

Tolerance at Arm's Length: The Dutch Experience

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Netherlands

SUMMARY. With respect to pedophilia and the age of consent, the Netherlands warrants special attention. Although pedophilia is not as widely accepted in the Netherlands as sometimes is supposed, developments in the judicial practice showed a growing reservedness. These developments are a spin-off of related developments in Dutch society. The tolerance in the Dutch society has roots that go far back in history and is also a consequence of the way this society is structured. The social changes of the sixties and seventies resulted in a "tolerance at arm's length" for pedophiles, which proved to be deceptive when the Dutch government proposed to lower the age of consent in 1985. It resulted in a vehement public outcry. The prevailing sex laws have been the prime target of protagonists of pedophile emancipation. Around 1960, organized as a group, they started to undertake several activities. In the course of their existence, they came to redefine the issue of pedophilia as one of youth emancipation.

MYTHS AND FACTS

This article is devoted to the developments in The Netherlands concerning pedophilia and the age of consent. The Netherlands warrants attention with respect to these issues if only to disentangle myths from facts. The Dutch have a reputation for being tolerant, although this view is probably held more widely outside than inside The Netherlands.¹ It has even been asserted that the Dutch are over-

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permissive, not least with respect to the aforementioned issues. In the United States, the makers of NBC's "Silent Shame" frowned upon the alleged legalization of child pornography in The Netherlands. The Spartacus Publishing Company of Amsterdam, often seen as the main inciter of boy prostitution in Southeast Asia, has come under attack from such organizations as *Terre des Hommes* and the United Nations. The mirror image of this indignation can be found in exhilarating notes on the Dutch situation in publications like the one by Tom O'Carroll, former chairman of the British Paedophile Information Exchange. He detects a "warm glow" radiating from the opposite side of the North Sea, as compared with only "a few glimmers of encouragement" in North America.²

However, the impression this might convey, namely that pedophilia is an accepted phenomenon in The Netherlands, is largely mistaken, as is demonstrated by the results of an inquiry into Dutch sentiments on the subject shown in Table 1. Although the survey dates from 1976, it is unlikely that public support for sex below the legal age of consent has grown much, if at all, in the meantime. According to a TV poll, which was taken in 1985, only 13 percent of the population supported a lowering of the age of consent from the present 16 to 12. So when the above-mentioned allegations were made, the Dutch advocates of freedom for intergenerational sex had in fact failed to ensure a solid social base for their demands. At that same time, however, they could be relatively satisfied by developments in another area: the practice of the judiciary. A statistical study of prosecution and conviction of sexual offenses in The Netherlands concluded in 1982: "The public at large, the police and the judiciary appear to be increasingly tolerant, especially of public exhibitionism and sexual contacts with minors."³ Although this is presently untrue with respect to "the public at large," it is a fact that the number of convictions for sex with a minor under 16 (excluding dependency relations) came down from 10.7 to 0.7 per 100,000 inhabitants between 1950 and 1982, i.e., by 93 percent. Over the same period, the number of convictions for rape rose sixfold: from 0.25 to 1.5 per 100,000. Since 1982 the downward trend has been reversed as far as sex with children is concerned, but the 1.4 convictions per 100,000 in 1988 are still far below the numbers reached during the '50s. Public prosecutors in The Netherlands can

TABLE 1. Sentiments of the Dutch Population with Respect to Pedophilia

Suppose that someone you know appears to like romping with children and to fondle and caress them sexually.

	Yes (%)	No (%)	Don't Know (%)
Would you still want to have any contact with them?	29	60	10
Would you want to work with them, e.g., as a colleague?	26	64	9
Would you allow them to visit you regularly as a friend?	24	62	12
Would you want them to be your neighbor?	38	44	17

TABLE 1 (continued)

Would you want to discuss your concerns and problems with them?	23	69	8
Suppose you have children, would you allow them to take care of them, e.g., as a teacher?	13	77	9
Would you allow them to look after your children, e.g., as a baby-sitter?	4	89	5

Source: G. Nijhof (1978): poll taken in 1976.

refrain from prosecuting if this is in the general interest, and they often do so. Their emphasis has markedly shifted from prosecuting "indecentcies" like exhibitionism and pornography to protecting people's sexual self-determination. The aforementioned statistics, like the ones in Table 2, reflect the social drive toward sexual liberation, in which the denunciation of the role of the state as moralist is a major element. Its heyday was the '60s and '70s and it could be argued that advocates of pedophilia merely jumped on the bandwagon. When they started their public campaign in the mid '70s, the number of convictions for sex below the age of consent had already declined to about 1.5 per 100,000 per year.

These juridical developments have not been translated into legalization. Sexual contact with a person under 16 remains entirely illegal. In 1985, after first presenting a bill that would have legalized non-coercive contacts with children between 12 and 16 and then meeting with immediate and strong opposition, the Minister of Justice had to retrace his steps hastily. This may in part have been due to his clumsy presentation of the proposal, suggesting a far more extensive decriminalization than the bill actually provided for. But the event was indicative of the nature of Dutch tolerance vis-à-vis adult/child sex. The issue is debatable, and this fits into the tradition of allowing great freedom in the expression of opinions that diverge from the mainstream. When it comes to acting, however, it will appear that the scope for social and legal change is not much larger than it is in the rest of the western world. To put the situation of pedophilia in The Netherlands in a nutshell: The sexual contacts themselves, or a substantial decriminalization, are usually not accepted, but the impulse to bar a free discussion of the issue is considerably less powerful than in most European countries and in North America. This greater open-mindedness has left some impact on prosecutorial policy in the sense that this policy has for years been less uncivilized than elsewhere.

Obviously this phenomenon cannot be explained when looked upon in isolation. It is a spin-off of related developments. First, there is the strongly increased openness regarding sexual matters, youth sexuality included. Whether teenagers may have sex with their peers is hardly an issue. Sexual ignorance among Dutch teenagers is comparatively small, witness the fact that the incidence of

TABLE 2. Shifts in the Relative Frequency of Convictions for Categories of Sexual Offenses Since 1950 (percentage of convictions)

	1950	1975	1982	1987
Public Exhibitionism/Sex With				
a Child	84	51	28	32
Sexual Assault/Rape	5	31	60	50
Other Sexual Offenses	<u>11</u>	<u>18</u>	<u>12</u>	<u>17</u>
Total	100	100	100	100

Source: Central Bureau of Statistics; adapted by J. Frenken in: J. Frenken and J. Doomen (1984); 1987 figures from the author.

teenage abortions is among the lowest in Europe and only one-ninth that of the United States.⁴ Second, the country has a large and influential gay rights movement, led by the 7,000 member Netherlands Society for Gay Integration (COC), which has succeeded in making the general public accustomed to the existence of alternative sexual preferences and lifestyles. Third, discrimination of minorities is actively fought against, both by the authorities and a multitude of private organizations. Since 1983 the Constitution has provided for a general prohibition of discrimination. Fourth, the penal system has traditionally been liberal (without leading to excessive crime rates), meaning that a high percentage of cases are not prosecuted and the punishments are relatively light. Grass root sentiments do not easily creep into the criminal procedure: judges and prosecutors are not elected and juries do not exist. Last, but not least, the news media allow a great variety of views to be heard. The broadcasting system is geared to that purpose, while The Netherlands is not flooded with the kind of gutter press that so effectively helped eradicate Tom O'Carroll's PIE in Britain.

The remainder of this article on the Dutch experience with pedophilia will successively focus on historical aspects, the recent state of affairs, the legal situation, the advocates of pedophilia, their activities and ideology and prospects for the near future. As said, pedophilia should not be observed in isolation. Hence the survey will depict pedophile emancipation against the background of related social developments.

THE ROOTS OF TOLERANCE

“All people in The Netherlands are treated equally in equal circumstances. Discrimination on account of religion, philosophy of life, political conviction, race, sex, or on whatever ground is not allowed.” Since 1983 this has stood in the first section of The Netherlands Constitution. The legislature considered this all-encompassing equal rights stipulation as the crown on the list of civil rights that make up the Constitution's first chapter. It can also be seen as the culminating point of a long-lasting process in which tolerance and the principle of non-discrimination were translated in concrete legislation. It began with the declaration of a limited freedom of

religion guarantee under the Treaty on the Union of Utrecht (1579). This treaty, under which the provinces of the Northern Netherlands joined to combat the Spanish Empire of which they then were a part laid the foundations of the independent state of The Netherlands as it exists today. Tolerance and moderation seemed almost natural ideals in a country that gained its independence fighting the Spanish Inquisition.

Kossmann sums up the main features of the socio-political situation in the Republic of the Seven United Netherlands (i.e., seven largely independent provinces), which existed between 1588 and 1795.⁵ First, there was freedom of conscience and religion. Public profession of non-protestant religions was prohibited, but religious meetings indoors were not restricted. Second, church and state were strictly separated and the rulers often turned a deaf ear to the demands of orthodox preachers. Third, The Netherlands at the time hardly constituted a nation. It was a melting-pot of different cultures and religions which lived together almost without a central authority that could impose binding laws with respect to personal behavior. Finally, the ruling class of merchants simply had no advantage in fighting tolerance, as this would have seriously undermined the political stability that made commerce and trade flourish. Enlightened self-interest made them liberal and this situation prevailed until, by the end of the nineteenth century, they had to cede power to the emerging religious political parties.

Liberalism was not enough to prevent discrimination entirely, however. The declining prosperity of the eighteenth century created a climate in which scapegoats were sought and easily found. "Sodomites" were the victims of a wave of anti-homosexual resentment in the 1730s, which left several dozens of people dead and many more stripped of their civil rights.⁶ It was only after the invasion of the French army in 1795, which put an end to the Republic, that all discriminatory regulations against homosexual behavior were repealed. In 1815, when the present Kingdom of The Netherlands was established, it inherited Napoleonic law, including a Penal Code that contained a minimum of prohibitions in the area of sexuality. Not only was homosexuality entirely legal, but the Code also lacked any age of consent. Non-violent sex with children remained formally legal throughout most of the previous century, in spite of

the fact that judges resorted increasingly to other articles of the law to prevent perpetrators from avoiding punishment.

The new Penal Code, which entered into force in 1886, contained an age of consent: 16. No legislator indicated why this was necessary; it seemed self-evident. As has often been pointed out,⁷ childhood and adult life had increasingly diverged from the end of the eighteenth century on, and this is one reason why it was felt obvious that children should be barred from adult sex life. But it is also true that youth prostitution flourished at this time, as it did in Victorian England and elsewhere.⁸ One effect of the first wave of feminism and sexual enlightenment, which began at the end of the nineteenth century, was a greater awareness of such problems and a readiness to act against them.

The age of consent has remained at 16 ever since. It was introduced as part of a wholly new set of sections concerning public morality. Nevertheless, the new Penal Code still bore the marks of nineteenth century liberalism. The State should not assume the role of moralist. As the Minister of Justice put it: "It is not the aim of the Penal Code to protect individuals against the voluntary corruption of their own morals. Its only purpose is to guard against the assaults on one's modesty."⁹

But the heyday of liberalism was almost over. The *kleine luyden* (little people, like retailers and farmers), whom the prevailing electoral system barred from substantial political influence, formed broad, right-wing emancipatory movements, based on common religion, which later turned into political parties. On the left side of the political spectrum the socialist parties emerged. It was the beginning of what came to be called the *verzuilde* (columnar, or vertically structured) society. Roman Catholics, Protestants, socialists and liberals all organized their own schools, political parties, trade unions, sporting clubs, newspapers, and, later on, their own broadcasting organizations. It was a practical way of each group tolerating the other: people belonging in other columns were kept at a distance in almost all important areas of social life. The columns were like islands inhabited by minorities, tied together only by a common central authority.

The religious parties benefited more than others from the extension of suffrage in the 1890s and thereafter. The rapid expansion of

the number of their seats in parliament did not fail to affect public morality laws. In 1911, only 25 years after their introduction, these laws were profoundly strengthened. The Roman Catholic Minister of Justice, Mr. Regout, was far less hesitant than his predecessors in using the Code as an instrument to impose his own moral standards. As a result, legislation against pornography was severely tightened. Moreover, the new section 248bis raised the age of consent for homosexual contacts (except for those between minors) to 21, the limit of heterosexual contacts being kept at 16. This section was adopted by 50 MPs, against an adamantly opposed minority of 34. It resulted in the incarceration of about five thousand Dutchmen before an overwhelming parliamentary majority repealed the section in 1971.¹⁰ During the sixty years when this law was on the books, homosexuals were almost outlaws. Although homosexual contacts between adults were never prohibited (not counting the legislation of the German invaders in the years 1940 to 1945), merely being known as a homosexual was often enough to make one a social outcast.

THE COLUMNS BROKEN UP

The sixties and seventies saw a number of remarkable social changes, one of which was a turnaround in the attitude toward sexuality, homosexuality included. Secularization and a declining respect for authority broke up the columnar structure, leading, among other things, to unprecedented shifts in political convictions. The religious parties lost their majority in parliament in 1967, after which their aggregate share of the votes has dwindled to about one third. The number of residents considering themselves unchurchly doubled during the seventies and reached 49 percent in 1986.¹¹

The liberalization and individualization during these years could also be observed in other countries, but in The Netherlands the process was especially conspicuous. A decisive factor was the lack of opposition from the churches and the news media. These elements of the columns, far from attempting to block or slow down this evolution, helped speed it up. Professor Kooy, a sociologist, speaks of a process of secularization inside the churches: many church members, laymen and leaders alike, adopted views on such matters

as sex, marriage and the family that diverged sharply from the more traditional ones.¹² The churches played a dominant role in the early years of homosexual emancipation. In the Roman Catholic Church, the Trimbos committee published the report "Homosexuality" in 1960, followed by a similar report from the Protestant side in 1961. Both reports were aimed at acceptance in a way that was quite remarkable for their days. Bishops started to approve openly the use of contraceptives in the mid-sixties. Later on the Vatican tried to call the Dutch to order by appointing a number of reactionary bishops, but most Dutch Catholics refused to submit themselves to their commands. There were limits to this reassessment of values by the churches: free abortion has never been considered acceptable by them.

Even without this ecclesiastical activism the columnar structure would have started to crumble. Social interdependency became greater and members of different components of society came into closer contact with each other. The television system played an important part: all columns had (and have) their own broadcasting organizations to which TV time is allocated. Television brought views of one column into the homes of others. The multiformity of the system made possible programs that left the beaten track and lifted taboos. Among those was a talk show discussing pedophilia in a positive way, broadcast in October 1978 and surprisingly well received by the viewers.

The swift changes that came about during these years can be seen in the results of two investigations labeled "Sex in The Netherlands." They dealt with the behavior and opinions of the Dutch in the area of sexuality and were made in 1968 and 1981.¹³ The view that sex is something natural and pleasant that should not be reserved exclusively to married couples was fully or largely adhered to by 39 percent of the population in 1968; in 1981 it was 71 percent. The acceptability of certain forms of behavior increased markedly. Whereas only 17 percent considered nudity in secluded areas outdoors (mostly) acceptable in 1968, 59 percent did so in 1981 when public nude beaches had become a normal phenomenon on the Dutch coast. A poll taken in 1985 showed that this figure had risen to 80 percent.¹⁴ Striking too was the increasing approval of youth sexuality: in 1981, 66 percent agreed that children under 16

should have access to contraceptives; in 1968 only 16 percent had held that view.

In this respect the efforts of the NVSH (Netherlands Society for Sexual Reform) deserve a special mention. It is a private organization, the successor of the Neo-Malthusian Union, which was founded in 1881 to promote the use of contraceptives and to combat ignorance about sexuality. In the 1960s, when public sale of contraceptives was still prohibited, the NVSH, which was the main distributor, became the preeminent driving force behind sexual reform. It was the NVSH that lifted deep-rooted taboos and made such matters as birth control, non-marital sex, youth sexuality, and reform of moral legislation a matter of public debate. After public sale of contraceptives was permitted in 1970, the NVSH lost its role as major distributor. When subsequently the society rid itself of its chain of consultation bureaus, most members lost interest and left. The once mighty group is now a modest group of mostly elderly people, which only narrowly escaped bankruptcy in 1986, but whose views are still publicly heard now and then, mostly in the form of press releases.

Around 1980 public interest shifted from sexual liberation to sexual misconduct. Ever since Ms. J. Doomen published her complaints about harassment of rape victims by the police and others in 1976, and after many similar publications, serious efforts have been made to train the police and to ensure adequate after-care.¹⁵ The same is true for young victims. Sexual abuse of children, and incest in particular, have been among the most hotly publicized issues in recent years in The Netherlands as elsewhere. The Society Against Sexual Abuse of Children, which is run for a large part by former victims, has found widespread recognition for its work in enlightening the public and taking care of victimized children.

Many were taken by surprise when this shift in attention occurred. Kooy's 1975 prediction of future events did not foresee any such development.¹⁶ It should not have come as a surprise, however. Far from a break with the recent past, it was a natural consequence of the emancipatory wave that had already taken shape. Paul Kapteyn, elaborating on the civilization theory of the sociologist Norbert Elias, argues that the lifting of taboos goes hand in hand with demands for new restrictions.¹⁷ Liberation, occurring when the

division of powers in society becomes more balanced, requires greater self-control. The first wave of sexual reform at the end of the nineteenth century revealed the misery of prostitution and made it more difficult for men to take advantage of it. The second wave coincided with such events as the rebirth of feminism and the decline of parental authority. Had it not been for these movements, rape, sexual abuse and other forms of sexual victimization would never have come to the surface as they have.

A reassuring conclusion might be that sexual liberation has gained so much acceptance that it is taken for granted, leaving only the fight against sexual violence and abuse to be continued. But, although this conclusion is not without some merit, it goes too far. Several authors, not the least of whom is Dr. H. J. Roethof, the second most senior member of parliament until his resignation in 1989, have warned that, as Mr. Roethof stated, "at present many see sexual violence and abuse as one of the greatest menaces to human civilization, casting its shadow over sexuality. . . . The choice is between self-determination and protection. Whoever absolutizes one, kills the other."¹⁸ Moreover, now that the religious parties have become political minorities they increasingly resort to their original role of emancipatory movements of the more traditional-minded people against the liberal majority. They still have a strong position: the rest of the political field is too divided to form one coalition. Moreover, they still have powerful constituencies, like the societies which organize private schools on a religious basis and which have a virtual monopoly of education in several areas outside the larger cities. As a result, the political debate on equal rights legislation was at a standstill for years. Whereas few countries can match gay emancipation in The Netherlands, a bill that would seal this accomplishment by prohibiting discrimination on account of homosexuality remained in the doldrums.¹⁹ It took twelve years of political discussion plus a major concession to the religious parties to eventually break the stalemate in the summer of 1990. No religious party (barring some tiny groups of fundamentalists) approves outspokenly of discrimination against gay persons, but they feel that private schools should be free to decide whether or not they want to hire and fire gays as teachers.

This is indicative of the nature of Dutch tolerance. The columnar

structure of society has kept every Dutchman keenly aware that he belonged to a minority and that none of the columns could become dominant on its own. He has to live with other minorities, to tolerate them, but at the same time he has kept them at a distance by staying in his own column. The word "tolerance" has a disapproving undertone, describing the attitude of the one who condones rather than accepts. Far from being welcomed and embraced, someone who is tolerated is kept at a distance. When this distance threatens to be bridged, tolerance may quickly turn into defense. This tolerance at arm's length is evident in a comparison of inquiries into the public attitudes toward homosexuality with a stocktaking of experiences of homosexuals who have come out of the closet. Whereas in 1981, 88 percent of the respondents to a poll said that homosexuals should be free to determine their own lives, it appeared rather easy to draw up a long list of recent examples of discrimination and physical and verbal harassment of gays in 1983.^{20,21}

Tolerance at arm's length can prove deceptive when public discussion of a subject does not provoke strong reactions. Once the debate results in concrete proposals for change that could affect people's lives, reaction occurs after all and takes those who felt sure of success by surprise. This appears to have been the case with pedophilia and the age of consent. Yes, the issue was openly debated and there has been a sharp contrast between the approach taken by authorities and the news media of The Netherlands on one hand and of the United States and Great Britain on the other. But when in 1985 the bill was published that would have relaxed the law, the public outcry was hardly less vehement than it would have been elsewhere. Its advocates must feel as if they had inflated a soap bubble that shone brilliantly while it expanded, but that suddenly burst asunder when it was at its brightest.

LEGISLATIVE CHANGE

The proposal to relax the law reflected the shift in the judiciary's attitude referred to in the beginning of this article. During the sixties the public morality laws, which still prohibited adultery, nudity outdoors, the sale of pornography, the public sale of contraceptives, homosexual contacts with minors, and all sexual contacts with minors under 16, were strongly challenged. Some prohibitions were

soon abandoned: the sale of contraceptives in 1970, adultery (hardly ever prosecuted), and homosexual contacts with minors over 16 (prosecuted to the end) in 1971. An overall revision of the sex laws was to be prepared by a governmental advisory committee, chaired by Mr. A. L. Melai, a criminal law professor from Leiden University. Unwillingness on the part of the new, Roman Catholic Minister of Justice, Mr. Van Agt, to follow up on the committee's first interim proposals caused a delay of many years and it was not before 1980 that the first report could be published. It dealt with sex crimes, like rape, sexual assault and sex with children. The minor crimes, like selling pornography and profiting from prostitution had already been covered in interim reports.

The final report was a product of its time. Public interest in decriminalization, which had fostered the founding of the Melai committee in 1970, had considerably waned ten years later. The shift in prosecutors' priorities from indecencies to assaults on sexual self-determination had caused a *de facto* modification of the legal regime that had taken the pressure off the quest for amendments of the law. Public attention focused on sexual victimization. So did the Melai report. It proposed several new prohibitions, which admittedly would fill gaps in existing legislation. On the other hand its proposals for decriminalization were not far-reaching. With respect to the age of consent, it proposed a uniform limit at 16 years, except that contacts, other than those within dependency relations would only be prohibited if it was the child's partner who took the initiative to the sexual activity. The latter would imply a relaxation of the law, but many commentators pointed out that the burden of proof in court would be too complex. Nonviolent contacts are rarely initiated by only one of the two partners with the other one remaining entirely passive.

Melai's report defended the view that the mere existence of an adult's power over a child suffices to pre-empt a voluntary sexual contact:

The law must disregard the means by which a child is induced to commit or tolerate sexual acts, because it is irrelevant for the judgement of the facts. Objectionable is the psychical and

factual inequality between the perpetrator and the victim; how this is made use of is not relevant.²²

As the report had clearly been written in great haste and left many questions unanswered, it failed to settle the issue. Its central thesis was challenged not only by the NVSH and the COC, but also by the juvenile police units. In contrast with the Melai committee, they argued that it definitely is relevant, if sex between a child and another person occurs, how the child has come to engage in this contact.²³ Similar views were expressed by a working group of the Dutch society of judges.²⁴ The Minister of Justice, Mr. Korthals Altes, a member of the statutorily liberal, but in fact generally rightist partner in the governing coalition, was convinced by the critique. He had a bill drafted that covered the items dealt with in the final Melai report. It stipulated among other things that sexual contacts with children between 12 and 16, barring dependency relations, could only be prohibited if they were prepared or promoted by presenting or promising gifts, abuse of power, or deception. In November 1985 the bill was sent to the Council of State, an advisory body of the government, as is always done before a bill is presented to parliament. A brief press release informed the public about the bill's contents. The public opposition that followed forced Mr. Korthals Altes to state that he would not necessarily pursue the matter. In August 1988, the Government finally decided not to complete the general overhaul of the morals laws, as conceived in 1970, but to limit itself to correcting the existing laws without affecting those regarding the age of consent. As a result, the old laws remain on the books for the time being. The present prohibitions concerning age limits and sexuality in the Penal Code are summarized in Table 3.

THE PROTAGONISTS: THEIR ACTIVITIES

It stands to reason that the prevailing sex laws have been the prime target of protagonists of pedophile emancipation. The origins of a pedophile movement in The Netherlands can be traced back to around 1960. It emerged as an offspring of the still closeted gay movement of those days. In the first major publication on the sub-

TABLE 3. Sections in the Dutch Penal Code Containing Age Limits with Respect to Sexuality

Section	Prohibition	Maximum Jail Sentence*
239	Obscene acts in a place accessible to children	3 months
240a	Detrimental showing of objects to children	2 "
240b	Sale or public display of child pornography	3 "
244	Coition with a girl under 12	12 years
245***	Coition with a girl between 12 and 16	8 "
247	Sex with a child Seducing a child to coition with a third party	6 "

TABLE 3 (continued)

248ter***	Inducing an uncorrupted minor to commit or tolerate sexual acts by presenting or promoting gifts, abuse of power, or deception	4	years
249	Sex with a dependent minor	6	"
250	Inciting or promoting sex with a dependent minor	3	"
	Inciting or promoting sex with a minor	4	"
250ter	Trafficking minors	5	"

* There is no legal minimum.

** "Child(ren)" refers to persons under 16; "Minors" are (since 1988) under 18.

*** Prosecution takes place only in case of a formal complaint by the victim, or his/her legal representatives if the victim is under 16.

Section 248ter is at present only relevant for minors older than 16; minors under 16 are dealt with in section 247. In 1985 the Minister of Justice I unsuccessfully proposed to apply the formulation (after deleting the word "uncorrupted" and the requirement of a formal complaint) to sex with children between 12 and 16.

ject by the gay organization COC, the term pedophilia was used in the context of man-boy love (specifically sexually mature boys).²⁵ Outside the COC, 1960 saw the start of the Enclave publishing house, the publications of which also dealt mainly with man-boy relationships. Out of it grew the Enclave Circle, founded in 1962 by Victor Servatius (Frits Bernard). Its purposes were: "To give help and advice to pedophiles in distress and to promote empirical research."²⁶

The Enclave Circle soon found itself in a monopoly position as efforts to organize pedophiles in the COC were unsuccessful. Sandfort observes that in the COC animosity against pedophilia grew markedly in the sixties, whereas before that time it had not been prevalent.²⁷ This is not hard to explain. In the social climate before 1960 a gay group could only have a closeted structure and inward looking activities. Pedophilia and homosexuality were in the same boat as long as section 248bis existed. But when the public attitude became less hostile and the chances of a repeal of section 248bis grew, the COC considered any link with pedophilia too great a liability. It formally reversed its position only in 1980.

The NVSH was much more forthcoming. As early as 1969 it had concluded its conference "The State as Moralist" with the words: "Sexuality is a matter for all ages" and "A critical investigation of the function of the age of consent would be useful."²⁸ In 1971 it founded its Federation of Working Groups on Pedophilia (L.Wg.P.), in which the local groups of the NVSH cooperated. Its original purposes were the modest ones of the Enclave Circle to which it was the natural successor. It caught public attention with its first publication, "Sex with Children" (1971), which dealt with the legal and psychological aspects of that issue and questioned the merits of the age of consent. A few quiet years followed, after which the L.Wg.P. evolved into a center of activism where useful political action was combined with the developing of sometimes grandiloquent philosophies.

In 1972 the national radio system and the press began to discover pedophilia as a new item worth exploring. This was the time when the media broke new grounds and played a leading role in the lifting of taboos. It was only logical that they would take up pedophilia in the process. In general their attitude was neutral, not inimical. But

the first TV coverage, in 1974, which linked pedophilia with two recent cases of child murder, was a setback that made the L.Wg.P. reluctant to seek out further media contacts.

The main reason why it overcame its hesitance to go public is that external circumstances forced it to do so. The Melai committee was reviewing all sex laws, including the ones with age limits. There stood a good chance of substantial legislative change in the immediate future. On the other hand, an unfavorable recommendation by the committee was likely to darken the prospects of change for decades to come. The motto was, "Now or never."

Not aware of the fact that the Melai report would be published only in 1980 and the first formal bill only in 1985, the L.Wg.P. felt itself forced to give overriding priority to political action for quick legislative change. It was inspired by a report prepared under the auspices of the National Center for Public Mental Health, which had concluded that all special legislation concerning sex with children should be repealed.²⁹ The fact that the authors had jumped to that conclusion by a rather loose argumentation did not prevent the L.Wg.P. from presenting a report with a similar recommendation in 1978.³⁰ This report made a lopsided survey of all the drawbacks of the age of consent and concluded that it should be abolished. As a result, the opponents of such an abolition were strengthened in their conviction that the L.Wg.P. was unaware of the nature and the extent of sexual abuse of children. It did not even lay the basis for a compromise with those who held more moderate views. But only a half year later the L.Wg.P. did better by launching a petition, together with other organizations, which asked for a modification of the laws to the effect that the main drawbacks of the prevailing prohibition would be eliminated.³¹ This petition drew an unexpectedly large support from about sixty organizations, including the left-wing and centrist non-religious political parties and a range of experts from various disciplines.

Apparently alarmed by the success of the petition, the opposition started to mobilize. The first major opponent was the section of child and youth psychiatry of The Netherlands Society for Psychiatry.³² These psychiatrists opposed any decriminalization, one of their main arguments being that it would undermine parental authority. This argument is obviously wrong: parental authority is a

matter of civil law and is not affected by a change in the penal laws. The psychiatrists' views were as extreme as those of the L.Wg.P. in its early years (but in the opposite direction) and this may have been the reason why they did not convince the Ministry of Justice. On the other hand, the Melai committee adopted many of the psychiatrists' views and strongly rejected the report by the L.Wg.P. and the petition. As previously said, the Melai report was not entirely followed up by the Minister of Justice. But it was nevertheless indicative of the spirit of the subsequent years. After 1980 sexual abuse became the major political issue, superseding that of more positive experiences children might have.

At first this did not seem to be a major problem for the L.Wg.P.'s successor, the NVSH Working Group on Youth Emancipation (L.Wg.J.). This group was formed in 1979 with the intention of focusing on children's sexual emancipation rather than on pedophilia (see the next section). It recognized the need for additional legislation against sexual abuse of children in addition to the general prohibition of rape and assault and it sought cooperation with groups concerned with children's rights: the Society Against Sexual Abuse of Children (VSKM), *Kindervuist* ("Kid's Fist," an action group run by children) and Defence for Children International. In 1983 it took the initiative at one of the first large conferences in The Netherlands on incest (organized by the more prestigious Society for Sexology), where one of the VSKM's members, herself a victim of incest, was a prominent speaker. Most views expressed in that conference were moderate and calls for more severe penalties and prosecution were far from dominant. The general stance of movements against sexual abuse did not seem to preclude a consensus with the aims of the L.Wg.J. The juvenile police units expressed moderate views and supported decriminalization to some extent in 1982 (see note 23). In that year the government sponsored a large conference on sexual assault of women and girls, which was meant to be a starting point for the development of a government policy. The participants of the workshop on child sexual abuse warned that the "new progressiveness" concerning intergenerational sex should not lead to restraint in the approach to child abuse, but it also stated that pedophilia should not be considered on a par with abuse.³³

Polarization increased gradually, however. In 1984 the views of

the L.Wg.J and the VSKM had diverged to such an extent that cooperation was no longer possible. On the surface the discord was over the question whether or not all adult/child sex should be regarded as abuse. But the underlying cause was the radicalization of the anti-incest lobby, which rapidly gained size and clout under the influence of media attention and the great number of victims speaking out. Child pornography brought a new element into the discussion in 1984 following a few spectacular appearing raids by the Amsterdam police and after allegations in the U.S. Congress about the supposedly voluminous trade in such pornography by Dutch residents (allegations that, after a serious investigation, appeared unsustainable).³⁴

The L.Wg.J. held a last meeting in 1984, not to resurface before 1987. Meanwhile activities of the protagonists have become scattered among various organizations. The NVSH has two national and several local groups, at least one of which (in the southern town of Maastricht) cooperates with social workers and the local police. The COC, which, after formally abandoning its anti-pedophile stance in 1980, had cooperated with the L.Wg.J. in developing an alternative for the prevailing sex laws, and other gay groups, are active in the field.³⁵ There exists a separate society, adorned with the boy's name "Martijn," which focuses exclusively on pedophilia and whose main activity is the bimonthly publication of the magazines "OK" and "Persfocus." It counts several hundred members. A serious magazine is published in English under the name "Paidika." In addition, a number of people are active on an individual basis, in particular by writing articles and books about intergenerational sex.

THE PROTAGONISTS: THEIR IDEOLOGY

The L.Wg.P.'s ideology has been formed both by the NVSH, of which it was a part, and by the small and more radical gay groups that emerged alongside the COC around 1970. Thinking in the NVSH was inspired by one of its most prominent foreign members, the Belgian historian Jos Van Ussel (who died in 1976). Van Ussel analyzed sexual emancipation by using a model in which he distin-

guished three stages.³⁶ The first of these, “sexual reform,” aims at a more humane approach to sexuality. It stresses the need for enlightenment, relief work, medical treatment instead of punishment for sex offenders, but it does not meddle with the primacy of monogamous heterosexuality. The latter activity is done only in the second stage: “sexual revolution in a narrow sense,” in which people begin experimenting with alternative lifestyles. Partner swaps, homosexuality, pornography, and pedophilia come to be accepted and legislation of morality is challenged. To his own credit, Van Ussel emphasized that this does not necessarily imply emancipation as long as the division of powers in society is not better balanced. For example, whether adult/child sex is beneficial cannot be considered in isolation. In an authoritarian environment it is as damaging as other aspects of education.³⁷ It can only be beneficial to the extent that it follows from the child’s right of self-determination. This view characterizes Van Ussel’s third stage, which he called “emancipation of man and society.”

The gay groups referred to above inspired the L.Wg.P.’s rejection of the noun “pedophiles” and its view on the pedophile identity. These groups disapproved of the cautious approach of the COC at their time. Since 1964 the COC had called itself Netherlands Society of Homophiles COC, a name that was supposed to reflect its coming out as an organization as well as the strong emphasis it put on the existence of a homosexual (or “homophile” as it was euphemistically called) identity.³⁸ According to these critics, the COC did not go beyond claiming a place under the sun for gays as a separate group, asking for tolerance rather than aiming at integration.³⁹ A homosexual preference was just one out of many characteristics that make someone equal to or different from others. Homosexuality should be integrated into society by eliminating the notion that it varied essentially from heterosexuality. The COC adopted this philosophy in 1971 and changed its name accordingly into The Netherlands Society for Gay Integration COC. This name has been kept ever since, but the idea of a homosexual identity was far from abandoned. It came up again during the seventies and in various degrees of extremism. The most radical views were ex-

pressed by groups like *Rooie Flikkers* (Red Queers), which introduced the antithesis between oppressed homosexuality and oppressing heterosexuality and which formed the Dutch gay pride movement.

It appears that the integrationist trend became popular at a time when homosexuals had to undergo a catching-up process. Discriminatory measures and practices had to be eliminated and this made it useful to minimize the differences and stress the similarity between gay and straight. At present the political discussion focuses on measures of which homosexuals would be the main beneficiaries, notably laws against discrimination on account of sexual preference. In this context it is felt to be more productive to emphasize the separate identity of the group of beneficiaries rather than to play it down. For pedophile emancipation, this latter stage is still far out of reach. It is therefore not surprising that the L.Wg.P. has been directed mainly by the integrationists.

In view of its purposes, Van Ussel would have categorized the L.Wg.P. in its first years as well as the Enclave Circle in his first stage. Later on, the working group tried to work out an ideology on the basis of Van Ussel's third stage, as well as on the views of the radical gay movement of the early seventies. It developed what it called the broad view, as opposed to the traditional one based on the concept of a pedophile identity. The first major element of this philosophy was the recognition of sexual activity on the part of children and the merits of an education that does not frustrate such activity. Adults' power over children can entail both sexual abuse and the prevention of children's sexual experiencing. Both are abuse and should be prevented, by legislation among other means.

The second element stressed, like the movement for gay integration did, that not only a minority of people with a special "pedophile" identity, but many others, are receptive of the sexual advances of children. More in particular, the age of consent threatens not specifically a handful of "pedophiles," but all those who do not frustrate sexual experimenting by children.

Finally, specific legislation against sexual abuse of children is needed to the extent that it is required by children's right of self-determination. Later the concepts of active and passive consent, used among others by L. Constantine, were adopted to underline

this point: adult/child sex should be decriminalized only in the case of active consent on the part of the child.⁴⁰

One of the first expressions of this ideology was the publication in 1977 of a collection of letters in which people told about their own sexual experiences, both good and bad ones, before their 16th birthday.⁴¹ This strategy seemed more promising than the one that dwelt upon the problems of a pedophile minority since it focused on the interests of a much larger group. To mark the new strategy, the name Working Group on Youth Emancipation was adopted in 1979.

Attractive though it seemed, the strategy failed to gain broad approval and understanding. It might have been more successful if it had been adopted much earlier by a group concerned with children's rights. For the L.Wg.P., burdened by its own past as a group of pedophiles, it came too late. The aging membership of the NVSH hardly provided an environment to start a working group on youth emancipation. The L.Wg.J. disintegrated in the early eighties. Many members had never shown much interest in youth emancipation in the first place, preoccupied as they were with their private concerns. Quite a few joined the new and insulated group which calls itself "Martijn Society."

EPILOGUE

If the general stance with respect to pedophilia in The Netherlands is considered moderate, this can only be in comparison to other nations. The difference between The Netherlands and Anglo-Saxon countries was particularly pronounced in 1977. In that year both the L.Wg.P. and the Paedophile Information Exchange organized their first public meetings in Amsterdam and London, respectively. The meeting in England incited street riots, a vigorous press campaign, imprisonment for PIE members, and finally the elimination of PIE. In the same year, Anita Bryant and Judianne Densen-Gerber campaigned forcefully in the United States. The conference in Amsterdam was followed by an upsurge in media attention to pedophilia in which negative responses were hardly heard. Even the popular press interviewed adult and teenage partners in sexual relationships, including consenting parents of the latter. A major break-

through was a talk show on television in 1978 in which former junior partners told the audience about their juvenile experiences.

This contrast with the situation prevailing in other countries has certainly created the impression that The Netherlands' success was just around the corner with those who struggled with extreme adversity in their own lands. But it can hardly be argued that the extremism in Great Britain and the United States provides an adequate standard by which to judge any situation elsewhere.

This article has tried to explain the nature and origins of Dutch tolerance, which is built on a tradition that goes back to the inception of the state. This tolerance has allowed free discussion of pedophilia and the age of consent and also relatively mild prosecution. But it has not led to legal change, nor to a wide acceptance of voluntary intergenerational sexual relationships. The NVSH working groups L.Wg.P. and L.Wg.J. have greatly benefitted from the social climate between 1965 and 1980, during which most sexual taboos were lifted. They were small groups, without any leverage by themselves, but they had time on their side. The sharp decline of the number of convictions for sex below the age of consent could be attributed only partly to the efforts of these groups: the trend has been visible long before they started their political activities.

The present state of affairs is aptly illustrated by a phrase in a recent governmental report on sexual violence against women and girls: "recent developments which stress children's sexuality are laudable as such, but they may hamper a proper judgment of sexual abuse."⁴³

Such views are obviously at variance with claims that every sexual contact below the age of consent is tantamount to assault and warrants prosecution. These claims are heard in The Netherlands especially among social workers and conservative religious groups, but such extreme views are not commonly shared. A feminist point of view does not necessarily imply an outright anti-pedophile stance.

The prospects for the near future are highly uncertain. As far as the legislative process is concerned, the government which resigned in 1989 was no longer willing to propose any change. The opposition parties, however, were of the view that the revision of the

moral laws needs to be completed. The government that was formed after the 1989 general elections seems unable as yet to agree on a further revision, so that any new initiative will have to come from parliament.

But it is unlikely that any substantial legislative change will occur in the foreseeable future. Not only was the public outcry that followed Minister Korthals Altes' proposal in 1985 an indication that popular support for change is lacking, but also has prosecutory policy become considerably harsher since that year. One important contributing factor has been pressure from American official circles following allegations in the U.S. Congress (November 1984) that The Netherlands ranked among the most important exporters of child pornography to the United States. Since then the Dutch and American governments have worked together with the effect of curbing what existed of this trafficking to virtual non-existence. But in addition to this, FBI methods of tracking down the supposed makers and collectors of child pornography have been copied for a part by the Dutch law enforcers. Hans Heesters of the Amsterdam police's youth and morals bureau attended an FBI course in 1985 where he was instructed by Supervisory Special Agent Kenneth V. Lanning, whose work has had a decisive impact on the prosecution of Americans suspected of child abuse. Mr. Heesters reported: "What Lanning told us was extremely interesting and has been very helpful in our work here, particularly his insights into the way child abusers collect and disseminate child pornography. When we go on house searches now, we know what to look for."⁴⁴ In 1987 the FBI's teaching resulted in the adoption by the Ministry of Justice of new guidelines for tracing and prosecuting supposed child pornographers.⁴⁵ In fact, these guidelines target those who engage in sexual contacts with underage minors.

At present it can hardly be expected that the tide will turn soon. Nevertheless, the conditions that made The Netherlands a place where issues such as pedophilia and the age of consent were discussed in a comparatively reasonable fashion have not ceased to exist. Whether these factors will ever lead to a turnaround of public attitude, only time can tell.

NOTES

1. In a recent inquiry carried out in The Netherlands only 24% of those polled considered the Dutch tolerant. Message number 2480 of The Netherlands Institute for Public Opinion (NIPO), March 3, 1988.

2. O'Carroll (1982), page 241.

3. Van Der Heijden (1984).

4. *Time*, March 25, 1985.

5. Kossmann (1974), page 17.

6. Tielman (1982), page 53.

7. Ariès (1973), Van Den Bergh (1974), Ch. 2, Kapteyn (1980), Ch IV.

8. Bullough (1976), pp. 570-572, De Bruine Ploos Van Amstel, pp. 396-397.

9. Quoted in Brongersma (1970), page 34.

10. *Vrij Nederland* [Free Netherlands], February 6, 1971.

11. See Doorn and Bommelje (1987).

12. Kooy (1975), page 52.

13. Kooy (1983).

14. *Sekstant* (NVSH magazine), August 1986, page 4.

15. Doomen (1976).

16. Kooy (1975), page 276.

17. Kapteyn (1980).

18. He did so on January 30, 1988 in a speech at a conference to celebrate the fifth anniversary of the Martijn Society, a Dutch pedophile emancipation organization. An English translation of his speech appeared in *Paidika, the Journal of Pedophilia*, number 4, Autumn 1988. See: Roethof (1988).

19. The general prohibition of discrimination in section 1 of the Constitution requires further legislation to stipulate which forms of distinction are to be considered as discrimination (and hence forbidden). This is the exclusive prerogative of the legislator; unlike their U.S. counterparts the Dutch judges are not entitled to rule that a law is unconstitutional. A problem is how to balance section 1 and section 23, which guarantees the freedom of private schools.

20. Kooy (1983).

21. Dobbeling and Koenders (1984).

22. Melai Committee (1980), page 31.

23. The comments by the heads of the juvenile police units were made available to the author. Meanwhile the police has shifted its stance in favor of maintaining the prohibition as it is.

24. See Van Straelen (1982).

25. Brunoz (1960).

26. Born (1973), page 8.

27. Sandfort (1980).

28. Born (1973), page 14.

29. NCGV (1976).

30. NVSH (1978).

31. The text of the petition is added to: Melai Committee (1980), as appendix II, page 53.
32. The letter by these psychiatrists is added to: Melai Committee (1980), as appendix III, page 55.
33. Acker and Rawie (1982), page 107
34. Working Group on Child Pornography (1986), page 10.
35. NVSH/COC (1984).
36. Van Ussel (1974), third section.
37. Quotation from Füss (1984), page 10.
38. Tielman (1982), page 173. COC stood for Center for Recreation and Culture; since 1964 COC has been a meaningless acronym.
39. Van Der Heyden (1983), page 130.
40. Constantine and Martinson (1981).
41. Füss and Goslinga (1977).
42. Kappeyne van de Coppello and Korthals Altes (1984), page 31 (typed).
43. See the psychiatrist F. Beyaert in: Frenken and Doomen (1984), page 206.
44. Hebditch and Anning (1988), page 323.
45. An English translation of the guidelines, as proposed by a task force appointed by the Minister of Justice, appeared in: "Child Pornography and Pedophilia," Report made by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs of the United States Senate, Washington, D.C., October 9, 1986, page 32, note 131.

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