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The Legal Vilification of the Vulnerable Child Witness: Some Historical Perspectives

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Introduction

In February, Baroness Newlove, the Victims' Commissioner, published a review into whether child victims are receiving their respective entitlements as guaranteed in the Victims Code, and Special Measures Directions. More importantly, it investigated whether the legal system properly treats children with dignity, respect, belief, and takes their complaints seriously, despite, or because of, their young age – themes that this paper will reflect on from a historical perspective. Newlove was 'disgusted to discover' that young victims were still not being taken sufficiently seriously by criminal justice agencies, social workers, teachers and society as a whole. Some were 'made to feel like criminals' or had been 'accused of wasting police time', many had lost faith in the criminal justice system because of their treatment, especially where there was no subsequent conviction. Despite similar criticisms in the Savile and Rotherham reports, Newlove concluded that 'lessons are still not being learnt' about taking children's accounts seriously.

We have been here so many times before - for me personally, since I started my dissertation in 1987 and then PhD reviewing the 1989 Pigot Report. Later with debates over the YJCE Act 1999. More recently the NSPCC's 2004 Report 'In Their Own Words'¹ followed by Measuring Up 2007-2008, showed that the implementation of mechanisms designed to assist children from initial disclosure to subsequent court trial were still far from systematically or automatically provided.² This led to a plethora of responses including Achieving Best Evidence, Witness Care Units, the Witness Charter etc etc. Even so, in 2014 HMIC found that the specific needs of the child were taken into account in only 10 of 69 interviews surveyed, video recorded evidence was poor, inappropriate questioning techniques were used, interview rooms were not suitable and better training was required.

It seems futile to keep asking why the same recommendations are continually reiterated, but never effectively executed. The Ministry of Justice insists that "children are only required to give evidence in court when absolutely necessary in the interests of justice and there is no Art 8 privacy violation" – but this still accounts for over 40,000 child witnesses a year. Are they really all absolutely necessary? It is probably equally futile to ask why the test for civil proceedings, confirmed by the Supreme Court in *W* 2010, is not applied to criminal

¹ http://www.nspcc.org.uk/inform/publications/downloads/intheirownwords_wdf48193.pdf

² http://www.nspcc.org.uk/Inform/research/findings/measuring_up_summary_wdf66580.pdf

proceedings: 'When considering whether a child should be called as a witness, the court must weigh two considerations: the advantages that that will bring to the determination of the truth and the damage it may do to the welfare of this or any child':³

Pigot stressed that "most children are disturbed to a greater or lesser extent by giving evidence in court" but there has been no scientific evaluation of this. Historically, there has been a real reluctance to acknowledge the psychological and physical stress of vulnerable victims from the intimidating court atmosphere, trial delays, age-inappropriate questioning, cross-examination, refusal to allow pre-trial counselling and presence of intermediaries etc. In 2014, the retiring Lord Chief Justice, Lord Judge, reflecting on his experiences in the criminal courts, argued that child witnesses should not have to physically attend and give evidence in court. The refusal to ease the experience of child witnesses for nearly two decades since section 28 YJCE Act was enacted in 1999 to permit pre-recorded cross-examinations is incomprehensible given the traumatic testimony many – thousands? -have experienced. Such criticism is vindicated by the success of the pilot project and announcement this week to extend the concession to adult rape complainants.

Unsurprisingly, the Ministry of Justice's evaluation concluded that the pilot scheme had enabled a more positive experience for vulnerable victims: reducing waiting times, producing more focused questioning and was, overall, less traumatic. However, it was immediately challenged. In *Re RL* 2015, the trial judge pruned some of the questions submitted by defence counsel on the basis they were unnecessary and repetitious.⁴ The defendant appealed, claiming he had been prevented from asking those questions and forced to rely on the 'combined effect' of being compelled to put 'bald propositions' and accept the answer given. He claimed the judge's rulings were 'draconian' and that his cross-examination of the children had been 'emasculated' though could not point to any particular question which he had been unable to ask. The appeal was rejected.

Such defence claims and tactics are objectionable reflecting a long history of negative attitudes and insensitivities from some lawyers and members of the judiciary towards child complainants, and an inherent reluctance from both the legislature and the judiciary to acknowledge their particular vulnerability. So why has the law and its representatives failed to respect the dignity of child witnesses and accept and believe what they say, and on what grounds - social, moral, gender, religious - have they 'justified' - or attempted to justify –

³ *W (Children) (Abuse: Oral evidence)* 2010 UKSC 12

⁴ *RL, Re* [2015] EWCA Crim 1215

such aversion? As we all know, more than any other criminal offence, complaints of sexual violation are intrinsically engaged with 'the truth'. But, from a historiographic perspective, too many judicial directions have tended to be dismissive of the authenticity of the truth, adopting an exclusive approach to competency and fixating on the legal minutiae of giving evidence, rather than encouraging a more inclusive one as in many inquisitorial jurisdictions. As Children's Minister, Tim Loughton confirmed in 2011 that "Sexual exploitation has not been fully understood by the judiciary and the justice system...even if children do get over the huge hurdle and want to bring their abuser to justice, they then have to face a judicial process which sometimes treats them as though they were somehow complicit in their abuse."⁵.

This has produced considerable inconsistency in the application of the law in practice, oscillating, through judicial discretion, between the imposition of exacting rules of evidence to more positive acceptance and facilitation of infant testimony. Yet even a more apparently inclusive approach can still be compromised by the unconscious invocation of moral and gendered norms that may reprise historical echoes but can also be perceived as distorting the law's primary objective of protection.

Contemporary concerns

Before we delve into the past, it is worth considering a couple of recent examples to set the contemporary context and illustrate some of the criticisms raised. Two years ago a gang of five men and a teenager, all of African origin, were convicted of rape and sexual activity with six girls aged 13 and over whom they had groomed and subjected to regular sexual abuse committed in cars, houses, parks and woods. Michael Magarian QC suggested that the complainants could have been 'brainwashed by social workers' and said 'It's better to be a victim than a slag. Once you are a victim who has been groomed you no longer have to take responsibility for anything that you did.' His co-counsel, Clare Dowse, claimed that they 'might be enjoying all the attention from police and social services.'⁶ Given the contemporaneous investigations of CSE nationwide such comments were highly ill-considered and unprofessional. Critics, including [Jon Brown] the NSPCC, condemned the statements as inappropriate and demonstrating a complete lack of understanding about how children are groomed reflecting similar prevailing attitudes of the police and social services as exemplified in the Rotherham inquiry – still ongoing and still revealing unacceptable professional conduct.⁷ In my view, even this was an overly generous excusal as Magarian

⁵ Children's Minister, Tim Loughton, *The Guardian*, 17 May 2011, 23 November 2011)

⁶ *The Times*, 7 March 2015

⁷ *Ibid.*

was deliberately drawing on enduring moral and gendered norms to try and shift responsibility from his client to the complainants.

Such comments are not dissimilar to those of Lord Justice Moses at the Court of Appeal in a similar case [without the grooming] *R v C*⁸, involving six young male adult footballers charged with the statutory rape of two 12 year-old girls, one of whom had 'agreed' to have oral sex with all five. Halving their sentences, so they could be released immediately, Moses concluded: "The girls wanted to have sex and they had pretty miserable, fleeting, sex in a freezing cold park. *It is what young people do*, but they are not allowed to do it until they are 16. The law is there to protect them." As I have previously commented,⁹ some aspects of his judgment are questionable, resonating with ill-considered judicial stereotypifications from the past relating to a female complainant's dress, conduct and previous sexual experience. While Moses' remarks may be excused as unintentional they still unconsciously inflect judicial perspectives undermining the dignity of child witnesses and implying that young teens really do know what they are doing when they consent to oral sex with multiple partners. I do wonder whether he would think the same if it was his own daughter?

To further complicate the issue, this week at the Scottish High Court, Lady Maggie Scott granted an absolute discharge to a then 19 year-old student for statutory rape as the girl had 'willingly participated', showed 'no concerns and there was no suggestion of her being distressed'.¹⁰ Maybe one for discussion later?

Being Believed

Historically, children have often been regarded as neither reliable nor competent witnesses. This is hardly surprising as the law required child witnesses to give their evidence from absolute memory and, until 1987, in the direct physical presence of the accused. Glanville Williams thought children made unreliable witnesses as they are 'suggestible' 'egocentric', only 'slowly learn the duty of speaking the truth' and that instances were reported where 'little girls' were not only willing partners in vice' but 'might spite or blackmail to get innocent men in trouble'.¹¹

Judicial opinion was initially guided by the great legal jurists of the day. Coke was one of the first to assert that all witnesses were obliged to swear an oath to God, thus infants

⁸ *R v C and others* [2011] EWCA Crim 2153

⁹ K Stevenson, 'It is What "Girls of Indifferent Character" do...' Complications Concerning the Legal Age of Sexual Consent in the Light of *R v C and others*' *Journal of Criminal Law* (2012) 76 130-39

¹⁰ *The Guardian* 19 March 2017

¹¹ G. Williams *The proof of Guilt* p.178.

unequivocally lacked capacity unless they could demonstrate sufficient understanding of the likely implications of 'burning in hell' if they lied.¹² This needs to be contextualised within the prevailing moral values which encouraged a belief in the innate 'viciousness' of children – especially girls – who had not been consciously 'saved' – or 'born again' – an 'experience' supposed to occur between 4 and 6 years of age when a child's pious sensibilities were thought to be first aroused.¹³

Blackstone was more empathetic believing infants should be heard as 'their inexperience and artlessness' limited any motive for falsehood and lies. Hale advanced a more subjective approach that infants under 14 should not be examined on oath but thought a girl under 12 who had been raped could give evidence 'If she has the sense and understanding that she knows and considers the obligations of the oath she may be sworn.' This was confirmed by the 12 justices at Sergeants Inn Hall in the lead case of *Brasier* 1779 - that an infant under 7 may be sworn provided she is sufficiently mature and could answer questions that would test her understanding of piety. Most witnesses were under 12 in line with the law relating to carnal knowledge outside marriage and the age of protection which [dropped to 10 in 1861, increased to 13 1875] increased to 16 under the CLAA 1885.

The law further required, as a matter of practice, that the testimony of anyone alleging a sexual offence be corroborated by independent evidence. Capital convictions could stand on a child's testimony but were rare as judges were reluctant to allow children to give sworn testimony. One example is H. Smith, sentenced to death at Salisbury Assizes for raping 6 year old Ann Fleck. Her testimony was corroborated by the fact he had just been released from serving 18 months for a similar offence and a second bill involving a 13 year old girl had also been presented to the court.¹⁴

So crucial was religious belief that judges were prepared to postpone trials until the next Assizes so that adult witnesses who had heard of God but never learned the catechism could be instructed in such matters.¹⁵ Examples soon start to appear of children being

¹² Sir Edward Coke, *First Institutes* (reprint Clarke et.al. 1832) 6b. Non-Christians were rejected not because of their incompetency as a witness, but because the weight of their evidence was regarded as inferior.

¹³ This is when infant teaching by mothers was supposed to bear its first fruit in a taste for Bible stories and other pieties like liking pictures of angels etc.. As infant mortality was so high (around 25-30%), the child who had moved out of babyhood learned to walk and talk was no longer protected solely by baptism –any good adult wanted children to manifest signs of salvation as young as possible so their souls could go to heaven if they died... Edward Gorey's allegory about the dangers of dogmatism – fictional C19 Mrs Regea Dowdy anagram of his name *The Pious Infant* 1966

¹⁴ *Sunday Times* 18 March 1827

¹⁵ *White* (1786).

'educated' and given 'crash courses' in their God-fearing responsibilities before testifying: after all God would always know if a child told a lie: 'Thou god Sees't me'.¹⁶ The earliest example I have come across is the rape of a 7 year-old in 1795 where the trial was postponed until she had been instructed by a clergyman on the principles of her 'duty'.¹⁷ By the 1830s, access to Sunday Schools¹⁸ meant that regardless of class, parents could be justifiably castigated by the court if their daughters were found ignorant of their duty and the case collapsed as a result.

However, the judiciary were becoming increasingly sceptical of such tactics.¹⁹ At the Central Criminal Court, Baron Alderson refused to examine a 12 year-old girl on oath who alleged she had been sexually assaulted by her father.²⁰ Despite attending church intermittently she 'had never heard of God, and knew nothing of the existence of an Almighty Creator.' Alderson rejected the prosecution request that the girl be instructed asserting that the judges were all agreed that it was an 'incorrect proceeding' like 'preparing or getting up a witness for a particular purpose'. He also opined that 'It was really dreadful to find a child 12 years old was not even aware of the existence of God.' Thus she was doubly abused by her father – sexually and for failing to ensure she was a good Christian girl and so could not be believed. The jury inevitably returned a verdict of not guilty.

At Durham Assizes in 1849, Justice Patterson rejected a conviction for carnal knowledge of a 10 year old girl believing she was too young to be sworn. There was no evidence she had resisted or refused consent though medical testimony confirmed marks of violence could have been caused by an implement or finger. Patterson reinforced the stereotype stressing 'My experience has shown me that children of a very tender age have vicious propensities'.²¹

¹⁶ Any judge who failed to prevent a child unconsciously lying and so perjuring herself might be responsible for setting that child on a spiralling descent into delinquency. The fixation with the belief in a future state and eternal damnation is also evident in the admissibility of dying declarations. *Pike* (1829) rejected the dying declaration of a four year-old girl in the subsequent trial of her murder as a child of such tender years could have no idea of the future state necessary to allow the reception of her evidence. Thus not all judges, especially earlier on, were convinced by the child piety trope.

¹⁷ *R v Murphy* (1795) 1 Leach 430

¹⁸ Now widespread existence of Sunday Schools to teach religious education aimed solely at the working classes – middle and upper class mothers were supposed to be competent to teach piety – but the key aid to piety was reading the Bible which Sunday Schools emphasise: the Peep of Day series, starting with Line Upon Line condensed the Bible for infant minds and was a staple of the general course of religious education that the judge would have been referring to.

¹⁹ *R v Williams* (1836) 7 C & P 320

²⁰ *The Times*, 1 December 1849.

²¹ *R v Cockburn* (1849) 3 Cox 543. Section 50 Offences Against the Person Act 1861 criminalized carnal knowledge with a girl under 10 years. A child under 10 cannot give consent to any criminal intercourse...but she can give consent as to render the attempt no assault.' Regarding 'acquiescing' to touching was no offence

The judiciary therefore retained mixed views on whether the oath made any difference. In *R v Holmes* 1861 the trial judge was persuaded that a 6 year old girl could give sworn evidence but questioned whether 'it really advances the credibility of testimony to such questions.'²² While the requirement of religious understanding remained, two tropes begin to stand out in the case reports: the prosecution start to emphasise the relative 'intelligence' of the child often coupled with her 'looking pretty' and the extent to which her testimony 'could be shaken' – i.e. good looking girls appear more virginal and are inherently more believable. Naturally, children were expected to be innocent and lacking in sexually knowledge: 'a child cannot consent to what it does not know the nature of'. A double-edged sword as neither should she possess the vocabulary to articulate it so automatically her testimony became unbelievable.²³

In 1885 Shaftesbury challenged the Government to relax the rule that children under 12 must give sworn evidence arguing, like Blackstone, that young children should be more trusted than adults to tell the truth – [something that would not be achieved for another 100 years]. Scottish law had allowed children to give unsworn evidence for years such as *R v Millar* 1870 where the defendant was convicted on the evidence of a girl aged 3 ½ years.²⁴ He secured an amendment to the Criminal Law Amendment Act 1885 which permitted girls only under 13 years to give unsworn evidence in cases of defilement, but the infamous proviso (eventually removed by section 34 Criminal Justice Act 1988) was added that the accused could not be convicted as a matter of law unless it was corroborated by other material evidence implicating him. The amendment immediately increased the number of successful prosecutions.²⁵ It was later consolidated in the Children and Young Persons Act 1933 allowing all children under 14 to give unsworn evidence where they possessed sufficient intelligence and understood the duty to tell the truth, and now section 52 Criminal Justice Act 1991. But some elements of the judiciary persisted in trying to impose a minimum age bar preferring an objective rather than a subjective approach. LCJ Goddard settled the position in *Wallwork* 1958 involving a 5 year old victim of incest who could not remember anything about the abuse. Goddard stated it was most undesirable to call a child

²² *R v Holmes* (1861) 2 F and F 788

²³ William M Best, *The Principles of the Law of Evidence* (1849 reprinted London: Sidney Phipson, Sweet & Maxwell 12th edn. 1922) 138-141

Section 4 Evidence Further Amendment Act 1869 made it compulsory for people who indicated that an oath had no effect on their conscience to affirm²³ repealed by Oaths Act 1888 s.6 and schedule leading Stephen to comment

²⁴ Cited in Spencer and Flin *The Evidence of Children* 1st edn 48

²⁵ 120 tried before Mr Justice Hawkins at the Old bailey during a six month period Ibid.

that age and hoped it would not happen again, mindful of his assertion the judiciary adopted the rule that the minimum age of competency should be 8 years.²⁶

Pigot was highly critical of the judicial bar arguing it had led to the 'abandonment of prosecutions for a large number of sexual offences against children'. In 1988 Judge Willcock QC at Exeter Crown Court ordered the jury to dismiss charges of indecent assault as it would be a 'waste of time' to ask two girls aged 10 and 7 to hold the New testament and take the oath.²⁷ He told the jury 'You may think this is a curious quirk of our law, but it is for good, logical and historical reasons. We are powerless to overcome it.' In 1989 Judge Joanne Bracewell acquitted a man of sexually abusing a 6 year old girl aged 7 at the time of the trial stating she was 'troubled by the tender age of the witness.'²⁸ Post-Pigot, in 1990, Wallwork was approved by the Court of Appeal (LJ Ognall) in *Wright & Ormerod*,²⁹ but was quickly overruled by the Criminal Justice Act 1991 enabling all children under 14 to give unsworn evidence.

Any pretence of an age bar was finally dispensed with when Lord Judge rejected the appeal from Steven Barker, in the Baby P related case, approving the trial judge's decision that the 4 ½ year old girl he had anally abused when she was 2, was competent to give evidence. The LCJ declared age is not determinative of a child's ability to give truthful and accurate evidence; C was a compelling and competent witness.³⁰ The ruling was highly significant in light of the NSPCC's 2008-9 survey of over 21,000 child sex crimes findings that 1 in 7 victims are under 10 and over 1,000 were under 5 years.

Dignity and Respect

Aside from believability, there are abundant examples of the humiliation and embarrassment child witnesses have suffered in recounting their experience numerous times or reproached for promiscuous or seductive conduct. One of the most extreme I have come across is Eugenie Plummer, 11 years, from a wealthy and highly respectable family who, together with her 8 year old sister Stephanie, testified against their in-house tutor the Reverend Edward Hatch, a 42 year old married man educated at Eton and Cambridge. Their father prosecuted Hatch for a number of counts of indecent assault alleged to have been committed in

²⁶ *R v Wallwork* (1958) 42 Cr App R 152 and see McEwan evidence and the Adversarial process p.115

²⁷ *The Times* 2 mar 1988

²⁸ *The Times* 10 may 1989

²⁹ Report on the Advisory Group on Video Evidence HO Dec 1989 paras 5.8 and 5.9 (1990) Cr App R 91;

³⁰ [R v B \[2010\] EWCA Crim 4 \(21 January 2010\)](#)

carriages and the girls' bedroom. Both girls gave evidence on oath supported by other family witnesses but there were inconsistencies in their parents' testimonies about how frequently the girls attended church. Hatch was found guilty and sentenced to 2 years imprisonment at Newgate Gaol, destroying his reputation. With no right of criminal appeal he sought a pardon from the Secretary of State. This was refused so in May 1860 he prosecuted Eugenie for wilful and corrupt perjury as he had been convicted partly on the testimony she gave on oath. The trial lasted four days. Unusually, as the accused, Eugenie was allowed to sit at the table with her defence counsel [Edwin James QC] rather than in the dock.³¹ In his 8 hours summing up, Baron Channel emphasised the discrepancies about how often the girls went to church. After two hours deliberation the jury returned a verdict of guilty recommending the need for strict moral and religious education for Eugenie who was sentenced to 3 weeks in Holloway followed by 2 years in a reformatory school.³²

With no state prosecutor, prosecutions were typically instigated by a child's family, herself a or voluntary society in association with the police. After initial disclosure, complainants would be expected to repeat their account to police officers, surgeon, magistrates in committal proceedings and the judge at trial. They might also be required to confront the accused and state the charge in his presence. In 1900 at North Fulham Police Station, Jessie Quantrell, under 13, alleged she had been criminally assaulted by Benjamin Dent a gentleman, who denied the offence. After a medical examination supported her account the police required her to state the charge in his direct presence.

The oppressive dominance of the all male criminal justice establishment cannot be underestimated. Statements were taken by male officers, it was not until 1914 that two deputations representing the National Vigilance Association and the Criminal Law Amendment Committee pressed the Home Office to appoint women police to take depositions from women and children in all cases involving immorality.³³ This led to the recruitment of the first Metropolitan female officers. It took much longer to populate other forces though Plymouth's chief constable had introduced a female special constable to take such statements in 1912.

³¹ Trial published in full in *The Times The Morning Chronicle* 12 May 1860; *Sunday Times* 13 May 1860; *The Times* 10, 11, 12, 14, 15, 16 May 1860

³² *The Times* 14 May 1860 stating 'there was good reason to believe that she was labouring under a want of education, both religious and moral, and had imbibed habits of untruthfulness, which if not checked might lead to great mischief *The Times* 15 May 1860

³³ *The Times* 17 July 1914

Courtrooms were overwhelmingly masculine spaces in structure and personnel. Children were physically isolated in the witness box. In the early twentieth century many courts would exclude all women and boys or imply that 'no decent women' remained depriving victims of the support and presence of other women and shifting sympathy towards the accused.³⁴ Those in positions of authority - the historical equivalents of Savile, Harris and Lord Janner - could convince magistrates, juries and others that they did not commit the offences alleged because their status outranked a child's believability – the respectability imperative. Example: John Hughes, 44, a former Presbyterian minister now General secretary of the Gladstone league, was indicted for the carnal knowledge of 6 year old Edna Houghton, found by her mother in Hughes' bed with him partially undressed. Edna's 10 year old sister confirmed Hughes had entered their shared bedroom and taken Edna from her bed. Hughes claimed she must have sleep walked and 'accidentally' wandered into his bedroom while he was on the lavatory as he never even noticed her in his room. Hughes had also been Private Secretary to Lord Burghclere who travelled from the South of France to testify that he was a man of 'good morals, high principles and great intelligence' – who would believe a child over a peer? The jury found him not guilty. ³⁵

In 1918 Captain Eliot Crawshay-Williams, 39 and a former MP for Leicester appeared at Leeds Assizes accused of attempt rape on his landlady's 10 year old daughter while she was out. The child's story was corroborated by the doctor. In cross-examination she said she had previously sat on the accused's foot playing 'ride a cock horse' and that he often kissed her. Williams had offered money to her mother to withdraw the complaint which she refused. He claimed he had not 'tampered with the child' but 'I kissed and fondled and made love to her. Believe me I did nothing wrong.'³⁶ Committed to trial he was found not guilty by the magistrates who believed his defence that 'the girl's story was pure imagination.'³⁷

It is impossible to track how many child abusers have escaped justice over the years or won appeals because of inconsistent legal rules and conscious and unconscious bias in judicial direction. Judges, like Pigot, who have been sensitive to the needs of children have often found resulting guilty verdicts challenged or overturned on the grounds of prejudice to the accused. In Dunne, 1929, the judge interviewed a 7 year-old incest victim out of court to determine if she was competent to give sworn evidence, he concluded she was but her abuser won his appeal against conviction as it was held the examination was unlawful.³⁸ The

³⁴ An anonymous Chair of the QS wrote to *The Times* in 1903 *The times* 2 december 1903

³⁵ *The Times* 6 February 1912

³⁶ *The times* 23 November 1918

³⁷ Hull daily mail 7 december 1918

³⁸ R v Dunne 1929 21 Cr Ap R 176

competency of a 5 year old also led to a conviction being quashed in *Southern* a year later as the preliminary inquiry had not taken place in the presence of the jury.³⁹ Nearly 100 years ago in 1925, the Committee on Sexual Offences Against Young Persons found that of 286 prosecutions for carnal knowledge of girls under 13, 30 were discharged by the magistrates, 12 tried summarily acquitted and 20 acquitted at the Assizes – over 20%.⁴⁰ Reasons given included difficulties in conducting and proving cases, the strain on child witnesses in re-telling their story, embarrassment, distress and the proximity of the accused. The implementation of section 28 has finally mitigated some of this pressure but with current research suggesting that only 2-3% of adults make false allegations of rape there is no reason to think that children are any more likely to tell such lies despite what the masculine establishments of the church and law might have said in the past.⁴¹

Conclusion

What to say? Over the last 20 years the restrictive legal rules in respect of competency, corroboration and the physical delivery of testimony have gradually been chipped away and revised, and with the implementation of section 28 the final evidential obstacle has been removed. History has shown that facilitating the delivery of children's evidence has facilitated an equivalent increase in convictions without undermining the integrity of the legal system or creating wrongful convictions – this is not rocket science! Historically, there has been much uncertainty in the criminal justice system about how the evidence of children should be received and perceived, often clouded by misunderstandings about the existence and truth of child sexual exploitation. Attempts to impose uniformity, albeit in the interests of protection, have tended to treat child witnesses as legal objects, not subjects, questioning their believability and undermining their dignity and respect.

Finally, for some points to ponder re historic abuse cases and child witnesses generally I would refer you to [Oliver Saxby QC's](#) blog at Pump Court which identifies some of the key challenges in prosecuting and defending historic cases. While I would not wish to denigrate his professionalism and expertise I cannot help but think that while ever we have an adversarial legal system where barristers can defend one day and prosecute another there is an inevitable conflict that must operate against the interests of child victims.

³⁹ *R v Southern* (1930) 22 Cr App R

⁴⁰ Para 11 Cmnd 2561

⁴¹ Lisa Avalos, Arkansas University *The Guardian* 19 March 2017