

PEDOPHILIA

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Adult-Child Sex

While philosophers have recently put into question traditional norms with regard to adultery,¹ promiscuity,² sexual perversion,³ and have maintained that sexual acts are morally neutral,⁴ they have not examined adult-child sex. There is no domain of sexuality in which a prohibition is more absolute and more unquestioned; the current categorical moral and legal prohibition against all forms of adult-child sexual contact reminds one in its rigor of previous prohibitions against homosexuality. While perhaps it would be too much to expect that our attitudes on this might become more open, as they have toward homosexuality, we must, nevertheless, not discount the possible effect of rational inquiry. While more difficult here than elsewhere, we must hold fast to Charles S. Peirce's injunction not to block the road to inquiry, and to recall that where there has been the least inquiry, there is probably the most need for it.

In spite of the fact that we tend to condemn all forms of adult-child sex, we more strongly condemn some instances of it than others. If we can take the criminal law as a clue to our attitudes, we tend generally to take a more negative approach toward sexual relations between an adult male and a young girl than toward relations between an adult woman and a young boy, and we are more forgiving of the act the closer the participants are in age.⁵ On the other side, I have not found much evidence that we adopt a more negative stance toward homosexual or incestuous sex in this domain than we do toward heterosexual or nonincestuous sex.

The negative attitude toward adult-child sex appears to have begun

around the second half of the eighteenth century with a movement to repress the sexual activity of children.⁶ In the Middle Ages and in the Renaissance, people regarded the sexual interest and activity of children as a normal state of affairs that did not call for special attention. In the first half of the sixteenth century, young people knew and were allowed to know everything about sex and were sexually active.⁷ In the moral and pedagogical literature of the first half of the eighteenth century, there appears no restriction on prepubertal sexual activity. The repressive trend that began in the second half of the eighteenth century eventually led to a vision of the child as asexual and never himself desiring or initiating sexual contact. The move toward this vision of childhood as a time of sexual innocence comes at precisely the same time as the "invention" of childhood as a distinct stage of life in which the child's dress and other modes of conduct were sharply marked off from the adult's. Prior to the eighteenth century, children wore adult clothing, played adult games, attended school with adults, tossed off ribald jokes, and were, of course, a part of the labor force.⁸

The late eighteenth-century vision of the sexual innocence of the child has so deeply imbued our language that we hardly have a term to designate adult-child sex (except this neutral term that I have made my title), one that does not imply that the child is a victim. Hence, sex itself is "abuse," "assault," or "molestation." This bias makes it difficult to put into question the negative moral evaluation of adult-child sex. There is no better example of this than Alan Goldman. For Goldman, sexual acts are morally neutral. However, he finds no other term for adult-child sex than "molestation." He does not mean by the term simply a threatening or violent sexual contact, since he argues that this is the "closest we can come to an act which is wrong because it is sexual." It is wrong because of the "detrimental effects such behavior can have on the future emotional and sexual life of the naive victims"; and there would, obviously, be no need to appeal to the one or the other of these arguments to rule out physical assault or coercion.⁹ I suspect that if Goldman had not assumed that adult-child sex is "molestation" of a "naive victim," he would not have been willing to make an *ad hoc* exception to his thesis of the moral neutrality of sexual acts in order to justify a categorical condemnation.

In assessing the prohibition against adult-child sex, I am questioning the cherished vision of the sexual innocence of childhood. Many people want children to be purer than adults, and there is no older and more established symbol of the loss of purity than sexual experience. When these same people envisage adult-child sexual contact, they see

the adult as defiling the innocent child. I suspect that it is this, and not the arguments that people commonly advance for the prohibition against adult-child sex, that lies at the root of its acceptance even among those who otherwise eschew sexual puritanism. There is, of course, a remnant of sexual puritanism in this reaction toward adult-child sex, since unless there were something morally problematic and impure about sex, how could it corrupt the child? The attitude toward adult-child sex is the last unquestioned bastion of sexual puritanism.

I shall put to the critical test the two main arguments that people commonly use to justify the claim that adult-child sex makes a victim of a child: the arguments that adult-child sex is harmful to the child and that the child is incapable of valid consent to sex with an adult. The strategy of these arguments is to formulate the issue, not in terms of an unrealistic and problematic ideal of childhood or in terms of sexual puritanism, but in terms of the child's unquestioned right not to be harmed or manipulated in order to satisfy the selfish interests of adults. If the arguments fail, as I shall attempt to show, so also does the strategy; and those who propose to defend current attitudes toward adult-child sex must do so in terms of a model of childhood or of the wrongness of sex apart from marriage or a form of responsible mutual commitment. They must admit to be willing to send a man to prison to preserve a higher incidence of childhood sexual naiveté a bit longer.

HARM

While the contention that adult-child sex harms children is an empirical, and not an *a priori* claim of moral corruption, it is still not easy to evaluate. For although there is a good deal of clinical data on the effects of adult-child sex on the children, there is little in the way of controlled scientific research. There are sound reasons to be suspicious of conclusions based on clinical data alone. The people who come to clinical and legal attention are not necessarily a typical cross section of the relevant population (Koch, 1980). They are apt to be more negatively affected than those who do not come to clinical attention, both because the negative effects bring them to clinical attention in the first place and because there are negative effects from the handling of adult-child sex on the part of parents, medical personnel, law enforcement and school officials, and social workers (Walters 1975; West 1980).

I have been able to find one scientifically rigorous study of the effects of "childhood molestation"; and this will make it possible for us to draw *some* conclusions that have claim to scientific respectability,

even though they must, of course, be tentative. Marvis Tsai, Shirley Feldman-Summer, and Margaret Edgar of the University of Washington (1979) made a study of the variables related to the differential impacts on psychosexual functioning in adult women of childhood sexual contacts with adults. The study conducted by Tsai et al., is not only valuable for its own findings, but also for providing an excellent summary and assessment of the available empirical evidence of the effect of adult-child sex on children.

Tsai et al., begin by pointing out what strikes almost anyone who surveys the clinical literature on the subject, viz., that "What little empirical evidence exists regarding the psychological impact of sexual molestation on the child tends to be contradictory (407). One can find what one is looking for: De Francis (1971), Kaufman, Peck, and Tagiuri (1954); Weiss, Rogers, Darwin, and Dutton (1955), all report that molested children experience a negative emotional reaction such as depression, guilt, or loss of self-esteem. Weiss et al., link molestation to phobias and nightmares; Burgess and Holmstrom (1975) find that it leads to unprovoked crying, compulsive bathing, and bedwetting; and Herman and Kirschman (1977), Katan (1973), Peters (1976), Sloan and Karpinski (1942), and Summit and Kryso (1979), all find support for the proposition that childhood sexual experience is a significant determinant of adult psychological disturbances.

On the other side, Yorukoglu and Kempf (1966) studied two cases of incest, one involving a 13½-year-old boy who had sexual relations with his mother since he was 12; the other a 17-year-old girl who had a sexual relationship with her father since she was 12. The study concluded that the children were unaffected by the experience. Bender and Blau (1937) studied sixteen sexually molested children and reported that they were not negatively affected. Fourteen of these children were located for a follow-up study fifteen years later by Bender and Grugett (1958) and only one was "seriously disturbed." Finally, and, I think, most importantly, due to the fact that the data does not arise from a clinical population, Gagnon (1965) and Landis (1956) surveyed college students about childhood sexual experience and found that between 28 and 33 percent of the respondents reported having sexual experience with an adult, but that only 3 to 7 percent reported serious psychological problems arising from the experience. Rascovsky and Rascovsky (1950) go so far as to argue that incestuous experience diminishes a child's chance of psychosis and allows for better adjustment.

Tsai et al., conclude from their examination of the literature that it is "difficult if not impossible to draw any conclusions about the scope

and duration of the impact of sexual molestation on the basis of previous research" (408). Moreover, they point out that the "methods employed differ in numerous ways, as to the samples studied, thereby making it virtually impossible to disentangle effects due, for example, to differences among the molested children in terms of age and gender of the child; the relationship between the child and the molester; the acts engaged in; and so forth" (408). They emphasize that the "possible impacts of childhood molestation on adult psychosexual functioning have not been systematically assessed" (408). Their own study is an attempt to provide this assessment.

They select three groups of thirty women each, one a control group without childhood sexual experience, a second group with such experience, but, otherwise, seemingly normal; and a third group seeking therapy for problems associated with their childhood sexual experience. The two main findings are that the women seeking therapy were less well adjusted generally than either of the other groups and, more interestingly, that reports of molestation by the clinical group differed significantly from those of the nonclinical group in such a manner as to suggest a theoretically meaningful explanation of the difference in adjustment. The women in the clinical group were (a) molested at a later age, (b) had stronger negative feelings at the time toward the events, and (c) experienced a higher frequency and longer duration of molestation.

With regard to the differences in age, Tsai et al., suggest that older children are more negatively affected by the act because they feel more responsible for it, are more aware of violating a social norm, and, therefore, are more likely to feel guilt. Because it occurs during the emotional problems of puberty, its impact is thereby increased. The psychosexual problems that arise from the act come about when the negative feelings associated with the childhood sexual experience become attached by stimulus generalization to other sexual and affectionate experiences. The principles of classical conditioning explain why these negative feelings become more strongly attached to other experiences and are more resistant to extinction, the longer the duration and the greater the frequency of the original negative experience. The strong attachment leads to adult psychosexual maladjustment.

The two main causes, according to Tsai et al., of adult psychosexual problems on the part of the sexually molested children are the negative feelings of the children toward their adult partner and their feeling of responsibility for, and guilt from, the violation of a social norm. There is nothing in the study to indicate that there would be a negative impact apart from an aversion to the adult and a violation of a norm. For this

reason, the study does not provide the least evidence in favor of a norm prohibiting sexual contact between a child and adult when the child is not averse. On the contrary, the fact that the negative impact of the perceived violation of the norm is a large contributor to the harmful effects of adult-child sex is an argument *against* the norm. There should be nothing surprising in the fact that moral and legal prohibitions impose severe costs on those who violate them and are a factor to be considered in assessing them. The cost of a prohibition always is a *prima facie* consideration against it.¹⁰

In spite of the cost of the current prohibition and the serious doubt as to whether it protects the child from a substantial risk of harm, one might, nevertheless, defend it to protect against a possible, though undetermined harm, and require, in order to modify it, that we establish more conclusively than we can on the basis of available evidence that adult-child sex is *not* harmful. The argument in this case is precisely analogous to that used by those who maintain that we ought not to allow the use of drugs unless we have established their safety, and ought not to permit pollution unless we have proved that it does not present a health risk.¹¹

While there is undoubted benefit in protecting against the possibility of harm, we must be careful, however, not to pay too high a price in foregone benefits ("opportunity costs") or in actual harm. When we restrict a promising drug, not known to be harmful, we may pay a high price for delaying the benefits of use while we test further for possible harm; when we control a pollutant, not known to be harmful, we may pay a high price in more expensive goods, economic stagnation, and unemployment. In both cases, the costs of restrictions are more determinate, although *ex hypothesi* not known to be greater, than the benefits. The situation is precisely the same in adult-child sex. We know the costs of the prohibition; the benefits of it are uncertain. One might argue at this point that we ought to take the most conservative approach toward risk in all of these cases. The "maximum" dictates that we protect against the risk of harm regardless of the opportunity costs. However, we are not in this case dealing merely with lost benefits; we are dealing with genuine risks of harm from the restrictive policies. The most conservative approach does not, therefore, necessarily dictate the restrictions. The "worst case" might be people dying from the delay of the drug, being impoverished and losing their jobs from the pollution control, and being subject to the trauma of guilt and criminal proceedings from the moral and legal prohibition against adult-child sex.¹² When we are more certain of the costs than the benefits of a policy, we

have good reason for taking a cautious approach to the policy itself.

While it might be admitted that we cannot justify a prohibition against all acts of adult-child sex, on the ground of the risk of harm from the acts considered in and by themselves apart from the effects of a wider *practice* of acts of that sort, it might, nevertheless, be argued that the relaxation of the prohibition would lead to a wider practice of these acts, which would itself be harmful, not only to the particular children involved in them, but to children generally. The wider practice, presumably, might be harmful either because of a negative cumulative effect, as in the pollution case, or because of reduced protection against abuse, as in the drug case. The harmful polluter does not want everyone to pollute. He would rather have no one permitted to pollute than to have everyone pollute. He finds polluting desirable only so long as others do not engage in it. He benefits from being a "free-rider." There is nothing analogous in adult-child sex. While the wide practice of this would be disadvantageous to those who desire to preserve the model (illusion?) of sexually innocent children, it would not, as in the pollution case, harm those involved in the activity. The participants in adult-child sex have no interest in being free-riders. They would prefer that their acts be widespread rather than prohibited altogether. They would probably prefer a wider practice simply to lessen their sense of being abnormal and to make sexual contacts easier to achieve.

There is, on the other side, a real danger that permitting even harmless adult-child sex might open the door to a more widespread physical and psychological abuse of children. While no one would seriously propose prohibiting all sex in order to protect against adult rape, we do, in fact, take this tact to protect against adult-child sexual assault. Apart from a mere aversion to adult-child sex, there is an important reason for taking this restrictive approach in relation to the child. The child is more easily intimidated by an adult than another adult is, and the child might often find it more difficult to lodge a complaint against abuse or rape. We cannot leave it up to the child to protect himself in this domain as we do the adult. However, there remains the question as to whether this justifies our regarding all adult-child sexual contact as abuse regardless of the facts in the particular case.

The fact that we cannot leave the child responsible for lodging complaints in this domain means that we must investigate all suspected adult-child sex, as we do under current practice. However, while this invasion of privacy is required in order to protect against abuse, the categorical prohibition in its present form is not. The implementation of:

the categorical prohibition tends, in fact, to be abusive. When society intervenes to impose moral or criminal sanctions against a pleasurable or loving sexual relationship, it runs the risk of producing, by stimulus generalization, damaging negative feelings toward a wide range of sexual and affectionate experiences that can lead to serious psychosexual problems. Moreover, the child, in this case, is bound to regard the intervention, from the perspective of his later life, as unjustified repression, and, for this reason, inconsistent with legitimate paternalism, which demands that a person be able to recognize in retrospect the desirability of the action taken with respect to him.¹³

Instead of considering only whether there has been sex, it would be more consistent with a genuine paternalistic concern for the child to assess the best approach for his own welfare in the situation. There should be several categories. When there is no evidence of physical or psychological harm and the child desires the relationship, the relationship would be permitted, but we would monitor it to detect signs of abuse.¹⁴ Where there is psychological disturbance, but no physical harm or compulsion, the relationship would be enjoined for the welfare of the child. When there is physical harm, and/or compulsion, there would be criminal charges of sexual assault. When an adult makes a child pregnant, we might treat this as a case of physical assault or else simply impose civil liability, depending on what is best for the child. This more flexible approach would enable social agencies to protect children without subjecting them to the trauma of a scandal or criminal proceedings unless this is necessary in the given case. There would be no "statutory rape" in the present sense.

The child is normally under the authority of parents or guardians, not an independent agent, and this raises the question both of the permissibility of sexual relations between the child and his parents or guardians and of the authority of parents or guardians over the sexual conduct of the children under their supervision. The answer to the first turns on whether a sexual relation is compatible with the proper exercise of the parental role. There is, in this case, more than the harm of the particular act involved; there is the general norm of parental behavior. To admit the legitimacy of parent-child sex in any case has implications with respect to the manner in which we conceive of the parental role. While the proper reaction to parent-child incest in a particular case ought to turn on paternalistic considerations of what is most beneficial to the child in that situation, as a general rule we ought to discourage it so far as it negatively affects parental authority and leads to a sexual involvement with the child that interferes with the tasks of parenthood.

The propriety in any case of adult-child sex where the adult has a specific role to play with regard to the development of the child raises questions that do not arise in the case of those who do not have a specified role of this sort, since, in the former, the answers depend on the requirements of the role, not simply on the empirical consequences of the act.

Regarding the right of a parent to exercise authority over the sexual activity of his (or her) children, it is clear that this right ought not to extend to determining the child's sexual partners. The once common authority of the father to arrange and require marriage of his daughter at an early age to a man of his own choosing led to the life-long subjugation of women and was incompatible with the long-term welfare of women as autonomous persons. On the other hand, it is questionable that parents have a right to *forbid* a child's sexual activity unless it is harmful to him. For in the end, it is as intrusive in the sexual life of the child to forbid a sexual relationship as it is to require one. The parent has a duty to protect the child against sexual abuse, but he has no right himself to become abusive in attempting to enforce his own preferences on the child. The use of parental coercion to forbid an otherwise satisfying sexual relationship puts a parent's own fitness into question and counts as a serious form of child abuse in its own right.

CONSENT

The very fact of parental authority over the child presupposes that the child does not yet have the same sort of capacity to make choices as the adult does. He is not yet capable of fully responsible choice, and, for this reason, he is not capable in the full sense of valid consent. The concept of consent in this context is not a mere psychological concept of nonreluctance or desire, but a normative concept prescribing the conditions of rational and responsible choice. To be capable of rational and responsible choice, the person must be free from perceived or actual coercion, must have the relevant concept, and must understand the most important consequences of his act. Apart from these conditions, he cannot in retrospect regard himself as having chosen the act and its consequences and therefore as being liable to answer for it. He cannot regard himself as responsible for an act when someone else coerced him into performing it or when he did not know what he was doing.¹⁵

The problematic character of the harm argument leads one proponent of a categorical prohibition of adult-child sex to maintain that we ought to justify the prohibition on the ground of the child's incapacity to consent rather than on that of the harmfulness of the act

(Finkelhor 1979). This at once raises the question of why a child's incapacity to consent justifies a prohibition on *sex* when it does not in regard to many other sorts of acts. Finkelhor gives the example of rape, but that is not relevant to the present issue. For insofar as rape requires that the act be *against* a person's consent, it does not apply where a person is not capable of consent. The incapacity of consent is an incapacity to give or to refuse consent. Insofar, on the other hand, as rape requires only that the act be against the *desires* of the person, not all adult-child sex is rape. The very fact that a child is not capable of consent means that we might be permitted on paternalistic grounds to use force to compel him to do things that we could not legitimately compel an adult to do. There is a possible (although, I think, invalid) paternalistic argument to justify the practice of arranging marriages and requiring sex of a child, even though the child does not desire it, on the ground that this is in the child's long-run interest and that the person will in retrospect approve of our act. I suspect that one reason for the arranged *child* marriage is that there is no question of a justification of this sort with regard to an *adult*. The forced sex in this case is not rape in the sense of a violation of the right of the person to choose his own sexual partners, since a person incapable of consent does not have this right. If we are to speak of rape in the context of adult-child sex, it can only mean the use of compulsion to have harmful sex with the child. The prohibition of rape of children is based on harm, not on the right of the child to determine his own sexual life.

The appeal to rape does nothing to answer the question as to why sex requires valid consent. The fact that a child cannot validly consent does, indeed, mean that he does not have a *right* to choose his sex partners as an adult does and that those responsible for him might legitimately forbid sexual conduct that is detrimental to him, in a situation where intervention would not be legitimate in the case of adults. However, the absence of a child's right to decide his own sexual life does not mean that others have a right to forbid a desired, nondetrimental relationship. The child is not without all rights; he has a right not to be harmed, and, in certain cases, a right to protection from harm. The intervention to forbid sex against his will is itself harmful, as is all compulsions, and when the intervention is not justified by benefits, it is itself a violation of his rights and ought to be prohibited. The situation of sex does not appear in principle to be different from other acts. The child has a right to do what he pleases in this as in all other domains unless it is harmful to himself or others.

When a person is not capable of valid consent, we must be more