

SEX, COERCION, AND THE AGE OF CONSENT

MAX O'CONNOR

Recently Radio 4 listeners heard a Church of England minister commenting on the Paedophile Information Exchange (PIE). Like most earnest Christians, this man was hostile to sexual pleasure if the manner of deriving it was not, by his standard, 'natural'. The members of PIE are 'dreadfully sad' and they execute 'horrible attacks' on children. Whether or not they are sad I cannot say, but 'horrible attacks' seems to be an inappropriate phrase for approaches which do not involve force or the threat of force. The 150 or so members of PIE meet to ogle sexually stimulating pictures of children, and to describe their carnal adventures, real or imagined. From all accounts they operate by becoming friendly with a child and then, if the child is willing, introducing him or her to sexual activity.

WHOSE RIGHTS ARE VIOLATED?

Libertarians maintain that all individuals have the right to be free from physical attack, or the threat of attack. No one has any greater claim on the actions of another than is permitted by this principle and the property rights it implies. Are the rights of the children who are approached being violated? It is not clear that they are. If children are coerced into submitting to sex by the use of force, or by threats, then this is certainly a violation of their rights and the attacker should be sharply dealt with. It is difficult to comprehend how merely becoming friendly with a child, and then encouraging him or her to indulge in sexual activities, can be a violation of rights. Is it not more likely that the horrified reactions of most people stem from a bigoted opposition to any form of sex that they themselves either do not find attractive, or have guiltily repressed thoughts of? Those participating in voluntary acts of oral sex, bondage, sado-masochism, and sex with another or the same gender have all been persecuted, and yet there is no violation of rights involved in any of these. Indeed, while most of us do not find all of these practices appealing, we are not thereby forced to conclude that they are immoral. Human beings commonly

differ over what novels, foods, films and styles of clothing they enjoy, but they do not (often) regard those with 'deviant' tastes in these areas as immoral. Why should sexual preferences be treated differently?

AGE OF CONSENT

Many people will object that sex with children *is* rights-violating because individuals below the age of consent, do not know what they are doing, and therefore the compliance is not voluntary at all. I believe this argument is fallacious, and that it is invariably presented by a kind of mental reflex action, and not as a result of conscious deliberation. Even most of these people will admit, when pressed, that the age of consent is set at an arbitrary level; it is obvious that children develop at different rates. Some pre-teenage juveniles are more able than many adults; others never acquire much knowledge or intelligence. Is it seriously claimed that a fourteen year old of average aptitude doesn't know what sex is? Even nine year olds have sometimes experienced orgasm through masturbation.

But we can go further. Does it really matter whether a young child has experienced any form of sexual arousal before? Does it really matter whether the child has any understanding of sex? Sex is just another source of pleasure, a potentially potent source perhaps, but basically little different to any other. If there is nothing objectionable about an adult giving a child sweets or toys, why is giving sexual pleasure wrong? It is ludicrous to reply that the adult is 'abusing' the child for his or her *own* pleasure. Such an attitude implies a hatred of all pleasure gained through voluntary exchange to mutual benefit. Altruists, conservatives and some socialists may think this way, but no rational person should do so after contemplating the implications. And why is it abuse? Below the age of twelve or so, a child *may* not be particularly interested in seeking sexual relations but that doesn't mean he or she will not voluntarily accept *and* enjoy them.

It is true that children questioned in court over alleged sex crimes have often shown great distress. But, as so many psychiatrists have attested, this is due to the great public attention, horror expressed by parents, and cross-examination under pressure in court. It is those who wish to retain the age of consent laws who are responsible for this emotional pain. If a child does not want to go to court, has not told the parents about his or her sexual activities, and has shown no signs of upset or fear, then there is no justification for assuming the use of coercion. Hence no legal action should be brought. On the other hand, if some evidence does exist, it is the child's word against that of the adult. Since it is unlikely that a child will maliciously bring an



Political Notes No. 10

ISSN 0267-7059 ISBN 1 85637 190 5



An occasional publication of the Libertarian Alliance,
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FOR LIFE, LIBERTY AND PROPERTY

action for no reason (and this eventuality is subject to examination by the defence) a court will commonly find for the child.

RIGHTS, MORALITY, AND ATTITUDES

A possible libertarian stand on this issue is that voluntary sex with children does not violate rights and therefore should be legal but that, nevertheless, it is immoral. This is identical to believing that drinking, prostitution, smoking, reading pornography etc. are immoral but should not be prohibited. This is not the only position compatible with libertarianism. As I have argued above, non-coercive sex with juveniles is *not* immoral — it is merely a matter of preference, as is bisexuality or homosexuality, oral sex, etc.. Libertarians, unlike most people, do not confuse the morality of an action with the separate question of whether it violates a right. We understand that rights violations are only a small (but important) subset of immoral actions. In

fact we do not even have to believe in an objective morality to uphold individual rights. But it is essential to be clear as to whether an act is really immoral or just a matter of personal preference.

Many people's feelings about sex are distorted by their upbringing, by social pressures, and by religious dogma. I ask readers frightened or disgusted by the thoughts expressed here not to condemn and forget, but to ruminate on *why* they feel as they do. Some sexual understanding and toleration is spreading, thanks to the appearance of books such as Alex Comfort's *The Joy of Sex* and the efforts of many doctors, psychologists and writers. Undoubtedly the decline of religious dogmatism has facilitated the process. But there is still much room for a rational evaluation of hostility towards unusual sex practices. Members of the public horrified at the existence of the Paedophile Information Exchange, and politicians and media men wishing to present themselves as champions of morality and decency, should think again.

A COMMENT ON THE ABOVE BY POLITICAL NOTES EDITOR BRIAN MICKLETHWAIT

Many readers of Political Notes, occasional or regular, may be puzzled (to put it no more strongly) by the publication of the above article, on a matter of such acute public concern. Are we *asking* for trouble?

What we ask, following Max O'Connor's concluding paragraph, is thought. For trouble comes in several forms. Expressing an unpopular view can be troublesome. But what if, as seems possible, libertarian principles start to spread to large numbers of people? And what if, as could also happen, the habit becomes established of shying away from the trickier or more unpopular implications of libertarian principles? Do we mean what we say only when saying it is easy, or when the company is congenial? Even on merely tactical grounds "publish and be damned" isn't a bad rule, for you can spike and be damned as well. In the Libertarian Alliance we are seeking to establish a tradition of critical reflection upon matters that may appear at first to be easy and obvious, yet which actually turn out to be very problematic.

"WOULD"

For example, libertarians believe in contracts and in property rights. So, may a man sell himself into slavery? If he does, freely if foolishly, what of the "property rights" of his then "owner"? Difficult. What of the rights of a group of property owners who, literally, form a ring — a ring of property around someone else's home, and then refuse an exit to their unlucky (or careless) "prisoner"? Say many libertarians: oh, these things wouldn't happen! People wouldn't sign away the rest of their lives! People wouldn't buy houses without ensuring access. But life is full of things that "would" not be done, in the opinion of carefree ideologists, which nevertheless are done. Think of all the horrors that socialism's nineteenth century opponents predicted if socialism ever came about. All the horrors that "wouldn't" happen happened.

Ideas have consequences. Rash spirits like me and Max O'Connor take ideas to what we believe to be their logical conclusions. (I too have argued in favour of freedom for children, and for adults in their dealings with children, in the pages of *Free Life*, the quarterly journal of the Libertarian

Alliance, Vol. 2, No. 1.) If libertarian principles are good, do they not also apply to children?

Most people follow the rule that principles should never be taken to their logical conclusions, but this principle can also be taken too far. If someone has already taken a principle "too far", someone else ought also to go that far in the argument, to say why that far is too far. If some opinion is mistaken it can still become accepted, as a result of the refusal of its opponents to dignify such an obviously false idea with a coherent rebuttal.

I suspect that O'Connor does go too far when he argues that contracts are as valid when implications aren't fully understood as when they are. There definitely *are* hazards associated with child sex, if only in the form of the outrage others, including other children, may feel about it. A child ignorant of such consequences cannot be said to have consented to them. But many other hazardous contracts are made, in ignorance, and subsequently and rightly upheld. So maybe O'Connor is right on that.

WHICH FREEDOMS FIRST?

Another doubt concerns the *order* in which moves towards libertarianism ought properly to be made. Might it not be that children, as childhood is now administered, are liable to live in such a state of ignorance of the world and its ways that to make the one change of permitting non-coercive sex between children and adults (while leaving all the other institutions of childhood unaltered) would be wrong? Libertarians believe, as a general principle, that the state should divest itself of all the property it owns, but that doesn't mean that we'd urge British Rail to sell off all its signals (even as it continues to attempt regular train services).

Maybe freedom for children ought to come only as a package, including freedom to skip school, go to work (see Political Notes 7: *Youth Liberation*), leave home and live elsewhere, and so on. Or maybe freedom for children should come gradually, but first in the form of these other freedoms. Or maybe it shouldn't come at all, and someone (like Sean Gabb, *Free Life* Vol. 2, No. 3) will write in and explain why.