analysis.[5] The rich sources that I explore – prosecutions for statutory rape in the case files of the Manhattan County District Attorney – reveal the incidence of working-class New Yorkers seeking to force men into marriage by charging them with rape was far greater in scale than Odem found. My sample, every statutory rape case in the case files for every fifth year from 1896 to 1946, included 165 cases in which one or more of the parties sought to resolve a case by means of a marriage, or by a financial payment in lieu of marriage. Those cases amount to twenty-seven percent (N=609) of the case files that contained sufficient material to reveal such efforts.[6] Such efforts appear less prominently

in the picture painted by other historians because of the nature of their sources. Efforts to force marriage on men who had sexual intercourse with single women or made them pregnant are largely absent from records of such institutions as the reformatories studied by Ruth Alexander and the maternity homes investigated by Solinger and Regina Kunzel, because only girls who could not pursue informal means -- those rejected by their families or unable to find the man that had impregnated them -- were drawn to institutions.[7] In the court records she studied, Odem found few efforts to force a male into marriage because of the small size of her sample, and, more importantly, because the records encompassed only those cases prosecuted in the criminal court, and not those resolved, as were many of those that ended in marriage, earlier in the legal process.[8]

The wealth of information contained in my sources opens to view the role of marriage in the working-class response to female sexual activity. Families sought a girl's marriage to save her from "ruin," from the loss of respectability and marriageability that otherwise attended the discovery that she had lost her virginity outside marriage or become pregnant. Investigative reports and statements in the District Attorney's case files reveal that working-class New Yorkers applied the concept of ruin to a more extensive range of circumstances than has generally been recognized. The practice of charging men with rape in order to persuade them to marry the aggrieved party reveals not only working-class understandings of sexuality, but also ordinary Americans' attitudes to the law. Historians have focused on working-class Americans' efforts to control the legal proceedings they instigated. However, if we step further back from formal law and allow our perspective to become "wide enough to glimpse the tugs and pulls between those who

contributed to law's formal statements, those subjected to its enforcement and yet able at times to resist and/or reinterpret, and those who consciously reconstructed the law for their own purposes…," those efforts become part of a legal culture made up of a "plurality of authorized behaviors and authorizing discourses," "a multitude of possibilities, arguments, strategies, positions, located in various institutions and in the imaginations of a complex and diverse citizenry," and the relationships between all these elements.[9] Working-class legal culture understood a charge of statutory rape as the final stage in a process that began outside the courts, and saw the legal system as a means to an end other than the punishment laid down in the law. To understand that process, that legal culture, in the terms that working-class New Yorkers did, rather than in terms of the formal law, requires us to look at the whole process, the extra-legal efforts and their extension into the legal system. Understanding working-class legal culture also involves distinguishing it from a middle-class culture that avoided recourse to the law out of a concern to protect reputation. In the twentieth century, middle-class Americans looked to an evolving range of alternatives to courts – private networks, private maternity homes and reformatories, child guidance clinics, and psychiatrists – but a lack of resources, and class prejudices, kept those options closed to most workers.

The case files also reveal that, at different points in the legal process, a range of officials – officers of the New York Society for the Prevention of Cruelty to Children (NYSPCC), assistant district attorneys, jurors, and judges -- lent their support to the efforts of working class families to bring about marriages between young women and the men who had 'ruined' them. Legal officials put pressure on men to agree to marriage,

facilitated marriages, and dismissed charges of rape once a marriage had taken place. Despite their formal responsibility to enforce the law, officials placed extra-legal outcomes ahead of the outcomes prescribed by the law. Such support meant that working-class efforts to use the law to make right a girl's ruin proceeded without the same degree of interference and scrutiny that similar, more studied, efforts to use criminal law, juvenile courts and social agencies attracted.

My argument is that the reason why ordinary New Yorkers were relatively successful in gaining access to the legal system lies in fact that both the means and the ends that they sought were traditional, well-established, responses to extra-marital sexual behavior. A modern sensibility did develop in the early twentieth century, one that saw forced marriage as a problem not a solution; given the absence of love, and the immaturity of teenage girls, it was claimed that such a marriage could only produce a catalogue of social problems. But the adherents of that new view, particularly the social work professionals, had less influence in criminal courts than they did in juvenile courts, maternity homes, and social agencies. Many of the judges who presided over the criminal courts, as well as many of the lawyers who appeared before them, continued to display an older, 'Victorian,' sensibility, one that emphasized female chastity, that saw teenage girls as mature, and that tolerated male sexual license. Although those notions set judges at odds with social workers, reformers, and young women seeking to carve out modern identities, as Odem and Alexander have shown, they also tended to ally judges with those who saw a girl as ruined and sought to make right her condition through marriage. Legal officials could more easily actively support the aims of working-class New Yorkers

because, unlike efforts by families to institutionalize 'problem girls,' or to obtain support from social agencies, a marriage cost those officials nothing, and could even save the state the cost of imprisonment, or of providing support for an illegitimate child.[10] In part then, working-class New Yorkers gained access to the law because judges did not simply create and adhere to a coherent system of normative values and beliefs, as much legal history would have it, but, as Hendrick Hartog has recently argued, were required to "improvise solutions to immediate and intractable conflicts, using the imperfect materials of an inherited and changing legal order."[11]

Finally, the case files offer striking evidence of the persistence of the practice of forced marriage into the second quarter of the twentieth century, well after the time when historians have assumed that the modern sensibility that rejected the practice had become ascendant. This is not to say that nothing changed in the 60 years covered by my study. Thus, after 1920, girls began to speak of being in love, signalling the spread of the middle-class concern that romantic love should be the basis of marriage. In this period, too, the State Legislature amended the law to prevent and restrict the marriage of young girls, and adopted new paternity laws and proceedings. Moreover, jurors, prosecutors, and judges became less willing to support efforts to pressure men to marry girls who had lost their virginity but not become pregnant. But the practice of forced marriage survived and maintained its leading place in the working-class response to female sexuality despite those changes. The rising tide of modern ideas about sexuality and childhood did not wash away the concerns about 'ruin' that many working-class New Yorkers held; rather it eroded the scope of those concerns and carried them to a variety of different locations

within the legal system. In the face of historians' preoccupation with the new, with the dramatic breakdown of the traditional, my concern is to direct attention to the less obvious, but arguably more substantial, continuities in working-class legal culture, continuities that raise questions about the nature of modernity.

This article begins by delineating the extensive range of circumstances encompassed by the concept of 'ruin.' I then trace the process by which working-class New Yorkers attempted to make right a girl's ruin, first exploring the extra-legal dimensions of the process -- the investigations, confrontations and negotiations undertaken by working-class girls, the men with who they had sex, and their families – and then examine the ways in which those efforts were overlaid on the legal process of arrest, arraignment, indictment, and disposition. At every stage, I analyze the actions and motives of the legal officials, and the complementary relationship between formal and informal legalities they created, a relationship that gave working-class New Yorkers' an unmatched ability to operate within the legal system on their own terms.

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Throughout the first half of the twentieth century, working-class New Yorkers continued to use the language of ruin to describe pre-martial sexual intercourse. Like Elizabeth Tedesco, girls and their families generally spoke of a man who took a girl's virginity as having 'ruined her;' they described the sex act itself as 'her ruin;' and they referred to her as a 'ruined girl.' A ruined girl did not have the intact hymen that conferred the status of

virginity. Regardless of the circumstances in which it took place, physical ruin led to a loss of respectability and to reduced prospects for marriage, consequences that threatened to ruin a girl's future. In its turn, a girl's social ruin threatened her family's reputation and future. Sociologist Ruth True reported that working-class parents on New York City's West Side told her that ""You've got t' keep your eye on a girl.... [Y]ou never can tell, if you don't keep watch, when a girl's goin' to come back an' bring disgrace on you."…The sting of her shame is felt to be keener than any boy can inflict." A ruined girl's limited prospects of marriage also threatened to make her dependent on her family for an extended period. Pregnancy magnified the consequences of a girl's ruin. Illegitimacy continued to carry a strong social stigma throughout the first half of the twentieth century, with the result that a ruined girl passed on her loss of respectability to her child.[12]

Ruin could be made right by marriage, even in the case of teenage girls. Marriage could bring both respectability and at least nominal economic security. Ruth True found that, on New York City's West Side, "Marriage -- even a common law marriage -- is accepted as removing any stigma that might attach to an irregular relationship"; working-class New Yorkers from other ethnic groups and neighborhoods who appear in the case files echoed that attitude. A marriage made right premarital sexual intercourse by rewriting that sexual encounter as a courtship, thereby resituating what had happened within the boundaries of respectability, and removing any blot on the family name. Marriage also, at least formally, offered the opportunity to shift the burden of providing for a girl from her family to the man who had ruined her.[13] Middle-class reformers often lamented that the marriages of ruined girls, particularly marriages into which the man had

been forced, lacked any substance and often quickly collapsed; but even a brief marriage that existed in form only did win for some girls a degree of respectability in their communities.[14] When a man's wedded state or other circumstances made his marriage to the girl he had ruined impossible, working-class families commonly sought a financial settlement from him as an alternative to wedlock. Payment of a lump sum, or regular payments for the support of a child, went some way towards ameliorating a girl's dependency, but, except where the money allowed a pregnant girl to be sent away from her community to have her child, it failed to restore a girl's respectability.

The Manhattan County District Attorney's case files add another level of specific detail to this familiar description of the concept of ruin, detail that gives the concept a less familiar shape. The notion of ruin that can be glimpsed in the case files encompasses a more extensive range of circumstances than has generally been recognized. Working-class families like the Tedescos pursued a girl's marriage when she lost her virginity, even if, like Elizabeth, she lost it to a man she had not known before he 'ruined' her. Families more often made efforts to arrange a marriage or a financial settlement when a girl's ruin extended beyond the loss of virginity to pregnancy (see Table 1).

TABLE 1:
Cases that involved extra-legal investigations, or efforts arrange a marriage or a financial settlement, 1896-1946.[#]

	1896	1901	1906	1911	1916	1921	1926	1931	1936	1941	1946	Total
Cases involving women who did not become pregnant	15	31	7	54	37	43	71	75	25	16	57	431
Number of cases that involved extra-legal efforts	2	5	2	20	13	14	10	21	3	5	7	102

As a proportion of the cases involving women who did not become pregnant	13%	16%	28%	37%	35%	32%	14%	28%	12%	31%	12%	24%
Cases involving pregnant women	1	2	4	8	12	3	8	27	34	34	45	178
Number of cases that involved extra-legal efforts	0	1	1	6	8	1	3	10	6*	7*	20	63
As a proportion of the cases involving pregnant women	--	50%	25%	75%	66%	33%	37%	37%	18%	21%	44%	35%

(Source: Manhattan County District Attorney's Closed Case Files)

The sample of cases files that contained documents that would reveal such efforts are drawn from a larger sample, every statutory rape case I could identify prosecuted in each sample year, which included 517 further cases.

* The totals for these two years are aberrantly low because assistant district attorneys or their clerks appear to have stopped the practice of recording that a grand jury had dismissed a case because the couple had married. In 1936 there are twelve cases, and 1941 a further six cases, in which a grand jury dismissed the charges against a man who admitted impregnating a girl. Usually such a dismissal meant that the couple married -- in my nine other sample years there are only four such cases that did not involve a marriage -- but these files include no mention of an extra-legal outcome.

Pregnancy clearly altered how Ellen Wilson's parents sought to deal with her ruin. Sixteen year old Ellen ran away from home in 1916, after her father discovered that she had lost her virginity. She found work, and an apartment, and persuaded Harry Donovan, the man she had been seeing, and having intercourse with for almost three years, to move in with her. The couple lived together for two months before the police found them. At the time of Donovan's arrest, Ellen's parents insisted that he be prosecuted, and refused to have anything to do with their daughter. However, by the time prosecutors had prepared the trial brief, Ellen's parents, having found out that she was pregnant, were no longer willing to prosecute Donovan. They now wanted the couple to get married. The Wilsons' change of heart could have resulted from their concern about the care, or the legitimacy, of their grandchild. Or, like many New York City parents, they may have feared that the costs of Ellen's pregnancy would fall on them.[15]

The Tedesco family were also not unique in adhering to a concept of ruin that

made no more allowance for the circumstances in which a girl lost her virginity than it did for the duration of her relationship with the man responsible for her condition. Elizabeth's family regarded her as ruined, and sought to bring about her marriage, even though the prospective husband had accomplished her ruin through the use of force. In twenty-five cases, or fifteen percent (N=165) of the cases I investigated that involved extra-legal efforts, the girl alleged that the defendant had forced her to have sexual intercourse. Even more strikingly, ten of the girls who stated that they had been raped themselves sought marriage. Seventeen year old Susan Russell, for example, charged that Peter Waldstein, a twenty-six year old Russian salesman, had put drugs in her wine, and, once she lost consciousness, had had intercourse with her. In return for his promise to marry her, however, Susan agreed not to tell her brothers about the assault, and regularly went with Waldstein to hotels, for the purpose of sexual intercourse. Only when she became pregnant, and he refused to go through with the marriage, did Susan tell her brothers. They confronted Waldstein, who threatened to have them arrested for blackmail; instead, Susan and her family had him arrested and charged with rape. As in other similar cases, the middle-class assistant district attorney saw Susan's willingness to remain involved with Waldstein as inconsistent with her claim that he had coerced her. In the terms in which most working-class immigrants viewed sexuality, however, Susan's behaviour was entirely consistent: once ruined, a girl had little prospect of marriage to anyone other than the man who had ruined her. That situation made it more difficult than middle-class prosecutors allowed for a ruined woman to spurn a man who had coerced her. Moreover, the firm distinction between coerced and consensual intercourse made by prosecutors did

not exist in the culture of working-class youth. Violence against women constituted an unexceptional part of the sexual behaviour of young men, a common occurrence even in sexual relationships into which girls willingly entered. In this sexual culture, the fact that a man had coerced a girl did not necessarily represent an obstacle to their marriage. In the event, Waldstein did eventually marry Susan Russell, whereupon the assistant district attorney dropped the charges against him.[16]

Although the case files clearly show that parents and relatives of girls who had been subjected to sexual attack saw them as ruined, the files also offer glimpses of the attitudes and actions of a small proportion of the girls, glimpses that suggest that, even some girls who had not been coerced, regarded themselves as having been ruined. In twenty-six cases, or sixteen percent (N=165) of the cases in my sample that involved extra-legal efforts to make right a girl's ruin, the files reveal that girls did share their families' sense that they were ruined once they lost their virginity, particularly if pregnancy followed. Some pregnant girls themselves tried to get the man in question to marry them, and expressed the same concern to legitimate their children, and to ameliorate their dependence, that their families displayed. Marion McBride, a seventeen-year-old domestic servant, had sexual intercourse with James Gray, a seventeen-year-old African-American pianist, on several occasions in the second half of 1935, and became pregnant as a result. Gray first gave her money to go to a doctor for an abortion, but apparently Marion could not procure one, because he later promised "to stay with her and have the baby." Several weeks later, Gray announced that he was "in no position to marry her." Marion then went to the police and charged the vacillating Gray with rape. At his

arraignment in the Magistrates Court, she stated she was still in love with him; she also revealed that she had lost her job several months earlier, a circumstance that evidently contributed to her decision to bring charges against Gray, in order, that is, to obtain his help in supporting their child.[17] Marion's relationship with Gray, and her declaration that she wanted to marry him because she was "in love" with him, expressed a romantic view of marriage common to most girls at the center of prosecutions in the years after 1920. In earlier decades, girls had not talked of being in love, a reflection of a working-class emphasis on a man's ability to be a dependable provider and a woman's ability to supply help and domestic services. These attributes contrasted with the emphasis on emotional intimacy, valued by the middle-class as the key to marriage. A new concern with being in love seems likely to have narrowed the circumstances in which girls would have pressured a man to marry them – it was at the root of African-American girls' reluctance to marry the fathers of their children in the 1960s – but the continuing adherence of many parents to the older vision of marriage must temper that conclusion.[18]

The concept of ruin made a man responsible for a girl's condition, and put the onus on him to "do the right thing," as Elizabeth Tedesco's brother Paul had put it when he had confronted Angelo Bonelli. When confronted, almost all the men in my sample admitted to having had sexual intercourse with the girl in question, but in only one third of the cases did men or their families propose that the case be settled through a marriage.[19] There is some evidence to suggest that the reason why a greater proportion of the men charged with statutory rape did not propose marriage was that different cultures held men responsible for a girl's ruin to different degrees. In a sociological study of the community

of Greenwich Village carried out in the 1920s, Caroline Ware argued that Italians, regardless of their class and degree of Americanization, believed that, "If a boy got a girl into trouble, the fault lay with the girl's father who had not protected her." The Irish, by contrast, were "more ready to lay responsibility on the man."[20] A further explanation for the failure of more men to propose marriage is a sexual double standard that limited male responsibility for sexual acts with a girl who had already lost her virginity. As late as the 1930s, sociologist William Whyte reported that, in an Italian slum district of an Eastern city,

> A man who takes her virginity from a "good girl," seriously affecting her marriageability, will marry her because he is responsible.…[If a girl] enjoys a good reputation, her family will be able to exert a good deal of pressure to force a marriage. If he makes her pregnant, marriage is hardly to be avoided. The promiscuous girl is less desirable socially, but there is also less risk in having relations with her. Only pregnancy can impose a responsibility and…such entanglements may frequently be avoided.[21]

Even in the case of a girl who had already lost her virginity, becoming pregnant outside marriage compounded her ruin. She passed on the same stigma of illegitimacy to her child, and she suffered the same economic pressures that a 'good girl' did. But, since her earlier sexual activity had damaged her social standing, the man who had made her pregnant felt less social pressure to make right that ruin than the man who had made a 'good girl' pregnant. Some of the men who agreed to 'do the right thing,' were motivated by their earlier promise to marry a girl should she become pregnant. But most men proposed marriage not in order to do the right thing, but to avoid punishment. In 1916, for example,

Anna Polentz sought to arrange the marriage of her twenty-two year old son, Leo, a clerk, to fifteen year old Catherine Meyerhoff. Fearing that her father would beat her for returning late from a visit she and Leo had made to the theater, Catherine had gone with Leo to a hotel. During the night, he forced her to have sexual intercourse with him. They stayed on in the hotel for two days, until Polentz heard that the police were looking for them and went to his mother for help. After consulting a lawyer, Anna Polentz announced that the couple had to get married. She took Catherine home and tried to persuade the girl's parents to consent to the marriage, but they refused to give it.[22]

When a girl's family refused an offer to make right her 'ruin' through marriage, as they did in nineteen, or twelve percent (N=165), of the cases in my sample, the case files indicate that they were usually motivated by concerns as to how effectively the marriage would make right a girl's ruin, but not, as I noted earlier, about the circumstances in which the couple had had intercourse. Some parents, the Meyerhoffs among them, rejected an offer of marriage because they did not think the man could adequately provide for their daughter. In other cases, parents objected to the bad character of the man, which usually meant that he had served time in prison. Ethnicity also operated as an obstacle to marriage. Jewish parents, for example, often regarded both Italian and Irish men as inappropriate husbands for their daughters.[23]

The extensive range of circumstances that fell within the gambit of working-class New Yorkers' concept of ruin helps explain why such a high proportion of statutory rape prosecutions involved efforts to make right a girl's ruin. Ordinary New Yorkers approached instances where no relationship existed between a girl and the man with whom

she had sexual intercourse, and instances where a man used force to compel a girl to have sexual intercourse with him, as acts that ruined a girl and created a condition that could be made right by her marriage to the man in question. Only among the cases in which a girl had sexual intercourse with a man in return for money, or some other form of payment, are there no examples of efforts to arrange a marriage.

Working-class girls and their families began their pursuit of marriage and financial settlements to make right a girl's ruin by using informal, extra-legal and local means. In early-twentieth-century New York City, informal, neighborhood ties, particularly among women, helped to police sexual behavior. Families conducted their own investigations, sometimes involving doctors, and confronted men whom girls alleged had 'ruined' them. Only when those informal efforts failed, when additional pressure needed to be applied to a recalcitrant man, did working-class New Yorkers look to the formal law, and seek to apply additional pressure through the threat of imprisonment. These extra-legal measures appear only on the margins of existing accounts of the efforts to police female sexuality, which has the effect of subordinating them to the legal system. What is largely overlooked here is the extent to which they took place in the shadow of the law, and indeed the extent to which they shaped the legal dimensions of efforts to respond to the sexual activity of teenage girls.

In the late nineteenth and early twentieth century, working-class New Yorkers continued to display a degree of interest in their neighbors' activities, and a willingness both to help parents maintain authority over their children, and to intervene when they observed suspicious behavior, that had been evident in the city's working-class

neighborhoods throughout the nineteenth century.[24] Charles Morris, a twenty-four year old shipping clerk, owed his conviction for statutory rape in 1896 to such community policing. Morris met Ethel Katz, a fourteen year old school girl, on the street, and, over the following weeks, took walks with her, before asking her to come to his room. Morris went into his building first, and had Ethel follow a short time later. However, the janitress, scrubbing the steps, saw through this subterfuge, spoke to the landlady, and sent a male tenant to tell Ethel's mother that they believed the girl "was in a room with a man." When Mrs. Katz arrived, the landlady took her to Morris's room, and when Morris, responding to Mrs Katz's knocking, opened the door, Mrs. Katz caught sight of her daughter. By the time she returned with her husband, Morris had left, but they met Ethel coming down the stairs.[25]

When a family did not actually catch a couple in the act of consensual sex, as was the case with Mrs. Katz and her neighbours, they often conducted their own investigations seeking to determine whether a girl had been ruined. One form of investigation involved taking a girl to a trusted family doctor. Parents and siblings asked doctors to confirm their suspicions that a girl had lost her virginity, or become pregnant, and used his diagnosis to persuade the girl to tell them what had happened. In a case from 1911, for example, an Italian woman, visiting her sister's family, noticed the "condition" of her fourteen year old niece, and became suspicious. She called the girl's physical appearance to her brother-in-law's attention, and he took the girl to a doctor. The doctor diagnosed her as five months pregnant; only then, in the doctor's office, did the girl admit that her step-mother's father had been forcing her to have intercourse with him. Parents turned to doctors as experts

able to authoritatively read bodily signs and to tell them the ‘truth’ about what had happened to their daughter. Regardless of what had happened to a girl, most families regarded her as ruined only if a doctor found that her hymen had been ruptured.[26]

When a family established that a girl had been ruined, they often confronted the man who was responsible. Olive Smith, for example, told an investigator in 1911 that, after her fifteen year old daughter told her that a seventeen year old neighbor, an elevator operator named Malcolm Lewis, had forced her to have intercourse with him, she

> went to the rooms of Mrs. Lewis and found the defendant there; that she demanded to know what the defendant had done to her daughter, and that both the defendant and his mother refused to admit or deny anything about it; that she said she would bring her daughter to confront the defendant, but when she returned with her daughter, the defendant had gone downstairs and refused to come up to face the girl; that she informed Mrs. Lewis she would give her a day or two to “think it over,” and not hearing anything from her, she took her daughter to the Fifth District Court…and made the complaint of rape.[27]

Olive Smith’s trip to the court makes it clear that the legal option of laying a charge of rape lay in the background of extra-legal efforts to force a marriage: when a girl or her family asked a man to ‘do the right thing,’ they were offering him a choice between marriage and prosecution. As sixteen year old Ellen Marcus put it, in testimony in the Magistrates court in 1911, “if he married me then there would be no trouble now.”[28] In effect, and whoever initiated them, extra-legal efforts to make right a girl’s ‘ruin’ through marriage took place not so much outside the legal system as in its shadow. Most men caught having sexual intercourse with teenage girls were aware that this shadow had fallen

over them. Paul Covello offered to marry Rosa Pirelli "if that would get him out of trouble," a phrase used by many of the men at the center of statutory rape cases.[29]

The use of the shadow of the law was a well-established part of working-class legal cultures in the United States long before the early twentieth century. Historians have found evidence that in the eighteenth century pregnant single women and their families began initiating fornication prosecutions in an effort to secure private maintenance and compensation settlements from the man responsible, in part in response to local authorities' decreasing interest in prosecuting such cases.[30] In nineteenth century Philadelphia, as part of poor and working people's regular recourse to criminal courts to resolve everyday quarrels with neighbors, friends, and co-workers, unwed mothers continued to initiate prosecutions for fornication and bastardy in an attempt "to use the threat of court action to gain a private settlement."[31] Reconstruction gave African-Americans in the South the opportunity to use the law in the same way.[32]

The absence of middle-class families from my sample reflects an equally longstanding rejection of recourse to criminal law in middle-class legal cultures. Cornelia Dayton locates the origins of that attitude in the eighteenth century, when elite and propertied householders moved from "a communal ethos -- by which one revealed and repented all sin -- to an ethic of privacy in which middle-class respectability was preserved by shielding the family name from public exposure."[33] In the late nineteenth and twentieth century, when middle-class Americans' failed in their informal efforts to arrange marriages or financial settlements in response to pre-marital sexual behavior and to out-of-wedlock pregnancy, they turned not to criminal courts, but to private networks, to the

intercession of organizations such as the Women's Christian Temperance Union, and to private maternity homes and reformatories. In the 1930s, middle-class parents also turned to the child guidance clinics established by psychiatrists involved in the mental hygiene movement. Mental hygienists cast middle-class girls' sexual activity as an emotional problem, an object for the therapeutic work of the clinic, not the disciplinary work of the courts. Beginning in the 1940s, psychiatric experts retouched that portrait in explicitly racial tones, painting white women who had children outside marriage as unadjusted neurotics, who would respond to psychiatric analysis, but black women as sexually promiscuous products of a pathological culture, who would respond only to state power.[34]

Although some New York families succeeded in arranging marriages in the shadow of the law, the efforts of others to use the law to get men to 'do the right thing' flowed into the courts. Even after a man's refusal to marry a girl caused her or her parents to charge him with rape, the wronged girl's family continued to pursue marriage within the legal system. One father, confronted by a female social worker seeking his consent to the marriage of his nineteen year old son to the fifteen year girl he had impregnated, declared he would not let his son marry any girl that appealed to the court, but generally working-class New Yorkers did not see the fact that a girl had charged a man with rape as an obstacle to the couple later marrying.[35] Men who offered to marry a girl, or agreed to a marriage proposed by her or her family, typically did so at the time of their arrest. Most of the remaining men suggested or accepted marriage after being arraigned in the Magistrates Court; only a few waited until a grand jury indicted them, at which point they faced the prospect of spending a long period in prison while awaiting trial. Michael Lione held out

until he faced the prospect of conviction for statutory rape. After keeping company with seventeen year old Donna Gallo for six months, Lione forced her to have intercourse with him. He told her, "I done this so that I know you are my true wife. I know that you have to marry me." Because of Lione's promise to marry her, Donna told no one about the rape, but a month later Lione told Donna's mother. Lione then stopped visiting the family, who eventually had him arrested. At his trial, Lione testified that he had called on Donna, but denied that he had talked to her of marriage, or had intercourse with her. As the evidence against him mounted, however, Lione changed his position. He pled guilty to second degree assault, and agreed to marry Donna.[36]

The efforts of working-class families to pressure men into marriage extended into the legal system, in part because the creation of the offence of statutory rape at the end of the nineteenth century gave them more scope for this approach. That had not been the intention of the reformers who came together under the banner of purity reform in New York, and succeeded, by 1895, in having the age of consent raised from ten years -- the common law age adopted in most state laws -- to eighteen years, and in making the age of consent the basis of a distinct form of rape. Reformers saw the increased age of consent as a weapon in the fight against prostitution, as a means of establishing a single standard of sexual control and morality, and as a way of extending to teenage girls the protection the law gave to children. Working-class families, by contrast, saw the law as offering a means of dealing with the social consequences that a girl faced as a result of having sexual intercourse outside marriage, a goal that implicitly treated a teenage girl as an adult, rather than as a child. The key to the effectiveness of the new offence of statutory rape lay in the

fact that, although the law simply punished men, and did not formally make right a girl's ruin, it cast a longer shadow than had the older legal categories of rape, seduction and abduction. Under the older statutes, only men who had physically forced a girl to have intercourse with them, or who had promised marriage to win a girl's consent, or who had either married her or put her to work as a prostitute without her parents' permission, needed to fear prosecution. With the creation of the offence of statutory rape, any man who had sexual intercourse with a girl under eighteen years of age, whatever the circumstances, faced the prospect of prosecution and imprisonment for up to ten years.[37] For working-class families, the development of statutory rape provided new opportunities to use the law as a lever, a threat, or a bargaining chip, in their efforts to make right a girl's ruin.

Although, in the 1920s, the space that existed in the legal system for working-class efforts to force marriage contracted and changed its form, girls and their families continued to find ways to use the courts to achieve their ends. The frequent marriages that resulted from statutory rape prosecutions in New York in the early decades of the twentieth century attracted the attention of reformers, and provided one impetus for campaigns to change and enforce New York's marriage laws. Reformers argued that an increase in the minimum age of marriage was necessary in order to prevent parents from consenting to the marriage of their teenage children. By the 1920s, the belief of reformers that, as Jane Addams put it, marriage operated as a "restraint, a control producing upright living," had been undermined by their new attention to psychological development, and their perception that early marriage created more problems than it solved.[38] Arthur Towne

of the Brooklyn SPCC expressed reformers' new understanding when he argued, in 1925, that, despite a teenage girl's physical maturity, she had not yet had the "opportunity for the stabilizing of emotional reactions, for the orientation of the individual as a social being, and for the acquiring of moral standards." A teenage girl's marriage therefore produced a catalogue of social problems: "improvidence, incompatibility, non-support, abandonment, abuse, exploitation, infidelity, separation, divorce, [and] improper rearing of offspring." Reformers' campaigns against such "child marriages" spurred the Legislature to raise the minimum age of marriage in New York to sixteen years for girls – or fourteen years with the permission of a Children's Court judge -- and to tighten enforcement of those laws.[39]

The new marriage laws formally narrowed the space that the legal system allowed for working-class efforts to use a charge of rape to pressure men to agree to marriage, but did not entirely preclude those efforts. Some families chose to stay away from the courts rather than submit to judicial scrutiny, putting off formalizing marriages which they had arranged until a girl turned sixteen years of age. Not all of those families successfully surmounted the risks inherent in that strategy: vacillating men and suspicious school officials unravelled some families' arrangements before the marriage took place, and brought the couple into the courts. Other parents continued to come to courts, seeking the permission they now needed to secure a marriage.[40]

At the same time that changes to the marriage laws imposed restrictions on efforts to force marriages, the development of new criminal paternity proceedings offered working-class families a new avenue by which to put pressure on men, one that could be used in conjunction with a charge of rape, albeit only in cases where a girl became pregnant. In

the first quarter of the twentieth century, Poor Law officials handled bastardy cases, and prosecuted men only when children were in danger of becoming public charges. In the second decade of the twentieth century, the Progressive child welfare movement began to urge the reform of bastardy laws. The reform campaign grew out of recognition of the peculiar vulnerability of illegitimate children to an early death, to ill-treatment, and to dependency on the state. The campaigns promoted reform of bastardy laws in lieu of more radical proposals to grant illegitimate children the same rights as legitimate ones. In 1925, the New York Legislature created new criminal paternity proceedings, proceedings that provided another way for families to secure financial support for an unmarried mother and her child. In New York City, the Court of Special Sessions was empowered to conduct hearings to establish a child's paternity, and to make orders that fixed a weekly sum to be paid by the man declared to be a child's father until the child reached sixteen years of age. Families, rather than only Poor Law officials, could initiate actions, and they could use them as an additional lever to pressure men into marriage, and to obtain, and collect, support payments negotiated outside the legal system. Any out-of-court settlement was not binding upon the mother unless the court reviewed and approved it; without that approval, she was free to bring paternity proceedings which, given the payments already made, would almost certainty result in a support order.[41]

Working-class New Yorkers' efforts to pressure men into marriage survived within the legal system, and often succeeded, because of the crucial support they received from legal officials. In the second half of the nineteenth century, a concern to make the law less accessible to personal use, and more effective in controlling specific populations, had led

to institutional and structural changes that placed control of the process of criminal justice in the hands of salaried city officials: professional police, district attorneys, and magistrates. Although historians have argued that salaried officials helped create rigid boundaries between formal and informal legal sites, discourses and practices, legal officials in Manhattan, particularly the judges whose decisions provided a lead for prosecutors, facilitated the continuous relationship between informal and formal legalities sought by working-class New Yorkers.[42] Steven Schlossman and Stephanie Wallach, and more recently, Ruth Alexander, Mary Odem and Laura Edwards, have highlighted instances in which legal officials ignored the wishes and authority of parents who had come to the legal system for help in controlling their daughters, and in which judges displayed hostility toward girls who expressed their sexuality. The case files in my sample show that there was another side to those attitudes. Reflecting their Victorian mentality, many of the judges who presided over the cases in my sample also shared with working-class families the belief that girls who had sexual intercourse outside marriage were ruined, and that marriage was the only way to remedy that condition, even in the case of teenage girls. Those beliefs sometimes led judges to disregard legal rules and stretch legal categories, or endorse the efforts of others to do so, in an effort to obtain that remedy.[43]

Officers of the New York Society for the Prevention of Cruelty to Children (NYSPCC) were the first legal officials encountered by most of those working-class New Yorkers who had laid a charge of rape with the aim of pressuring a man into marrying a ruined girl. The NYSPCC, a private child protection agency incorporated by the state, had a formal role in the New York legal system that extended to shaping, enforcing and

administering criminal law relating to children in New York City, including the statutory rape law. Not only did the state grant powers of arrest and prosecution to the Society's officers, but the police turned all cases that involved children under sixteen years of age over to the Society to investigate, assistant district attorneys relied on the Society's officers to prepare cases for trial, and judges sought their assent to plea-bargains. With considerable justification, the NYSPCC claimed that it constituted a "component part of the city government."[44]

The elite philanthropists who directed the NYSPCC committed the Society's officers to a view of teenage girls as children in need of protection, and to law enforcement and the punishment of offenders as the only effective means of protecting children marked the work of the Society's officers. Although most child protection agencies adopted a social work approach at the turn of the century, the NYSPCC maintained its orientations throughout the first half of the twentieth century.[45] Both concerns could have been expected to lead NYSPCC officers' to obstruct working-class efforts to use the law to pressure men into marriages. In practice, however, its officers proved more pragmatic, adapting to the attitudes of the assistant district attorneys and the judges, who had the greatest influence on how a case would be resolved. When a man who admitted impregnating a fifteen year old girl asked one NYSPCC officer "what was the customary thing to do in these cases," the officer replied, "sometimes they married and sometimes they stood trial."[46] NYSPCC officers did not so much encourage or endorse marriages in statutory rape cases as act as intermediaries in the efforts of others to achieve that end. In one case in 1936, two officers literally acted as intermediaries, conveying an offer of

marriage made by a man being questioned at a police station to the mother of the girl for whose rape he had been arrested.[47] More often, NYSPCC officers simply directed the parties involved in a prosecution to the District Attorney's Office. When Joseph Angelico, an eighteen year old Italian errand boy, was charged with the rape of fifteen year old Maria Ferranti and released on bail, he approached the Society, which had the pregnant Maria in custody, and sought to marry her. The Superintendent of the NYSPCC responded by sending Angelico to the assistant district attorney, a referral that began a process by which the families involved resolved the case through the marriage of Joseph and Maria.[48]

In a typical pattern of action, the assistant district attorney, after meeting with Angelico and both families, recommended to the judge that the couple be allowed to marry. When the couple supplied the assistant district attorney with proof of their marriage, he obtained the judge's permission to recommend to the grand jury that the charge against Angelico be dismissed.[49] When circumstances made it difficult for a marriage to be performed, assistant district attorneys sometimes went beyond telling families what they needed to do, and themselves helped with the process. After Mary Fine, seventeen years old and seven months pregnant, charged nineteen-year-old Michael Bell with rape, in an effort to get him to fulfil his promise to marry her, the assistant district attorney asked the Youth Counsel Bureau to arrange the couple's marriage. Because Bell was on parole, he needed the permission of his parole officer to marry. The Bureau obtained that permission, as well as the couple's birth certificates, and arranged for them to be issued a marriage license.[50] Some assistant district attorneys went as far as

putting pressure on men to go through with a marriage. After the establishment of the new paternity proceedings, prosecutors typically coupled a statutory rape charge to paternity proceedings that involved underage girls. If a man agreed to pay support, assistant district attorneys typically urged the grand jury not to indict him for rape, and, if the grand jury did indict him, district attorneys allowed him to plead guilty to a lesser offense and receive a suspended sentence. The fear of being charged with statutory rape helps explain why so few men contested paternity proceedings in New York City in this period. [51]

There is little direct evidence as to assistant district attorneys' motives for such actions. In one case in 1906, a man, told by an assistant district attorney to produce a marriage certificate within two days or face prosecution for rape, later filed for divorce on the grounds that the district attorney had coerced him into marriage. The District Attorney's Office defended itself by asserting that the assistant district attorney "had merely followed the precedent established in the police courts and the Court of General Sessions in similar cases."[52] That statement, the most explicit expression of prosecutors' attitudes that the case files offer, suggests both that the District Attorney's Office was not committed to enforcing the law when the parties sought a marriage, and that, in supporting marriages, assistant district attorneys followed the lead of magistrates and trial court judges.

In addition to an assistant district attorney's endorsement, working-class families required the support of both a grand jury and a judge in order to secure a marriage and to extract a couple from the legal system. The marriage of Joseph Angelico and Maria Ferranti referred to earlier makes that clear. Grand juries of working and middle-class

New Yorkers could have indicted a man like Joseph Angelico, despite the assistant district attorney's recommendation that they dismiss the charges against him.[53] Not only was marriage not a formal defense to statutory rape in New York law, but grand juries in other circumstances, particularly when faced with sexually experienced girls who had offered unambiguous consent, regularly rejected district attorneys' recommendations that they indict defendants and instead effectively nullified the statutory rape law.[54] When the parties to a case had married, however, grand juries did follow district attorneys' recommendations, and dismissed the charges. Although the case files contain little direct evidence of jurors' attitudes, in one surviving transcript, from April 1916, a grand jury focused on marriage in its consideration of a statutory rape case. Early in the hearing, seventeen year old Sadie Brumberg told the Foreman of the grand jury that she had become pregnant, and had had a child, after an extended sexual relationship with Joseph Rosen. The Foreman and several other jurors then questioned Sadie and the other witnesses at length about why the couple had not married. Sadie claimed Rosen had initially promised to marry her, but had then demanded $200 from her family to go through with the marriage. Sadie's brother and father told the grand jury that they opposed her marriage to Rosen. The arresting officer testified that Rosen had revealed nothing to him about his attitude to such a marriage. Eventually the grand jury did indict Rosen, but the questions it members asked clearly established their willingness to see the case resolved through marriage, rather than by Rosen's imprisonment.[55]

A marriage settlement also required the support of a judge. The cases in my sample, and the observations of commentators, make it clear that magistrates and trial court judges

in the criminal courts generally co-operated with a family's efforts to pressure a man into marriage. Arthur Towne, the Superintendent of the Brooklyn SPCC, Morris Ploscowe, a New York Magistrate and an authority on sex crime, and Bertram Pollens, the senior psychologist at Rikers Island Penitentiary and the author of a popular book on the sex criminal, all described judges as not only sympathetic to efforts to arrange marriages, but as active supporters of those efforts. Pollens offered an account of a magistrate who claimed that four out of five statutory rape cases could be solved through marriage, and who attacked the NYSPCC for unnecessarily dragging couples into the courts.[56] It is important to note that not all judges acted in this way. Commentators also observed a lack of uniformity in the attitudes and in the decisions of the judges who presided over the city's criminal courts. Moreover, judges in the juvenile courts, who were often allied with child protectors and shared their modern idea that childhood extended beyond puberty, more frequently opposed the marriage of teenage girls than did those who sat in the criminal courts. In the 1940s, for example, Paul Tappan found that most judges in New York City's Wayward Minor Court, a court that had jurisdiction over girls aged between sixteen and twenty-one years, preferred to institutionalize girls, rather than to allow them to marry. But even in this court, there was one judge who saw marriage as the most desirable outcome.[57]

Judges' motives are less clear than are their actions, all the more so because I know nothing about the background of those who presided over the cases in my sample. The available evidence suggests that judges who supported efforts to bring about a marriage did so because they saw the situation of the girls who appeared before them in the same

terms as did working-class families: the girls were ruined, but could marry, and, by so doing, could make right their condition.[58] Judges' belief that teenage girls were capable of assuming the adult role of being a wife reflected their attention to the physical maturity of the girls who appeared in their courtrooms, and their understanding of the cultural beliefs of Southern European immigrants to the United States. Judges frequently commented on the physical maturity of adolescent girls and stressed the incongruity between a girl's mature appearance and the law's treatment of her, on the basis of her age, as an immature child. The fact that the law formally privileged age over physical maturity in defining childhood failed in practice to direct attention away from girls' bodies, largely because, until the 1930s, most working-class parents could not produce birth certificates, or other evidence of a girl's age. The absense of documentation resulted in a provision in the New York Penal Code that allowed the judge and the jury to determine a girl's age by "personal inspection" -- by looking at her.[59] Ideas about the different, more sexual, nature of Southern and Eastern Europeans added to judges' inclination to see immigrant girls as mature enough to marry. As Judge William Gold of the Niagara County Children's Court remarked in 1927, "a person must recognize that both the Italian girl and the Polish girl mature much younger than the average American girl. I had a girl come into my office, she was Polish, not quite fifteen, she weighed one hundred thirty-five pounds, a strong robust girl."[60]

Judge Gold went on to tell his colleagues that "Everybody knows the Italian girls marry early in life, and I think there is less immorality among the Italian people because of that fact.… I feel it is my duty to grant that [Italian] girl the right to be married."[61] His

comments reflected a tendency on the part of New York City judges to support early marriage as a laudatory element in the cultures of immigrant groups. In Judge Gold's case, his support for the marriage of Italian girls derived at least in part from his belief that early marriage could contain the sexual nature of Italian immigrants, a nature that would otherwise manifest itself in socially dangerous sexual activity. Arthur Towne, in generalizing about judges' support for the marriage of teenage girls, also attributed the bench's respect for early marriage as a cultural practice to an assumption that such marriages "must be part of Nature's wisdom."[62]

Judges' support for marriage also reflected a belief that marriage effectively made right a girl's ruin. The judge who presided over the trial of Michael Lione asserted that, notwithstanding the fact that Lione had agreed to marry Donna Gallo only after he realized that the jury would convict him of statutory rape, in view of the support of both sets of parents, and Lione's previous good character, "there is no good reason why two young people cannot live happily together." He then gave Lione a suspended sentence, warning him that if he did not treat his wife as a husband should, he would send him to jail.[63] These comments reveal that this judge believed that marriage made right a girl's ruin by providing her with the social identity of a wife, and with a future, a life of happiness if not wedded bliss, that reintegrated her into respectable society. The judge did recognize that a gap existed between the formal state of marriage that the law provided and the relationship that effectively made right a girl's ruin. He noted that the couple's parents would need to support them, and warned Lione that imposing a suspended sentence allowed the court to supervise, and if necessary, punish his behaviour. Reformers such as Arthur Towne argued

that the gap between form and substance made marriage ineffective as a response to a girl's ruin. Towne lamented the fact that, once the charges against them had been dropped, men often mistreated, or abandoned their wives, leaving them facing the same struggle to support themselves that they had confronted before their marriage.[64] The judge in the Lione case, by contrast, was typical of his colleagues in taking the view that there was "no good reason" to believe that marriage would fail to make right a girl's ruin.

Once a girl had become pregnant, judges also supported her marriage on the grounds that it prevented her ruin from being passed on to her child, in the form of the stigma of illegitimacy. Children's court judges, given no legal guidelines as to how they should use their discretionary power to permit the marriage of fourteen and fifteen year old girls, generally agreed that they should give pregnant girls permission to marry. "It always seemed to me harsh for us to refuse to give a name to an unborn child," Judge Scripture remarked, in 1930, to the general assent of his colleagues.[65]

It is not simply the beliefs that judges exhibited, but those that they did not, that help explain why they supported working-class efforts to secure a marriage. To act on their beliefs, judges had to step outside the rape statute, outside formal legal categories and rules, as had the judge in halting Michael Lione's trial when he promised to marry Donna Gallo. But we do not hear judges lamenting how the formal law restricted them from acting to help families. They appear not as men constrained by statute and precedent, but as men willing to improvise a solution, particularly one that employed a legal form, marriage, which reflected long-standing custom, and which cost them nothing. Even judges in the Children's Court balanced the modern concern with the immaturity of

teenage girls that formed the premise on which their court had been founded with a willingness to improvise; as one judge told his colleagues in 1927, "you can't lay down any hard and fast rules, you have to get the facts, you have to study them and see what is for the welfare of the girl, the child involved, and if you do that there will be some instances, as you well understand, where they ought to get married…."[66] Judges also showed little sensitivity to the modern ideas of childhood and sexuality that persuaded social workers to reject forced marriage. Few proponents of those ideas had a role in New York City's criminal court system; because it rejected social work, the NYSPCC did not bring to statutory rape cases the modern perspective that a social agency involved in the legal process might have been expected to display. Older ideas remained so entrenched in the criminal justice system that, as Ruth Alexander has argued persuasively, even the psychiatrists and social workers who were affiliated with the courts reinforced rather than overturned the court's emphasis on female sexual purity.[67] In part because modern ideas were less influential in the criminal courts, the concept of ruin and marriage as the means of making right that condition appears to have survived among judges in these courts to a greater degree than it did among their colleagues in the juvenile courts, or among the staff of maternity homes and reformatories.

There are signs that modern ideas did begin to influence legal officials in the second quarter of the twentieth century, but not to a degree sufficient to persuade them to entirely abandon the concept of ruin. After 1920, grand jurors, middle-class assistant district attorneys, and judges were less willing to force men to marry girls who had not become pregnant. They did not see sexual intercourse outside marriage as having, for a girl, social

consequences of such a magnitude that they warranted requiring the man involved to marry her. Often following a district attorney's recommendation, grand juries were less inclined to provide the indictments necessary to put pressure on men to marry girls: they indicted only those men who coerced a girl who had not previously had sexual intercourse, men who knew their partner was under the age of consent, and men who failed to marry or provide support for a girl who had become pregnant. Most Children's Court judges refused girls under sixteen years of age who had been 'ruined,' but had not become pregnant, permission to marry. They argued that sparing girls' "disgrace" did not constitute sufficient grounds for relaxing the law. Some judges did, however, continue to give Southern and Eastern European girls permission to marry, emphasising the need to recognize their different physiology and culture.[68]

The diminished support offered to working-class families did not put an end either to those families' belief that girls who had sexual intercourse outside marriage were ruined, or to their practice of using the law to make right that ruin. Those ideas also survived outside working-class neighbourhoods, among middle-class legal officials who were only beginning to be influenced by modern ideas. To accommodate those continuities in our picture of mid-century American culture, we need to shake off the view that modern notions simply superseded older understandings. The wave of new ideas about sexuality and childhood that swept through the mainstream of American culture failed to reach all the pools and eddies of that culture, allowing older ideas to survive. We are used to thinking about such persistence as leading only to conflict: holding to traditional beliefs drew immigrant parents into a struggle with middle-class reformers and

social work professionals, and set them at odds with their ‘modern,’ working daughters. Pursuing those conflicts has led historians to focus on institutions like courts, maternity homes and reformatories. But the survival of older ideas produced continuity as well as conflict. A clear picture of that constancy emerges only when we step back from a narrow focus on the courts and other institutions. By reducing the legal system to just part of the picture, we are able to see that New Yorkers, for whom sexual purity, rather sexual desire, remained at the heart of female sexuality, and who still saw sexually active girls as “ruined,” maintained the practice of employing both extra-legal and legal means to bring about a marriage that made right that condition. In the criminal court system, families rarely encountered legal officials or social work professionals who had been influenced by modern ideas, whose perspective would have made them an obstacle to efforts to secure the marriage of a ruined girl. Seeking a traditional outcome that did not impose an economic burden on to the state provoked nothing like the opposition that families stirred when they pursued more novel practices, such as the use of prosecutions and institutionalization to discipline girls. A weaving of the legal culture of ruin into the web of negotiations around female sexuality that is described in the existing historical literature presents us with a more variegated, complex structure. It suggests that each court, each legal category, each institution, offered those ordinary Americans who were responding to sexual behaviour a different space, a different set of possibilities and constraints, a diversity, that we must more fully engage with in order to understand the nature of sexual modernity.

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[1]Statement of Elizabeth Tedesco, Brief, District Attorneys Closed Case File (hereafter DACCF) 188405 (1931) (Municipal Archives, New York City). I have altered the names of all the parties to the cases discussed in this article.

[2]Kathy Peiss, *Cheap Amusements: Working Women and Leisure in Turn-of-the-Century New York* (Philadelphia: Temple University Press, 1986); Joanne Meyerowitz, *Women Adrift: Independent Wage Earners in Chicago, 1880-1930* (Chicago: University of Chicago Press, 1988). For recent elaborations of this picture see Ruth Alexander, *The Girl Problem: Female Sexual Delinquency in New York, 1900-1930* (Ithaca: Cornell University Press, 1995); 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 the America* (Berkeley: University of California Press, 1997), 28-44.

[3]DACCF 188405 (1931).

[4] Rickie Solinger, *Wake up Little Suzie: Single Pregnancy and Race Before Roe v. Wade* (New York, Routledge, 1992), 13, 177, 233 note 3.

[5] Odem, 51-2.

[6]This figure likely under-represents how often efforts to arrange marriage or financial settlements figured in the response to pre-marital sexuality. Only those instances in which confrontation and negotiation did not make right a girl's ruin before somebody charged the man with rape, or before law enforcement officials discovered the situation, became part of the legal record. The absence of a section in which to note extra-legal outcomes on the forms used in the case files also meant that the record of extra-legal efforts depended on the practices of clerks, particularly in cases that did not go far enough in the legal process to generate witness statements and trial records.

[7] Solinger, 108-11; Regina Kunzel, *Fallen Women, Problem Girls: Unmarried Mothers and the Professionalization of Social Work, 1890-1945* (New Haven: Yale University Press, 1993), 67-8.

[8] Odem, 191-2.

[9]William Forbath, Hendrick Hartog, and Martha Minnow, "Introduction: Legal Histories From Below," *Wisconsin Law Review,* (1985), 764-65; Christopher Tomlins, "Subordination, Authority, Law: Subjects in Labor History," *International Labor and Working-Class History*, 47 (1995), 66-7. For a critical discussion of the concept of legal culture, see Richard Ross, "The Legal Past of Early New England: Notes for the Study of Law, Legal Culture, and Intellectual History," *William and Mary Quarterly*, 50, 1 (1993), 32-9.

[10] Linda Gordon notes that social agencies often lacked the staff and the funds to give clients what they wanted. See *Heroes of Their Own Lives: The Politics and History of Family Violence* (New York: Penguin, 1988), 297-8.

[11] Hendrick Hartog, *Man and Wife in America: A History* (Cambridge, Mass., Harvard University Press, 2000), 4.

[12]Ruth True, *The Neglected Girl* (New York: Russell Sage Foundation, 1914), 19. For the concept of 'ruin,' see Arthur Towne, "Young Girl Marriages in Criminal and Juvenile Courts," *Journal of Social Hygiene*, 8 (July 1922), 292; Joan Jacobs Brumberg, "'Ruined' Girls: Changing Community Responses to Illegitimacy in Upstate New York, 1890-1920," *Journal of Social History*, 18 (1984), 250; and John D'Emilio and Estelle Freedman, *Intimate Matters: A History of Sexuality in America* (New York, Harper and Row, 1988), 77.

[13]True, 79.

[14]See Towne, 290-1.

[15]DACCF 112943 (1916).

[16]DACCF 86286 (1911). For other examples of this middle-class attitude, see DACCF 189070 (1931), and William Robinson, *America's Sex, Marriage and Divorce Problems*

(New York: Eugenics Publishing Company, 1934), 191-3. For other studies that argue that violence was an unexceptional part of working-class sexual culture, see Elizabeth Lunbeck, *The Psychiatric Persuasion: Knowledge, Gender and Power in Modern America* (Princeton: Princeton University Press, 1994), 219; and Kevin White, *The First Sexual Revolution: The Emergence of Male Heterosexuality in Modern America* (New York: New York University Press, 1993), 80-105, especially 89-92.

[17]DACCF 209518 (1936).

[18]For examples of girls who talked of being 'in love,' see DACCF 188025 (1931); DACCF 209984 (1936); DACCF 229277 (1941); and DACCF 2297 (1946). On ideas about the nature of marriage, see D'Emilio and Freedman, 73-8. On the attitude of African-American girls in the 1960s, see Solinger, 78-9.

[19]It is not always possible to determine who initiated efforts to resolve a case through marriage. A significant number of less documented case files simply record that a man offered to marry a girl or that a marriage had taken place, and do not make clear whether the girl, or her family, had been seeking a marriage.

[20]Caroline Ware, *Greenwich Village, 1920-1930* (New York: Harper and Row, 1935), 111.

[21]William Whyte, "A Slum Sex Code," *American Journal of Sociology,* 49 (July 1943), 26, 28.

[22] DACCF 113284 (1916).

[23]*Ibid.* For other cases in which families rejected a man's offer of marriage because they did not think that he could provide for the girl, see DACCF 189376 (1931); and DACCF 185689 (1931). For cases in which families rejected a man's offer because they considered he had a bad character, see DACCF 85730 (1911); DACCF 86225 (1911); and DACCF 3499 (1946). For cases where ethnic differences led parents to refuse a man's offer, see DACCF 9258 (1896); DACCF 111304 (1916); and DACCF 207416 (1936).

[24]For the nineteenth century, see Christine Stansell, *City of Women: Sex and Class in New*

York, 1789-1860 (Urbana: University of Illinois Press, 1987), 55-61, 81-3, 85-9.

[25]Abstract of Court of General Sessions Trial (December 29 1896), Court of General Sessions Case File (hereafter CGSCF), People v. W. S. (indicted December 1896); and DACCF 11881 (1896).

[26]DACCF 84789 (1911). For other examples, see DACCF 11387 (1896); DACCF 35751 (1901); DACCF 83905 (1911); DACCF 86356 (1911); DACCF 109457 (1916); DACCF 108927 (1916); DACCF 110642 (1916); and DACCF 209984 (1936). For a discussion of the importance attached to the hymen by working-class families and their practice of taking girls to doctors to establish their virginity, see my "Signs, Marks and Private Parts: Doctors, Legal Discourses and Evidence of Rape in the United States, 1823-1930," *Journal of the History of Sexuality*, 8, 3 (January 1998), 345-88.

[27]DACCF 84167 (1911).

[28]Transcript of Arraignment in Magistrates Court (April 18 1901), 4, in DACCF 34760 (1901).

[29]Brief, DACCF 83640 (1911).

[30]Cornelia Dayton, *Women Before the Bar: Gender, Law and Society in Connecticut, 1639-1789* (Chapel Hill: University of North Carolina Press, 1995), 160-1, 195, 203-4, 221-3; Hendrick Hartog, "The Public Law of a County Court: Judicial Government in Eighteenth-Century Massachusetts," *American Journal of Legal History* 20 (1976), 299-308.

[31]Allen Steinberg, *The Transformation of Criminal Justice: Philadelphia, 1800-1880* (Chapel Hill: University of North Carolina Press, 1989), 13-91.

[32]Laura Edwards, *Gendered Strife and Confusion: The Political Culture of Reconstruction* (Urbana: University of Illinois Press, 1997), 184, 211-3.

[33] Dayton, 12-3, 208, 215, 227, 305-7, 327.

[34]For private networks, the WCTU and private maternity homes, see Brumberg, "'Ruined' Girls." For private reformatories, to which families could send girls without recourse to the

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courts, see Alexander, *Girl Problem*, 172, note 44. For child guidance clinics, see Kathleen Jones, *Taming the Troublesome Child : American Families, Child Guidance, and the Limits off Psychiatric Authority* (Cambridge, Mass.: Harvard University Press, 1999). For the new racial discourse of the 1940s, see Kunzel, 144-70.

[35]DACCF 109115 (1916).

[36] For examples of men who made an offer of marriage at their arraignment, see DACCF 81568 (1911); DACCF 163661 (1926); DACCF 185920 (1931); and DACCF 209984 (1936). For the case of Michael Lione and Donna Gallo, see Trial Transcript Collection (hereafter TTC), Case 619, Roll 100 (1906), 10, 21, 39, 64, 90, 146-191, 240-2 (John Jay College of Criminal Justice).

[37]For New York's rape law and its interpretation, see *Laws of New York, 1881*, vol. 3, chap. 676, 66-67 (Penal Code Title X, Chapter II, sec. 278 and 280) and my "Signs, Marks and Private Parts." For New York's abduction statute, see *Laws of New York, 1848*, chap. 105, 118; *Laws of New York, 1881*, chap. 676, 68-69 (Penal Code Title X, Chapter V, sec. 282); *Laws of New York, 1884*, chap. 46, 44; *Laws of New York, 1886*, chap. 31, 39. For New York's seduction statute, see *Laws of New York, 1848*, chap. 111, 148.

[38]Jane Addams, *A New Conscience and an Old Evil* (New York: Macmillan, 1912), 203.

[39]Towne, "Young Girl Marriages," 291, 294. The Legislature enacted a law that established fourteen years as the minimum age of marriage for girls and sixteen years as the minimum age for boys in 1926; see *Laws of New York, 1926*, chap. 590, 1056-1057. For an overview of reformers arguments for child marriage laws, see Mary Richmond and Fred Hall, *Child Marriages* (New York: Russell Sage Foundation, 1925).

[40]For cases involving parents who had arranged marriages, but delayed having the ceremonies performed, see DACCF 186850 (1931); DACCF 1934 (1946); DACCF 3327 (1946); and DACCF 3755 (1946).

[41]For an analysis of bastardy law and its reform in the nineteenth century, see Michael

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Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1985), 196-233. For the emergence of illegitimacy as a problem that concerned Progressive reformers, and their decision to address that problem through a focus on paternity and maintenance, see Susan Tifflin, *In Whose Best Interest? Child Welfare Reform in the Progressive Era* (Westport: Greenwood, 1982), 166-86. For the new New York law, which was added to the Domestic Relations law, see *Laws of New York, 1925*, chap. 255, 508-514. For a discussion of paternity proceedings in the late 1940s and early 1950s, see Association of the Bar of the City of New York and Walter Gellhorn, *Children and Families in the Courts of New York City* (New York: Dodd, Mead, 1954), 192-216; and Sidney Schatkin, *Disputed Paternity Proceedings*, 3rd ed. (New York: Banks, 1953), 357-89.

[42]See Lawrence Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993); and Steinberg, *Transformation of Criminal Justice*.

[43]Steven Schlossman and Stephanie Wallach, "The Crime of Precocious Sexuality: Female Juvenile Delinquency in the Progressive Era," *Harvard Educational Review* 48, 1 (1978), 65-95; Alexander, *Girl Problem*; Odem, *Delinquent Daughters*; and Edwards, *Gendered Strife*.

[44]For the NYSPCC, see Elizabeth Pleck, *Domestic Tyranny: The Making of Social Policy Against Family Violence from Colonial Times to the Present* (New York: Oxford University Press, 1987); and Lela Costin, Howard Jacob Karger, and David Stoesz, *The Politics of Child Abuse in America* (New York: Oxford University Press, 1996). For the NYSPCC's role in the legal system, see *Laws of New York*, *1881*, chapter 130, 114; and *The Nineteenth Annual Report of the New York Society for the Prevention of Cruelty to Children* (New York: NYSPCC, 1894), 7; *The Twenty-Third Annual Report of the New York Society for the Prevention of Cruelty to Children* (New York: NYSPCC, 1898), 6-8.

[45] For the child protection movement's adoption of a social work approach, see Gordon, 34, 52, 60-81. As late as 1937, an investigation of the NYSPCC by Paul Blanshard, the New

York City Commissioner of Accounts, attacked the Society for its failure to adopt the methods of social work, asserting its officers made "no attempt to adjust family situations, administer social treatment, or do case work." Instead they immediately took cases to court. Blanshard's investigation also found that the Society did not require its staff to have any educational qualifications or experience, and as a result "only [two tenths of one percent] of the work done is remedial in character to even a slight degree, and the remainder is law enforcement." See *New York Herald Tribune* August 5, 1937 (Mayor La Guardia's Scrapbooks, Roll 33 (Municipal Archives)) and the summary of the investigation prepared by E. S. Epstein, an Administrative Assistant to Mayor La Guardia, in Departmental Correspondence, Mayor's Office, Epstein, SPCC (1937), La Guardia Papers, Roll 521, 1718-1756 (Municipal Archives).

[46]Assistant District Attorney's notes on trial testimony, 2, in DACCF 209984 (1936)

[47]DACCF 209984 (1936).

[48]DACCF 111246 (1916).

[49] *Ibid*.

[50]DACCF 1199 (1946)

[51]In 1951, for example, men admitted paternity in 837 of the 917 cases decided; see Association of the Bar of the City of New and Gellhorn, 198. For examples of cases in which the assistant district attorney recommended that defendants who had admitted paternity be discharged or allowed to plead guilty to a misdemeanor, see DACCF 209817 (1936); and DACCF 229064 (1941).

[52]"Wed When Jerome's Aid Threatened Jail," *New York American*, May 4 1906 (District Attorney's Scrapbook, Municipal Archives, New York City).

[53] Under New York state statute, eligibility for jury service was restricted to men, between the ages of twenty-one and seventy years, who were residents of the city and citizens, who owned real or personal property worth at least $250, who were in possession of their natural faculties,

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who could read English. and who had no criminal record. Men in a long list of occupations, including clergymen, lawyers, teachers, physicians, journalists, firemen, and engineers, could claim an exemption from jury service. See *Laws of New York, 1909*, chap. 35.

[54]For grand jury nullification of statutory rape law, see my "Sexuality through the Prism of Age: Modern Culture and Sexual Violence in New York City, 1880-1950," Ph.D. dissertation, Rutgers University, 1998, 415, 421-423; and Morris Ploscowe, *Sex and the Law,* (New York: Prentice-Hall, 1951), 190-1.

[55]Transcript of Grand Jury hearing (Ap. 3, 1916), 3, 5-7, 9, 11, in DACCF 109238 (1916).

[56]Towne, "Young Girl Marriages," 293-4; Ploscowe, 185-6; Bertram Pollens, *The Sex Criminal* (New York: Macaulay, 1938), 159-63.

[57]Paul Tappan, *Delinquent Girls in Court: A Study of the Wayward Minor Court of New York* (New York: Columbia University Press, 1947), 156-7, 161. For other discussions of the lack of uniformity among judges, see Association of the Bar of the City of New York and Walter Gellhorn, 170-1, 210-1.

[58] Much of the evidence for the following argument is provided by the comments of Children's Court judges, rather than magistrates who sat in the criminal courts. Children's Court judges, who gained the power to decide whether girls under the age of sixteen could marry in 1925, were more influenced by modern ideas about childhood, which formed the premise for their courts, than their criminal court colleagues. As a result, they less consistently showed sympathy for efforts to arrange marriages. But when they did support marriages, they expressed beliefs more strongly held by criminal court judges.

[59]For descriptions of teenage girls that emphasized the incongruity of their physical appearance and their age, see *The Morning Journal*, 16 Jul. 1886 (District Attorney's Scrapbook); *The Morning Journal,* 27 Oct. 1886 (District Attorney's Scrapbook); *People v. Marks*, 146 App. Div. 13 (1911); *People v. Lammes*, 203 N. Y. S. 741 (1924); and Memorandum, DACCF 35249 (1901). For the provision of the New York Penal Code, see

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Laws of New York, 1884, chap. 46, 44.

[60]*Proceedings of the Seventh Annual Conference of the New York State Association of Judges of County Children's Courts* (Albany: State of New York, 1928), 22.

[61]*Ibid*.

[62]Towne, 293.

[63]TTC, Case 619, Roll 100 (1906), 240-2.

[64]Towne, 290-1; see also Ploscowe, 185.

[65]"The Child Marriage Law in Operation," *Proceedings of the Eighth Annual Conference of the New York State Association of Judges of County Children's Courts* (Albany: State of New York, 1931), 74-5.

[66] *Proceedings of the Seventh Annual Conference of the New York State Association of Judges of County Children's Courts* (Albany: State of New York, 1928), 20.

[67]Alexander, 64-6.

[68]In 1946, grand juries, usually following the direction of district attorneys, dismissed 61% (N=115) of the total number of prosecutions for statutory rape, including numerous cases in which the district attorney presented sufficient evidence to warrant an indictment; see my "Sexuality through the Prism of Age," 415. For the refusal of judges to grant permission to marry to ruined fourteen and fifteen year old girls, see "The Child Marriage Law in Operation," *Proceedings of the Eighth Annual Conference of the New York State Association of Judges of County Children's Courts* (Albany: State of New York, 1931), 71.