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Private pain and public morality

Deviant Laws

'If a man wants his scrotum sandpapered in the privacy of his own home, is it anyone else's business?' asked Nick Cohen, earnestly in *The Independent* recently. He was referring to the jailing just before Christmas of eight men for what the appropriately named Judge Rant described as 'degrading and vicious' sexual activities.

In other words, if a precedent is set by this case then the answer to the question posed by Nick Cohen is 'Yes'. What may at first appear to be an entirely private if peculiar activity is in fact subject to public jurisdiction - the law. This particular case was disturbing, not for the shock-horror headlines about a sadomasochistic torture group which dominated the headlines but for the implications it has as a civil liberties issue.

I would not actively encourage grown men to go around nailing each other's genitals to bits of wood. Yet I would defend their right to do so. Indeed many of the details of this case are so unpleasant to so many people

that they have clouded the political issues that such a prosecution throws up. It is doubly important therefore to get the details right, to be sure what these men were and were not doing.

A group of men met regularly to engage in sadomasochistic sex sessions. This involved beatings, genital torture, sex with animals as well as the use of drugs. Fifteen men were given sentences ranging from conditional discharges to four and a half years imprisonment. Eight of them were jailed for what the judge deemed to be beyond the limit of 'acceptable behaviour in civilised society'.

But the point is they were not forcing or coercing people into doing things they didn't want to do, nor were they making a profit from their activities. No harm was caused to anyone but themselves and none of the injuries inflicted resulted in hospital treatment. The average boxing match would be far more likely to result in long-term injury than anything that happened here.

So why was the case brought in the first place? No member of the public had complained. What had gone on happened in private. It was only because the police had got hold of a video the group had made that the case went to court. The hackneyed phrase 'even hardened detectives were sickened by what they saw' was trawled up once more. Have you ever heard of a case where these mythological creatures, these anonymous hardened detectives, are not sickened by evidence of one kind or another?

Usually, though, these unelected arbiters of morals are not allowed to go forward with such completely unnecessary prosecutions. It is only because the behaviour that occurred here was between homosexuals that such a case could even be considered. Clearly the law in this area is inconsistent.

Now your idea of a quiet night in may not involve inviting a few friends around and cutting their penises with surgical scalpels, but the issue here is one of consent. Although this may well be distasteful to the average person, it didn't cause harm to anyone else. Is it any more disgusting than deriving pleasure from dressing up in stupid outfits and riding around the countryside in order to encourage a pack of dogs to rip apart a wild animal? And more mundanely, is sending any of these men to prison really going to stop them or anyone else doing this kind of thing?

It's like a sick joke. Question: where do you send a bunch of homosexual sadomasochists for punishment? Answer: to an all male environment where S&M relationships have been institutionalised to a sublime degree. More seriously though, this case where private and consenting behaviour between adult homosexuals has become an imprisonable offence, makes a mockery of what passes for consent in many rape cases. Only a few weeks ago a rape case was dismissed because a 15-year old girl had agreed to go for a walk with a man. He violently raped her, but saying

'yes' to going for a walk was, according to the judge, tantamount to saying 'yes' to sexual intercourse.

In other words when a heterosexual woman says 'no' she really means 'yes', but when a homosexual man says 'yes', the law says that is just not good enough. Homosexual men are not allowed to perform acts of violence on each other, even when both parties consent, while the law repeatedly stands by as heterosexual men beat the shit out of women in a definitely non-consensual way.

If the law is to start being used, as it is increasingly, to prosecute individual and private activities, all of us have cause for concern. Spanking, whipping, scratching, biting, piercing can all be construed as acts of violence, yet they are all sexual activities that many people have indulged in. That harmless love-bite could easily count as an assault, you know.

Most (heterosexual) people assume that the law has no right to poke its nose behind the bedroom door, that their sexuality is somehow beyond public discussion. Unfortunately homosexuals have always known different and would quite sensibly prefer public money to be spent on prosecuting 'queer-bashers' rather than cases such as these. Yet such cases depend on a clustering of moral outrage - homosexuality equals perversion equals paedophilia equals murder - that may start in the tabloids but in this instance was reinforced by the judiciary.

The organisation Liberty (formerly NCCL) has suggested that part of the problem is that we don't have a bill of rights, which in some ways would give a less confusing account of freedom of expression and principles of privacy. Instead we have the likes of Judge Rant rattling on about 'brute homosexual activity' and literally making it up as he goes along. These days you don't have to be a sadomasochist to know that there may be a thin line between pleasure and pain; but it's not as dangerously thin as the one between private lives and public morality.*