SADO-MASOCHISM AND THE LAW:

CONSENT VERSUS PATERNALISM

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The practices were degrad-
ng and vicious and no one
who had heard what had hap-
pened would say, "men
should be free to practise this
kind of thing on one another".
He added: "This is not a
witch-hunt against homosex-
uals. The unlawful conduct
before the court would result
equally in the prosecution of

not
letter or the spirit of
which followed the Wolfenden
report and allowed homosex-
ual acts between consenting
adults in private. He said the
case went far beyond what the
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"the violent and deliberate
inflicting of injury and pain on
human beings often to the
point of real torture".

It also involved "brute
homosexual activity in sin-
ister circumstances about as
far removed as can be imag-
ined from the concept of
human love".

Many witnesses associated
with the ring were promised
that their identities would not

John

be disclosed when they came
forward to help the police.
Detectives were so alarmed by
a violent scene shown on a
video film made by some of
the men that they suspected it
might have been an actual
murder being performed be-
fore the camera.

When they searched a coun-
try house in Shropshire shared
by Ian Wilkinson, aged 56, a
forester, and Peter Grindley,
aged 41, a care assistant in a
home for the mentally handi-
capped, they took dogs to
search for "bodies in the
garden", the court heard.

The ring had an "inner
circle" of middle-aged men,
but youths, one aged 15, were
corrupted. One man asso-
ciated with the gang had died
of Aids and another had
contracted the disease. The

judge studied
some of the worst acts
violence. He went white in th
face and asked for an adjourn
ment after watching the mo
horrifying video. He later sa
"I am not likely to forget t
one. No one would."

Many of the men
leading secret lives.
were married or living
girl friends. Others held h
paid jobs. Police in the B
area of Greater Manc
found a film in whic
violence depicted
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tracking down those in

The ringleaders w
kinson and Grindl
shared a country hou
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Anthony Brown,
Cadman and Rolan
They received man

The guilty men and their sentences

THE sentences of those
two years' probation; Chris-
topher Carter, 37, fancy-
dress hire proprietor, of
Shrewsbury,

Rights protest

By FRANCE

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SADO-MASOCHISM AND THE LAW: CONSENT VERSUS PATERNALISM

ANTHONY FURLONG

The laws of God, the laws of man,
He may keep that will and can;
Not I: let God and man decree
Laws for themselves and not for me;
And if my ways are not as theirs
Let them mind their own affairs.
Their deeds I judge and much condemn,
Yet when did I make laws for them?
Please yourselves, say I, and they
Need only look the other way.

A. E. Housman, *Last Poems*, XII.

Over himself, over his own mind and body, the Individual is sovereign.

J. S. Mill, *On Liberty*, "Introductory".

THE POLICE

Some time in 1987, while leafing through their copies of the *Gay Times* and *Euroboy*, the officers of the Metropolitan Police Obscene Publications Squad came on an unusually interesting advert. It is, of course, their job to check into these things. They are paid to stamp out any but the mildest hint of sexual enjoyment. It is, of course, in their interest to do their job well. Even in these days of AIDS and incurable herpes, it is on the whole safer to persecute sexual nonconformity than to go looking for real criminals. There is less chance of a violent reaction. There is more chance of public approval. Unless they have done something extraordinarily bad, thieves and murderers quite often find more sympathy than condemnation in the courts. But prostitutes and pornographers are guaranteed a bad reception. They are usually convicted. They are always pilloried by the gutter press. The officers who go after them are not ordinary policemen. They are the upholders of public morality. By both politicians and the media they are treated with the kind of deferential respect that your ordinary PC Plod only receives when a rioting mob cuts his head off. On this occasion, they had found an advert promising the ultimate in depravity and corruption to anyone who would reply to it. It was time to launch "Operation Spanner".

This went well from the start. At first, indeed, the officers thought they had hit the absolute jackpot. A video tape fell into their hands. It showed scenes of unimaginable violence and perversion. Men were hung up by chains and beaten insensible. Hooks were pushed deep into flesh. One man had a nail hammered through his foreskin. The actors ran about, dressed variously as schoolboys and officers in the SS. A dog was sodomised. All this was set to a soundtrack of Gregorian plainchant. This, the officers told each other, was surely a "snuff" video - a horror film where there are no special effects, but the participants really are tortured and killed. The moral purity fanatics had been claiming these things to exist since the 1940s. So far, not one had ever come to light. Now, it seemed, one had.

The search ended in Shropshire, in a country house shared by Ian Wilkinson, aged 56, a forester, and Peter Grindley, aged 41, a care assistant in a home for the mentally handicapped. The officers took dogs with them, to help search for bodies buried in the garden. No bodies were found. But there was no need for disappointment. Instead, they had uncovered the biggest homosexual vice ring in British history. The house was fitted with a spacious and exceptionally fine torture chamber. Men would go there and torture or be tortured all the way to orgasm. And, since this was the 1980s, they could relive their experiences afterwards by watching them at home on videotape.

Some of the men, moreover, were living double lives. They were married or had girl-friends. Some were even very well-to-do. There was an international lawyer with limited diplomatic immunity. There was a

missile designer with security clearance. There was a lay preacher - whom, as a matter of interest, I used to know in my days as an estate agent. There were the makings here, the investigating officers knew at once, of a real scandal. All they had to do was come up with a reason for making arrests.

THE OFFENCES

There was, it must be admitted, ample reason. Homosexual acts are illegal in this country, unless between two consenting adults who have reached the age of 21 or over and in private.[1] The presence of a third party - or even the commission of the act in a place to which third parties lawfully have access - is deemed to render such an act public, and the participants liable to imprisonment for up to two years. Bestiality - that is, to have carnal knowledge of an animal to the extent of penetration - is an offence carrying a maximum penalty of life imprisonment.[2]

Youths below the age of consent had taken part in a few of the orgies. One of them was aged 15. Sodomy or gross indecency with a male under the age of 21 carries a maximum penalty of five years.[3] As with animals and women, sodomy with a boy under the age of 16 carries a maximum penalty of life imprisonment.[4]

Other offences had been committed. The house had been made into a brothel - into premises habitually used or resorted to for the purposes of prostitution or for lewd homosexual practices. It is no defence to prove that no public nuisance was committed, or that no money passed hands. This offence carries a maximum penalty on summary conviction of three months' imprisonment, or six months on a second conviction.[5]

Indecent and obscene material had been published. Again, it is no defence to prove that no money was had in exchange. Publication, or possession with intent to publish, is sufficient. The maximum penalty is six months' imprisonment on summary conviction, or three years' imprisonment on indictment. As an alternative or in addition, unlimited fines may be imposed.[6]

Some of the material included pictures of the 15-year-old boy. It is a summary offence, carrying a maximum sentence of six months' imprisonment or a £2,000 fine, to take or to possess an indecent photograph of a young person who is or who appears to be under the age of 16.[7]

Some of the material had been sent through the post. This, again, is an offence. On summary conviction, it carries a fine of £1,000, and on indictment a maximum of 12 months' imprisonment.[8]

At least one of the accused was charged with the possession of illicit drugs. The gravity of punishment for this offence depends on the type of drug possessed, and on the possessor's further intentions regarding its use.[9]

Most of these are crimes that ought not to exist. So long as there is no public nuisance, I see no reason whatever why the authorities need to bother themselves over homosexual orgies that only involve consenting adults. Bestiality should not be an offence unless it can be shown to have caused pain to the animal. The same argument applies to pornography. Children should be excluded. Animals should be protected. Beyond that, the only proper grounds for constraints on publication are those having as their end the avoidance of public affront. Our drug laws are a disgrace to civilisation. They allow the State to stand over the citizen as a father stands over his children. They put a bounty on organised crime. They divert resources from the one legitimate function of the State - the protection of life and property.

As I have already indicated, I do believe that there should be an age of consent. I reject the extreme libertarian argument, that children are entitled to the same rights as adults. Even so, the current age of consent for homosexuals, at 21, is at least five years too high. It certainly ought to be consolidated with the heterosexual age of consent, at 16. Both might even be brought down by a year or so. This is no radical suggestion. In France, the age of consent for all sexual activity is already 15. In Italy, it is 14. In Spain, it is 12.[10]

But, while this may be worth saying, it is a digression. The officers had found evidence that crimes had been committed. It was their undoubted duty, whatever nasty pleasure can be imputed to their doing it, to make their arrests and leave the Crown Prosecution Service to do the rest. This they did. I may think the Obscene Publications Squad a pack of fascist goons who ought to be sacked, or sent en masse into the next race riot. But they did nothing unusual. They acted entirely within the letter and spirit of laws not made by them. What makes the case of *R v Wilkinson & Ors* so memorable is what the lawyers did with it.

THE TRIAL

Of the 43 men investigated, 15 were eventually brought to trial, charged among much else with various crimes under the Offences Against the Person Act 1861. To this part of the indictments the defence put in a plea of consent. The essence of such crimes is that injury is inflicted on an unwilling victim. Since here there had undeniably been full consent, these charges would have to fail. Not so, said the Judge, Mr James Rant QC:

> Much has been said about individual liberty and the rights people have to do what they want with their own bodies, but the courts must draw the line between what is acceptable in a civilised so-

> ciety and what is not. In this case, the practices clearly lie on the wrong side of that line.[11]

These acts, he continued, were peculiarly degrading and vicious. Mr Michael Worsley QC, for the prosecution, agreed, adding that the case went far beyond what the law allowed in that it involved "the violent and deliberate inflicting of injury and pain on human beings often to the point of real torture". It involved "brute homosexual activity in sinister circumstances about as far removed as can be imagined from the concept of human love." [12]

Some of the seized video tapes were shown. After one of them, white in the face, the Judge ordered an adjournment. He later said: "I am not likely to forget that one. No one would."[13]

THE SENTENCES

Their sole grounds for defence cut away from under them, all 15 defendants pleaded guilty. They were sentenced, on the 19th of December 1990 as follows:[14]

Ian Wilkinson, for keeping a disorderly house and causing actual bodily harm, was jailed for three and a half years.

His accomplice, Peter Grindley, for the same offences and for possessing drugs, was also jailed for three and a half years.

Colin Lasky, 46, a computer operator of Pontypridd in Glamorganshire, for causing or aiding and abetting actual bodily harm and possessing an indecent photograph of a young person, was jailed for four and a half years.

Graham Cadman, 52, an ice cream salesman of Bolton in Lancashire, for keeping a disorderly house and taking and possessing indecent photographs of a young person, was jailed for four and a half years.

Anthony Brown, 54, a retired local government officer of Yardley in Warwickshire, for assault and aiding and abetting assault, was jailed for two years and nine months.

Roland Jaggard, 42, a missile design engineer of Welwyn Garden City in Hertfordshire, for actual bodily harm, was jailed for three years.

Saxon Lucas, 57, a restauranteur and lay preacher of Evesham in Worcestershire, for actual bodily harm, was jailed for three years.

Donald Anderson, 60, a retired pig breeder of Hartford in Carmarthenshire, for keeping a disorderly house to which people came "to take part in acts of sadistic and masochistic violence and accompanying acts of a lewd, immoral and unnatural kind", was jailed for 12 months. His plea of not guilty to buggery with a dog and donkey were accepted by the court.

John Atkinson, 48, an antiques restorer and restauranteur of Broadway in Worcestershire, for aiding and abetting others to cause injury to himself, was given two years' probation.

Christopher Carter, 37, a fancy dress hire proprietor of Shrewsbury in Shropshire, for aiding and abetting actual bodily harm, was jailed for 12 months, suspended for two years.

Christopher Zimmerli, 51, a lawyer of Haverstock Hill in London, for actual bodily harm, was jailed for 12 months, suspended for two years.

John Lofthouse, 49, a retired fire officer of Lowestoft in Suffolk, for causing or aiding and abetting actual bodily harm to another and to himself, was jailed for 21 months, suspended for two years.

Anthony Oversby, 56, a tattooist of Bayswater in London, for offences not disclosed in my newspaper reports,[15] was jailed for 15 months, suspended for two years.

Albert Groom, 55, an hotel porter of Thornaby-on-Tees in Yorkshire, for conspiracy to send indecent photographs through the post, was given a conditional discharge.

Graham Sharp, 41, a photographic developer of Coalpit Heath in Gloucestershire, for sending indecent material through the post, was fined 1,000.

Paul Kelly, 23, of Horwich in Cheshire, for aiding and abetting Graham Cadman to keep a disorderly house, was given a two year conditional discharge earlier in 1990.

"Operation Spanner" had entirely succeeded. The Obscene Publications Squad even managed to get a word in about the evil trade in pornography and its "snuffy" tendency. According to the main report in *The Times*,

> Det Supt Michael Hames, head of Scotland Yard's Obscene Publications Squad, said after the trial that sadistic pornography was becoming more bizarre, more violent and more widespread. He issued a warning that it would eventually lead to a death being filmed.[16]

Now, compare these above sentences with the following:

On the 13th of November, 1990, a lorry driver who killed two people, when he crashed into their parked car after fumbling for his tobacco pouch on the floor of his cab, was sentenced to 90 hours' community service and disqualified from driving for two years.[17]

On the 30th of August, 1989, an admitted thief and fraud, who had stolen nearly £350,000, of which scarcely £50,000 was recovered, was put on probation

for two years. Since his arrest, the accused had converted to Christianity, and was now sorry for his offences.[18]

But I am missing the point. These were only crimes against life and property. Messrs Wilkinson et al. had committed crimes against morality. There is no comparison. Any one of us might for some reason kill or rob another person. But to commit a sexual offence - especially a homosexual offence - why, that requires a particularly revolting turn of mind. It is, both legislators and public agree, the business of the law to suppress that sort of thing. Whatever else it may become, England shall not be allowed to become another Sodom or Gomorrah.

THE LAW RELATING TO CONSENT

The various offences relating to unlawful sex and publication and possession of drugs have already been mentioned. The law regarding them may be grossly immoral in its paternalism. But it undoubtedly is the law; and the "Shropshire 15" might have found their interests better served by paying attention to it. What may surprise the average reader is the strange ability of the courts to construe a sexual act between consenting adults as a criminal assault. Indeed, John Atkinson was convicted solely of having aided and abetted others to cause injury to himself. It must certainly have surprised the convicted men. Yet Judge Rant's decisions made some sense in the circumstances. It is open to the Court of Criminal Appeal, or the House of Lords, to rule that his interpretation of the law was incorrect. Yet there is some reason for holding that, when two sado-masochists make love, they are committing a serious offence.

As has already been said, it is the essence of a crime against the person that injury is inflicted contrary to the will of the victim. This is the admitted assumption of the law. Consent is a valid defence; and it is for the prosecution to prove its absence.[19] It is not, however, a defence in every case. There are circumstances in which a plea of consent will be rejected by the courts.

There is fraud. If you consent to my injecting a vaccine into your body, and I instead inject a useless irritant, I shall very likely be guilty of battery. It is the same if I lie to you that I am a qualified dentist and unnecessarily pull out one of your teeth. Fraud will negative consent where the injured party is deceived as to the identity of the person or the nature of the act.

There is duress. If I hold you prisoner and will not release you unless you consent to have sexual intercourse with me, your consent will not be recognised by the courts; and I shall be guilty of rape or an indecent assault. There is doubt as to the amount of duress required to negative consent. It is thought that if I merely threatened to dismiss you from my employment, or to bring a prosecution against you - both lawful acts in themselves - I might still be guilty. The probable test to be applied is whether, having regard to the gravity of the threat and the proposed act, the will of a reasonably firm person is likely to be overcome.

There is the incapacity of minors. Some years ago, a defendant tattooed boys aged 12 and 13, and they suffered injury as a result. Although they had consented to be tattooed, the court decided that they were too young to understand the nature and likely consequences of the act to which they had submitted. The defendant's plea was rejected.[20]

Finally, there is the public interest. There are supposed to be certain classes of act which the State ought not to allow, irrespective of whether the parties have given their fullest and most informed consent. It is for the defence to prove that the act in question does not fall into one of these categories.

Now, this goes far beyond the two other limitations described above. Those are quite compatible with the right of adult individuals to do with their bodies as they will. They operate only where, on account of the circumstances of the injured party, consent cannot be taken as genuine. This, however, allows the fullest public supervision of private actions. There has never been a comprehensive definition of the concept. Instead, it is for the judges to decide whether any particular class of acts is in the public interest. It is for them, consulting their own sense of right and propriety, to decide what we may do with ourselves and each other. It is their prejudices, and not an objective, logical rule, that are allowed to define the limits of our freedom.

Take, for example, the case of sporting injuries. Prize fights are not in themselves illegal in England. But they have nearly always been held by the courts to amount to batteries. Yet boxing matches held in accordance with the Queensberry Rules have not. Both have entertainment value. Both involve considerable danger of injury or even death to the participants. But only the dangers in the former have been held to be too great for the public interest to be served by their toleration. As Mr Justice Cave said just over a century ago:

> The true view is, I think, that a blow struck in anger, or which is likely or is intended to do corporal hurt, is an assault, but that a blow struck in sport, and not likely, nor intended to cause bodily harm, is not an assault, and that, an assault being a breach of the peace and unlawful, the consent of the person struck is immaterial. If this view is correct, a blow struck in a prize-fight is clearly an assault; but playing with single-sticks or wrestling do not involve an assault; nor does boxing with

> gloves in the ordinary way, and not with ... ferocity and severe punishment to the boxers.[21]

A professional boxer may consent to have his brains knocked out in the ring, so long as the customary rules of conduct are observed. That is in the public interest. It is a different matter if those rules are not observed. If two people outside a legitimate boxing ring black each other's eyes, at least one of them commits an assault. In 1980, two youths decided to settle their differences by finding out which had the harder fists. One got a bloody nose and a few bruises. The victor was charged with assault occasioning actual bodily harm, but was acquitted by the jury. The Attorney General referred the points raised in the case to the Court of Criminal Appeal for clarification. He was answered thus:

> ... It is not in the public interest that people should try to cause or should cause each other actual bodily harm for no good reason. Minor struggles are another matter. So, in our judgment, it is immaterial whether the act occurs in private or in public; it is an assault if actual bodily harm is intended and/or caused. This means that most fights will be unlawful regardless of consent ...
>
> [Yet n]othing that we have said is intended to cast doubt on the accepted legality of properly conducted games and sports, lawful chastisement or correction, reasonable surgical interference, dangerous exhibitions, etc. These apparent exceptions can be justified as involving the exercise of a lawful right, in the case of chastisement or correction, or as needed in the public interest, in the other cases.[22]

Their Lordships mention "reasonable surgical interference". The test of what is reasonable is, again, what they consider to be right and proper. If my legs are so badly mangled in an accident that my life is endanger-ed, I may consent to having them cut off. The preservation of my life, I am sure, would be held to be in the public interest. But, if, like one of the characters in Peter Greenaway's *A Zed and Two Noughts*, I had one leg cut off merely for aesthetic reasons, to balance the earlier loss of the other in an accident, my surgeon might well find himself in trouble. That degree of body modification might offend the Judge. He might not think that to be at all in the public interest.

On a similar point, see Lord Denning 40 years ago, commenting on the legality of an hypothetical vasectomy:

> When it is done with the man's consent for a just cause, it is quite lawful, as, for instance, when it is done to prevent the transmission of an hereditary disease; but when it is done without just cause or excuse, it is unlawful, even though the man consents to it. Take a case where a sterilisation operation is done so as to enable a man to have the pleasure of sexual intercourse without shouldering the responsibilities attaching to it. The operation is then plainly injurious to the public interest.[23]

At the time only *obiter dicta*, this particular point is now obsolete. The National Health Service (Family Planning) Amendment Act 1972 authorises the performing of vasectomy operations for contraceptive purposes. But the passage is still important. It shows the inevitable bias of judicial reasoning when such a vague and illimitable concept as the public interest is received in the courts. There is no other guide available than the judge's own conscience. Lord Denning is a moderate Anglican. His church by then had accepted the propriety of contraception for certain reasons, but still condemned promiscuity. Had he been a Catholic, he might have taken a more restrictive view. Had he been a follower of D. H. Lawrence, he might have been considerably more liberal. The concept has been less vague in practice than it might have been only because most of the other judges have been moderate Anglicans, and have come from much the same background as Lord Denning. The concept remains manageable only because the number of views as to its meaning has been limited by the facts of judicial selection.

Not surprisingly, the bias against sexual nonconformity retains all its old force. The intentional infliction of bodily harm is a criminal offence unless the injured party consented, and unless the injury falls into a class of actions considered to be in the public interest. It is for this reason that Judge Rant was able to dismiss the pleas of consent with his words about drawing the line "between what is acceptable in a civilised society and what is not". It is for this reason that 14 of the Shropshire 15 were punished for beating each other up. It is for this reason that John Atkinson, the 15th, was punished for letting himself be beaten up: he was an accessory to an assault. It is for this reason that the law ought to be changed.

A PROPOSAL FOR REFORM

The Government has recently introduced a Criminal Justice Bill into the House of Commons - the third mass of substantive and procedural changes in four years. Most of the changes in this Bill, as in the previous two Acts, are decidedly for the worst.[24] But, whatever else it contains, a Criminal Justice Bill is just the place for amending the law relating to offences against the person. To any Member of Parliament who may be interested in the extension of individual freedom, I offer this draft clause for inclusion in the Bill:

> Where, in any prosecution for a non-fatal offence against the person, the consent of the injured

party shall be pleaded for the defence, that plea shall be adjudged a full defence unless it shall be proved for the prosecution in rebuttal

(1) that such consent was not given, or was obtained by fraud or duress; or

(2) that the injured party was at the time of giving such consent below the age of 18; or

(3) having regard to the gravity of the injury, or to the probable mental state of the injured party at the time of consent, or to both, that the form in which such consent was given was not sufficiently clear to sanction the injury.

A BRIEF COMMENTARY

This amendment, I hope, is sufficiently clear not to require any long commentary. But there are a few points that might benefit from a further discussion.

I specify "non-fatal" offences. I believe that euthanasia ought to be legal. At the moment, to assist someone to put an end to his life is a serious offence. To aid, abet, counsel or procure the suicide of another person carries a maximum penalty of 14 years' imprisonment.[25] If that person is unable to do more than plead for death, to grant his plea is to risk an indictment for murder, which carries a maximum penalty of life imprisonment. What I shall want when my time comes I am unable to say. But I will maintain that I have the right to end my life in the manner of my choosing. If I am diagnosed early enough as suffering from a painful and fatal illness, the law places no impediment to my committing suicide.[26] Why, if I delay until I am too feeble, can I not be helped by another, or simply appoint another to dispatch me?

The prohibition of euthanasia is yet another example of moral paternalism. It is to be condemned on exactly the same grounds as the prohibition of sado-masochism. But I have drafted an amendment to a Parliamentary Bill, not a philosophical text. There are probably more Members in favour of legalising what they may never have noticed was a crime than for legislating on a subject that has been hotly debated for years.

For the same reason, I take 18 as the age of majority. I have already said that I would see the age of consent lowered. There is a good case for drawing a single line between childhood and adulthood some time about a person's 16th year. But this, again, is a controversial point. I am at the moment interested in a single reform of the law.

In sub-clause (3), I give a formula for deciding the reality of consent. This may not be in the ideal form. It may require elaboration. But something like it is undeniably necessary. If I go into a tattooist's parlour, and ask to have a skull and crossbones put on my chest, it is perfectly reasonable to assume that I know what I am asking for. I am an adult of sound mind. I ought to know what a tattoo is, how it might hurt, how difficult it might be to remove. My consent may be taken as indicated by my saying what I want and removing my shirt and vest.

Suppose, on the other hand, I asked for a "Prince Albert" - that is, to have a steel ring put through my glans. Now, this is an extremely painful operation. It can take months to heal. It is also a dangerous operation. If the cavernosum is pierced, the whole member may need to be amputated. At least this latter fact is not common knowledge. It might, therefore, be well for the piercer to explain what I was asking for, and have me sign a consent form in which I acknowledged my understanding and acceptance of the risks involved. It might be well in addition for the piercer to check that I was sober and otherwise of sound mind.

For some more drastic modification, he might be advised to have my consent form witnessed by a third party. Whatever complexity may be needed in practice, the principle is simple. The more extreme or unusual the act that I required, the more explicit must be the evidence of my real consent to it. If that is what I want, I am to be allowed to have myself hung up on hooks and flogged within an inch of my life. My consent is to be a full defence to any charge of assault or battery. But the person who has injured me must have a good counter-rebuttal prepared to any attempted rebuttal of my consent by the prosecution.

CONCLUSION

It is frequently said that the modern Conservative Party believes only in economic freedom. It has lowered taxes. It has lightened the vast burden of public restraints on enterprise. It has on the whole resisted calls for protectionism. But it has done this, we are told, not out of any commitment to the principle of individual freedom - only for the sake improving the performance of Great Britain plc against that of its main rivals.

This may be true of some Conservative Members of Parliament. But it is untrue of other Members. It is most emphatically untrue of John Major, our Prime Minister. His belief in freedom goes far beyond any mere interest in economic efficiency. At the heart of his philosophy, he says, is a determination to

reinstate the individual to his or her rightful place in society. To offer him new incentives and opportunities to use his initiative. To deploy his talents. To demand something of him. To enable him to achieve something for himself and his family. And to take control of his life ...

[The role of government] is to take the steps which will enable people to help themselves.

> Left to their own devices, people will create a spontaneous, well-ordered society ...
>
> Our appeal is unashamedly populist. Quite simply, it is that people know best. That they should choose for themselves, and not have the choices made for them by politicians, self-styled experts, or, for want of a better word, the establishment.[27]

These sentences are worthy of John Stuart Mill. If my amendment is ever put before the house, I confidently trust that Mr Major's vote would be no less worthy.

NOTES

1. By s.13 of the Sexual Offences Act 1956, as amended by s.1 of the Sexual Offences Act 1967.
2. The penalty under common law was death until 1861. The current law is contained in s.12 (1) of the SOA 1956: "It is an offence for a person to commit buggery with another person or with an animal."

   As mentioned, the 1967 Act partially exempts consenting male adults and lays down a less severe scale of penalties otherwise. But the adventurous husband had best beware!
3. S.3 SOA 1967.
4. See Note 2 above.
5. Ss.33-36 SOA 1956. For the definition of homosexual brothel, s.6 SOA 1956.
6. S.2 Obscene Publications Act 1959.
7. Protection of Children Act 1978, as supplemented by the Criminal Justice Act 1988.
8. S.11 Post Office Act 1953.
9. S.5 Misuse of Drugs Act 1971.
10. Source: Peter Tatchell, *Out in Europe: A Guide to Lesbian and Gay Rights in 30 European Countries*, Channel Four Books, London, 1990, pp 18-19.
11. The *Times*, 20th December, 1990.
12. Ibid.
13. Ibid.
14. The following paragraphs are compiled from the *Times* (20th December, 1990) and the *Daily Telegraph* (21st December, 1990).
15. He may be connected with Alan Oversby, who runs a tattooing and body piercing business in Central London under the name of Mr Sebastian. For a full account of the ancient and interesting art of body modification, see: V. Vale and Andrea Juno, *Modern Primitives: An Investigation of Contemporary Adornment and Ritual*, Re/Search Publications, California, 1989 - available from the Virgin Megastore in Oxford Street for £12.95.

    Alan was also tried before Judge Rant in the December of 1990, for the crime of having unlawfully wounded a client whose penis he was engaged to pierce. His plea, that the client consented, had a predictably frosty reception, on which he pleaded guilty. He also admitted charges of unlawfully administering an anaesthetic and sending obscene material through the post. I have yet to discover what sentence he received.
16. 20th December, 1990.
17. The *Daily Telegraph*, 14th November, 1990.
18. The *Daily Telegraph*, 31st August, 1989.
19. *R V Donovan* [1934] 2 King's Bench Reports 498.
20. *Burrell v Harmer* [1967] Criminal Law Reports 169, together with the printed commentary.
21. *R v Coney* (1882) 8 Queen's Bench Division 534.
22. *Attorney General's Reference (No. 6 of 1980)* [1981] 2 All England Reports 1057.
23. *Bravery v Bravery* [1954] 3 All England Reports 59.
24. See the *Guardian*, 29th December, 1990. Clause 25 reclassifies solicitation by a man, the procuring of homosexual acts and indecency between men as "serious" sexual offences. These acts ought not even to be against the law. They are directed against neither life nor property. In those cases where they may cause a public nuisance, the police are already able under the general law of the land to take action. Now they are to stand beside indecency towards children and indecent assault.

    I have little time for homosexual activists. For the most part dullard socialists, they spend far too much of their time crying out for grants of public money and the suppression of what they barbarously call "homophobia". Nevertheless, when they begin their campaign against Clause 25 of the Bill, they will be absolutely in the right. They will deserve - though they may not be clever enough to welcome - the support of all libertarians.
25. S.2 Suicide Act 1961.
26. Before the Suicide Act 1961, it was a felony at common law for a sane adult to commit suicide. The penalty was forfeiture of goods and exclusion from consecrated ground. Failed suicides were guilty of the misdemeanour of attempted felony, and were liable to imprisonment. For a good account of how suicide was regarded throughout Europe until the middle of the last century, see W. E. H. Lecky, *History of European Morals from Augustus to Charlemagne* (1869), Longmans, Green and Co., London, 1911, Volume Two, pp 43-61.
27. From a speech given to the Radical Society in late 1989 - quoted, the *Sunday Times*, 2nd December 1990.