

# The British House of Lords, gay consent and democratic rights

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**5 August 1998**

For the past weeks, politics in Britain has been dominated by a furore over government legislation proposing a lowering of the homosexual age of consent. This was defeated in the House of Lords last month.

Presently, the age at which gay men can have consensual sex is 18 years, as opposed to 16 for heterosexual relationships. As expected, the Labour government responded to the Lord's defeat by dropping the specific clause of its Crime and Disorder Bill proposing to equalise the age of consent for gay men. Prime Minister Blair has been very anxious to get the Bill through the House of Lords before the parliamentary recess. He has promised single-bill legislation on the age of consent later in the year.

The episode raises many questions. Clearly, it is a violation of democratic principles to determine the age of consent according to sexual preference. It was no surprise that right-wing and religious sentiment dominated in the House of Lords debate. The opposition to 16 as the age of consent for gay men was invariably the precursor to a denunciation of homosexuality as a sin against God, the family and nature.

It is an affront to democracy for the House of Lords to take decisions on any matter, let alone personal behaviour. An unelected body of 1,100 peers--drawn from the aristocracy, business, government and the church--it is truly a relic of the Dark Ages. Yet it has the power to block legislation proposed by the House of Commons, supposedly the highest constitutional body in the country.

The House of Lords' anti-democratic decision was the subject of protests and condemnation. Yet there has been almost no comment on the Crime and Disorder Bill itself. Many could be forgiven for thinking that the age of consent was the only matter up for discussion.

The Crime and Disorder Bill is a central plank of Labour's legislative programme. It consolidates Blair's pledge made in last year's General Election to be 'tough on crime'. The consent amendment notwithstanding, the new legislation marks a significant attack on democratic rights, and the rights of children in particular.

The very concept of juvenile justice, as it has traditionally been understood, is ended in all but name. For a child aged between 10 and 13 years to be found guilty of a crime, the prosecution had to prove that the child knew its actions were seriously wrong and understood their consequences. This is now overturned. Children are to be tried as adults. One of the major attacks on legal rights made by the previous Conservative government was to curtail a suspect's right to silence. Labour's bill extends this to juvenile cases.

Youth Justice Boards, Youth Offending Teams and a series of other bodies are to be established by every Local Authority to prevent crime involving juveniles. A representative from the Criminal Bar Association described this as a 'dramatic shift' in juvenile policy, as the emphasis is placed on punishing crime rather than child welfare. The Bill also introduces curfews, 'parenting orders', fast-track punishments and penalties for 'anti-social' behaviour.

What accounts for the almost universal silence on such a major reversal of long-established democratic norms? Certainly Blair has borrowed from Clinton a flair for combining supposedly democratic changes with the most retrogressive policies. The Crime and Disorder Bill also contained measures to make racially-motivated crime a specific offence, for instance.

But the inclusion of such measures is more than just an attempt to camouflage the government's agenda. Labour's abandonment of its old reformist programme has lost it the support of broad sections of working people who provided its former constituency. To offset this, the party has to try and build a new social base. This explains Blair's increasing resort to identity politics, such as women's issues, gay rights, etc. The press has lauded the presence of women MPs and openly gay members as if this compensated in some way for Labour's right-wing politics.

But the silence that met the Bill is not a case of fooling all of the people all of the time. There is unanimity between all the major parties on questions of social policy. All agree that social reforms have gone 'too far' and are 'too costly', and that the welfare state must be dismantled. Previous

democratic and social gains are now considered an unaffordable luxury, and are even blamed for the 'moral decay' of modern society.

What motivated more humane conceptions of justice for children, and why they were maintained for many decades, is never examined. The presumption that a child is '*doli incapax*'--has a different understanding than an adult of moral behaviour and is therefore incapable of committing a wrong--is a common law principle dating back hundreds of years, for example.

Children are now a specific target for the shift in official attitudes. The very concept of childhood is under attack. One reason is their vulnerability. No other section of the population is so dependent on the attitudes of society as a whole for their lives and well being. But what does it mean when a society deliberately targets its weakest sections?

In the last century, prior to the liberal and social reforms of the final decades, children were treated as 'little adults'. They could be hung for minor offences, beaten, jailed and transported. They were sent to work as young as six, often in the harshest environment. Schooling was non-existent in most cases. In short these 'little adults' were considered to be a burden who should be made to earn their keep as quickly as possible.

With the spread of more progressive ideas, there was a growing reaction against this. It was understood that society would be the main beneficiary of a change in approach towards the child, so as to facilitate good education and health. Moreover there was a genuine belief that every child had a potential which it was society's responsibility to help realise.

Each advance made met opposition from reactionaries who maintained that discipline alone provided the means to teach 'little adults' their place in life--summed up in such homilies as 'spare the rod, spoil the child' and 'children should be seen and not heard'.

The revival of these backward ideas is inextricably bound up with economic imperatives. Ruling circles now consider the social advances made in an earlier period to be a barrier to their further exploitation of the working class. That Labour was prepared to redress a democratic imbalance on the age of consent does not contradict this.

On the contrary, making all youth responsible for their sexual behavior at the same age was seen as a necessary step in holding all youth responsible for criminal acts. In any event, a change in the age of gay consent was not entirely under Blair's control. The European Court had ruled last year that Britain's discrimination on this matter was in breach of human rights and that a free vote in Parliament was necessary.

The official debate on this question has highlighted another feature of contemporary political life--the failure to examine issues in their social context. Sexual relations are among the most basic and yet complex form of human interaction, but there has been no discussion of the wider ramifications of official attitudes and policy in this area. Reliance on legislation to regulate sexual matters is always inadequate, and often inadvisable. But given this, what responsibility should society take for preparing a young person, already dealing with the upheavals of adolescence and generally still in education and living at home, to cope with the emotional demands that accompany sexual activity?

There are other questions worthy of consideration. Why is it that, despite a relaxing of sexual constraints and an apparent 'openness', Britain has the highest rate of teenage pregnancies in Europe? What is the relationship between the increase in under-age parents, the harsher socio-economic situation facing young people and the general cultural decline?

Sex education in schools is still confined to the mechanics--generally involving rabbits--leaving the moral and emotional aspects as the exclusive preserve of the right wing. In this debate those opposing the Lords have proved incapable of a genuine, all-encompassing defence of democratic rights. The Gay Rights movement, for instance, has been motivated by the narrowest concerns, dismissing any of the broader implications of the Crime and Disorder Bill. For all the invocations of progress, this debate again indicates that there is something seriously wrong in the body politic.

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