somethingdark
: SDk Latest News
: Tyranny's genesis and its opposition
: by Jane Fae : 10 August 2012
: 1,919 words

Tyranny's genesis and its opposition

by Jane Fae

Britain's New Labour, when it was in power, was a hotbed of sexual repression and prudery. What they couldn't understand, they banned – and they had the non-standard sexual community in their sights for some time.

To put it another way: in Australia, controversy rages over a plan to compulsorily filter all internet content. The aim is simple: prevent Australians from accessing evil.

In the UK, government would like to achieve the same objective. Blocking internet sites might now also be on the agenda, but they are criminalising individuals, or depriving them of their livelihood, for possessing "nasty" images.

The contrast could not be starker. One approach targets content; the other goes after people who fail to live up to the ideal of sexual propriety established by New Labour.

That may have seemed an odd approach for a government that supposedly did so much for at least one "alternative" sexuality – the gay community – and that so assiduously upheld the rights of women. Yet this apparent policy contradiction makes sense. There are votes and money in the gay community; so if you're a calculating politician, all you need do is talk about abstracts like rights and try not to think too hard about the "awful" things these people actually do.

The end result has been to leave those with almost any other alternative sexuality – particularly those who enjoy some degree of sadomasochism – worried, upset, fearful and, in many cases, very very angry.

Because despite UK BDSM community focus over the last few years on the "extreme porn" law – which from 26 January 2009 made a criminal offence of possessing material that realistically depicts sexual activity that is violent, life threatening and grossly offensive – the truth is the Labour campaign against alternative sexuality began almost the day they entered office in 1997.

The Conservatives were never going to welcome liberalisation with open arms: but nor did they have any particular agenda on the sexual front. Indeed, it was in the dying days of John Major's administration that a body as conservative as the Criminal Law Commission published a paper on the topic of sadomasochism and the law.

That took the unusually bold view that private sexuality was not a matter for the criminal law and that seeking to police this area using criminal law was likely to result in all manner of harm, from less safe practices, to blackmail, to a general alienation of a significant community from the police.

If only they had listened!

In the 1990s, a series of rulings left the law on sadomasochistic sex in disarray. The verdict in the Spanner prosecutions reinforced the notion that one could not consent to an assault on one's own

Copyright © John Ozimek 2009 & Jane Fae 2012

person. However, in the case of *R v. Brown et al* (1992) the Court of Appeal also established that any injuries sustained during sexual activity that were no more than "transient and trifling" would not attract the attention of the law.

In the case of *R v. Wilson* (1996), it was held that "Consensual activity between husband and wife, in the privacy of the matrimonial home" was not "a proper matter for criminal investigation, let alone criminal prosecution".

Meanwhile, men continued to batter each other into unconsciousness in the boxing ring, and self-flagellants were inflicting serious harm on their own bodies in the name of religious devotion.

Into the middle of this stepped the Law Commission, which in 1995 published the innocent-sounding Consultation Paper No 139. This groundbreaking report dealt with thorny issues around "Consent in the Criminal Law"; not only issues arising from sadomasochistic practice, but also flagellation in Christianity and tattooing.

Their utterly surprising conclusion – at least, surprising to anyone who believes the British to be irredeemably hung up when it comes to sexual matters – "nobody may give a valid consent to seriously disabling injury, but subject to this limitation the law ought not to prevent people from consenting to injuries caused for religious or sexual purposes. We see no value in circumscribing the law by reference to any specific limitation of purpose".

Shortly after, *The Times* reported the Conservative government might be prepared to accept this recommendation. Then New Labour swept to power and quickly installed its own Sexual Offences Review Team (SORT) at the Home Office; the next time they looked at the issue of consent, it was to wonder about the precise circumstances in which consent might be withheld.

A particular sect of radical feminists arrive

By contrast, one of Labour's first actions on coming to power was to put in place a group (of women) at the Home Office whose task it would be to steer a review of the law in respect of sexual activity. This was SORT.

Government would recoil in horror at a proposal to place men in charge of a review of the law on rape; yet, over and over, those at the heart of developing change in the field of sexual law have been female, feminist or exceedingly Christian. It was David Blunkett, Home Secretary 2001–04 and a very committed Christian, who observed how wonderful it was to be surrounded by so many of like persuasion amongst his coven of Home Office special advisers. SORT was widely considered to be an offshoot of radical feminism, with very little interest in views that clashed with their beliefs.

The emphasis shifted very quickly from the rights of the individual to a focus on the perceived (female) "victim". The Law Commission looked at consent in the context of when the state should be prepared to recognise that individual rights took precedence over state responsibility; SORT had no truck with such stuff, immediately refocusing the "consent" debate on the issue of when an individual might be said to have withdrawn consent.

The Sexual Offences Act 2003 followed, plus much tinkering with the law. The standard narrative has the proposals to criminalise the possession of "extreme pornographic material" appearing as if by accident in 2005 – and oh! how the government agonised over "evidence". In the end, despite early admissions that evidence for "harm" from extreme porn was lacking, they brought on board an academic team (three feminists, naturally) who carried out a wholly skewed rapid evidence assessment (REA) and concluded that yes, maybe extreme porn *did* cause harm.

So government followed the evidence? Not exactly. Because one year before the REA, in 2006, they passed the Safeguarding Vulnerable Groups Act. This is significant, as eventually it will regulate nearly half the jobs in the UK: fall foul of this act, and those jobs will henceforth be closed to you.

Copyright © John Ozimek 2009 & Jane Fae 2012

Originally, this suggested that people who possessed child pornography might be unsuitable to work with children – a fairly banal, generally acceptable proposal. That is, until a week or so before its final reading in the House of Commons, when this clause was amended to state, baldly, that if you possessed sexual material of a violent nature, you might be barred from employment.

There was no debate on this issue. The Opposition were already reeling from some 250 last-minute amendments. It is far harsher than anything in the extreme porn legislation – and its effect was felt almost immediately as individuals began being quizzed at interview about their reading habits.

The fact that this amendment was imposed at the very time government was declaring it had no evidence at all of harm from extreme porn betrays their agenda. As Lord Hunt told the House of Lords during debate on the extreme porn law shortly before the new law was passed in May 2008: one of the main reasons for criminalising extreme porn is to deal with individuals who are "causing concern".

Ah yes. Concern to the police – who were at the forefront of arguing for this law – because people weren't actually doing anything illegal. To the government because they find all non-standard sexual activity ever so faintly "icky".

The role of the police

The extreme porn law is very much police inspired. In the original, 2005 public consultation on the subject, nearly half the responses counted as coming from organisations were from different police bodies, almost unanimously in favour of some toughening up of the law on porn.

Several forces felt the proposals did not go far enough, with calls for the criminalisation of graphic representation and written material as well. The police argument on porn has many similarities to that on cannabis, with the same flaws: many heroin users started with cannabis, therefore cannabis inevitably leads to heroin. Many rapists admit to using porn: ergo extreme porn leads to rape.

This flies counter to another British constitutional fiction: that politicians deal with matters of policing policy, whilst the police limit themselves to "operations". Senior officers don't draw this distinction: operations depend on underlying politics, and they are well aware of this.

They have sewn the wind... and perhaps are about to reap the whirlwind predicted by the Law Commission. The mood within the BDSM community is distinctly cooler as far as the police are concerned, and it begins to look as though ten-plus years of growing détente will soon be undone.

As well as a chilling effect – websites playing safe by banning all material that might cause trouble – anecdotal evidence is beginning to mount that individuals suffering abuse within the BDSM scene are no longer prepared to report it to the police.

So where does this leave "the scene"?

An opposition evolves

New laws (plural) were on their way despite strong evidence that far from alleviating harm, they would cause it. There is genuine fear in the BDSM community – but that is tinged with anger, towards both government and police.

When it comes to leading the battle against repressive legislation, three organisations have all played key roles. In 1995, the Spanner Trust was formed in response to the Spanner ruling. In the years since then, they have campaigned tirelessly for a legal recognition of the right of individuals to consent to sadomasochistic sex. Spanner is still looking for the funding and opportunity to bring this issue before the European Court of Human Rights.

Copyright © John Ozimek 2009 & Jane Fae 2012

In 2005, in direct response to the government's initial consultation on extreme porn, Backlash was formed. This coordinated and helped provide a distinguished intellectual pedigree to opposition to the proposals. However, Backlash discovered government was not interested in debating with them. Backlash continues to provide advice and briefing to groups opposed to the extreme porn laws.

The latest champion into the lists is CAAN (Consenting Adult Action Network), which draws a wider remit in that it is campaigning to end *all* government interference in the bedroom. Besides the extreme porn and vetting laws, CAAN is opposed to the criminalisation of buying sex and in favour of allowing an individual the right to act out their own sexuality, insofar as this is not directly harmful to others.

CAAN's campaigning activity has been higher-profile and developed a more influential support base than previous campaigns of this kind, including erotic/fetish photographer Ben Westwood, the son of alternative fashion doyenne Vivienne Westwood; prominent gay and human rights activist Peter Tatchell; and various parliamentarians.

If anything, the "extreme porn" law was the final straw, with many individuals at last shrugging off their anonymity and "coming out". It may have been premature, but 2009 could well have been the year when a real challenge emerged to government credentials on sexuality, and Labour called to account for its bigotry.

That day of reckoning may yet come, for whoever is in power in Westminster.

This article was originally published in the* Skin Two Fetish Yearbook 2009 *(London: Tim Woodward Publishing Ltd, 2009). It has been revised and reproduced as a* SomethingDark *PDF with permission of the author, August 2012.

Copyright © John Ozimek 2009 & Jane Fae 2012