

SEX, SCIENCE, AND SIN: THE RIND REPORT, SEXUAL POLITICS, AND AMERICAN SCHOLARSHIP

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The report by Rind, Tromovitch, and Bauserman (1998) used a sophisticated statistical technique to demonstrate that sexual relations between adults and children do not usually have long-term harmful effects on the child.¹ When the report was published, it generated a strong political reaction, ending in a congressional resolution of condemnation and the collapse of the APA before the political and ideological onslaught. Though the report took no overt ideological stand, and explicitly acknowledged the separateness of the moral issue, it was interpreted and attacked as a defense of pedophilia. Additionally, the character of the report's authors was questioned, and at least one was claimed to be a known defender of pedophilia. The defenders of the report, in turn, defended their methodology and questioned the character and motives of their attackers.²

It is certainly not common to have Congress condemn an article, and—even though no laws were passed—the strength of the political reaction surprised many. It seemed that the report should have been welcomed, since it showed that many people who were afflicted with what was considered to be a severe psychological problem would be able to lead normal lives. In a sense it was like finding that congenital AIDS could often disappear on its own, without leaving any ill effects, and that the experience of being sick might even have long term benefits for some of the disease victims.

In this article, I will examine the political reaction to the Rind et al. report. Though the assertion that a serious empirical or statistical social science argument should not have been published seems shocking, it does go along with the special rules of sexual politics. In that arena, laws have a different purpose than they do in other political areas, and the common relationship between normative declarations and empirical findings is reversed.

A Sexual Society and Its Innocent Children

The United States' sexual policies are sometimes thought to reflect our Puritan heritage,³ but that no longer seems true of the dominant culture. Sex is considered desirable, and sexual images are everywhere. We see sex therapists if we aren't enjoying sex, and use Viagra and other drugs if we have problems. Sexual images are common in our ads, books, museums, TV, computers, and music. Of course, as is almost always true, the leaders of the official culture decry the ubiquity of sex. People listen silently to the attacks, or even appear to nod approval, and then ignore them. The general pattern is public attack and private popularity, and in practice the censors and condemners are not very successful, even though we do not have the type of cultural debate that existed in the 1960s when there was an ideological defense of sex that publicly disputed the official culture.⁴

There is, however, one area in which sex is still a cultural and legal forbidden: when children and youth are involved. Children are thought of as pure and sexually innocent, existing without sexual knowledge or desire. When they are exposed to sex, it is as though Eve's apple is again eaten. The children are thought to be sullied and hurt, psychologically maimed and in need of therapy. The government constantly asserts its special interest in children, and there is a general consensus about the need to censor available images in order to protect them. Youths are treated almost as a different species, and the sexual liberation and exploration that is thought good for adults is viewed as harmful for them.

Unlike the official adult sexual viewpoint, the ideological beliefs about kids are strongly adhered to by almost all groups. Cul-

tural conservatives include children and teens as a central component of their arguments, and the need to protect the sexual purity of the young has been a traditional feminist cause. Additionally, despised minorities often attempt to prove their virtue by arguing for the special protection of the young. Gays have separated their movement from an early history that prized youthful beauty, pro-pornography groups exclude anyone under 18 from their arguments, and First Amendment advocates worry primarily about how to restrict the flow of sexual information to youth without limiting the availability of the material for adults.

The protection of the sexual purity of children is one of our few unquestioned moral principles. Sex education for the young focuses on the dangers of sex, and preaches abstinence. Although millions of American children masturbate several times a week, and most adults did the same when they were children, we rarely talk about it. We forbid pictures of children masturbating to enter the culture in the same way as other sex acts have, and become irate when advertising campaigns like Calvin Klein's portray youth as erotic. We give children allowances and use other techniques to socialize them into the economic system. We train them for sports, send them to Sunday School to bring them into our religious systems, work hard to bring them into our political system, dispute the gender values that they are to be socialized into, and yet try to totally shield them from our sexual system.

Before the Rind et al. report, almost all scholarship in this area explicitly or implicitly endorsed the idea that children are badly hurt by sex and aren't ready for it.⁵ Sexual activity involving children is routinely described with negative terms like "abuse" and children's purity of heart is usually assumed. Other scholarship is largely forbidden—not primarily by the government but by cultural norms. Thus, in a study of kindergarten through second grade school children, a model of normal sexual behavior was used. Children in this age range do not have genital sex, of course, but they do talk, touch and explore. Students who went beyond the norm raised red danger flags. But children who exhibited less sexual behavior than the norm were not considered sexually repressed, since the complete absence of sexual expression in children is considered natural and desirable.⁶

Cultural censorship in this area is strong, and scholarship is closely monitored.⁷ For example, I wrote an article defending child pornography as a form of speech, arguing that there was no constitutional justification for separating child and adult pornography. The highly respected editor of a journal that deals with sex and public policy accepted it for publication. The article was treated with special care, as child pornography was such a controversial topic, but at the end the journal publisher refused to print it. The article was sent out for special review, and then rejected, largely because the tabloid press might get hold of it. There might have been other objections, but unlike normal processes in academic journals, I was never shown the reviews or given a chance to respond. In another incident, a person was recruited to do a popularization of the Rind et al. article for a reader in controversial sexual issues. The editor accepted the article, but the publisher rejected it, apparently because the author was a known defender of pedophiles.

In the case of the Rind et al. article, the APA did publish it, but at the end it refused to defend its publication. By implication, at least, the APA concedes that, in this area, publication of a peer reviewed, academically defensible statistical argument that reached an unpopular conclusion was a mistake. In other words, instead of the normal process of publication, discussion, and possible refutation of a statistical finding, the APA would go along with attempts to silence discussion of the topic, and the editors of the *Bulletin* would be asked to consider the social policy implications of proposed articles. Even under pressure, this is an extraordinary statement for a scientific and professional organization to make.⁸

The strong reaction to the article seems surprising. It is not a sizzling read, and it is difficult to see the harmful consequences likely to flow from it. Certainly children will not read it and think that they ought to have sex with adults, and it seems improbable that adults will be more likely to have sexual relations with children because of the article. The statistical evidence would not be compelling in a court case against an individual's claim that he/she had suffered harm from an adult that had sexual relations with him/her. The only obvious victim was the conventional wisdom and the CSA (Child Sexual Abuse) scholarship. Many social scientists and

psychologists disagreed with the article, but one would have expected them to fight back with other articles rather than with a call for censorship. In fact, the problem with the article was not that it was methodologically weak, but that it was strong. It broke the rules of sexual politics.

Sexual Politics

The reaction to the Rind et al. article involved public policy issues but, unlike cases in which images or the Internet are involved, it took place largely outside of government. Congressional action was a lagging actor, more like the caboose of a train than its engine, and the resolution it passed was dramatic but purely symbolic. No laws forbidding academic publications of this type were passed, and Congress was not a leader in the movement to censor. The Congressional resolutions implicitly put financial pressure on the APA but, since the APA collapsed before the battle began, no more legislative action was attempted. Furthermore, even though the Supreme Court has not been a bastion of free speech when issues of sex and children are involved, it is unlikely that it would have upheld an attempt to censor an academic social science publication.

When sexual issues are involved, the rules are different than they are in most other policy areas, and the hardest fought battle is the battle to prevent a normal political perspective—which allows for bargaining, negotiation, and fact finding—from being employed. Sex rules are grounded in the idea of sin, and in the seventeenth century the moral claim was both absolute and sufficient. Sexual sins were against God's law and would be punished by God, the ministers, the community, and the state. Violation of sexual laws brought disgrace and, perhaps, God's retribution on the community. Sin might be enticing, and might give some individual pleasure, but—since it violated God's law—it was bad. No proof of evil consequences was needed.⁹

In the nineteenth century, the dominant perspective changed. In a more utilitarian and individualist time, sexual issues were medicalized and individualized. Violations of sexual norms were

now believed to cause severe health problems. In the twentieth century, the notion of psychological harm entered. The posited physical and mental damage was not actually the reason that the evil acts were condemned; the damage was simply the secularized retribution for the sinful acts. The harm came because the acts were sinful, and the claims of harm were based on faith rather than on scientific investigation.¹⁰ That is why there is a such a strong reaction to empirical arguments that run counter to the absolutist position: the original assertions were invoked to support.

Thus, in the nineteenth and early twentieth centuries, masturbation and nocturnal emissions were considered bad and were claimed to have deleterious effects on both psychological and physical health. They deprived boys of ambition, caused pimples, sickly babies, and could cause insanity. The purpose of sex was procreation within marriage, and all male sexual indulgence outside of this frame was thought to be evil. It robbed men of energy and could lead to consumption, loss of memory, and death. It also destroyed the moral structure of society. Birth control was considered sinful because it made it possible to bypass the religiously mandated link between sexual enjoyment and procreation, and destroyed many of the claims about the harmful consequences of sex.

Effective and easy birth control changed heterosexual behavior. Groups that continue to think that sex outside of marriage is a sin, like the religious conservatives, have fiercely fought changes in the moral code. Other groups continue to maintain that, in one form or another, youth and teen sex causes physical, social, and psychological harm. These assertions are used to justify the abstinence policies that are taught in school. Additionally, the dangers of sexual diseases have been brought to the rescue. The exaltation expressed by many social conservatives at the rise of sexual disease illustrates the relationship between claims of actual individual harm and the moral imperative.

The relationship between empirical findings and changes of policy is complex. Often there is a concerted media campaign against the objectionable behavior. Additionally, sex policies are over-determined, and have been used for many ends, including control of women, children and minorities. Changes in sex policy can also be

correlated with economic and social policy, and revolutionary societies and societies in the first stages of economic growth usually have restrictive sexual ideologies whereas consumer societies like those in the western world have more permissive policies. As is emphasized in the Rind et al. report, we don't live in a unicausal world. Social science evidence that contradicts policy is a danger to it, but often the evidence is not reported or believed.

There are two mechanisms that supplement the general tendency to resist testing of empirical claims in the sexual area:

1) *Claims are usually true by definition, and thus cannot be refuted by empirical evidence. Attempts to deny the moral claim are taken as a sign that the questioners do not correctly understand their own situation.* White women were traditionally considered pure and moral. If they turned out to be immoral, this was not an expression of desire on their part but a sign that they had been corrupted. These claims then supplied the motivation for a campaign against the corrupting influence. In the social purity movement, arguments that evil women seduced males and destroyed their moral purity were supplemented by feminist claims that the girls themselves were victims of a patriarchal system and had been forced into prostitution against their will. It did not matter that many of the women involved denied this claim, as it was asserted that they did not understand the circumstances that forced them to become victims. The claim was true by definition, and the prostitutes did not understand their situation.¹¹ Similarly, white women, by definition, could not be attracted to black men. Therefore, any relationship between a black man and a white woman became a proof of force. This simple definitional equation, combined with another that asserted that black men innately lusted after white women, created the major justification for the Jim Crow laws and the lynchings that accompanied them. The policies were complicated, of course, and had multiple facets. Nonetheless, most students of the period agree that sexual fears and allegations of rape were one of the primary factors leading to popular support of lynchings.

2) *Evidence in this area is collected to support the moral argument. The methodology is often poor, but—since the moral argument is supported—the methodological flaws are not noticed.* Allegations against homosexuals were supported by assertions that homosexuals were diseased personalities, unhappy and neurotic. They seduced ordinary boys and men, and thus were a danger to the moral fiber of the republic. In the McCarthy period, they were alleged to be wimpish personalities that were responsible for an effeminate foreign policy and easy to blackmail. All of these allegations supported the moral argument that homosexuals were evil. The fact pattern was largely destroyed when Evelyn Hooker (Hooker, 1957) did her famous study. Though her methodological criticisms gener-

ated a great deal of anger, they were powerful and eventually led to changes in the empirical claims. These changes, in turn, led to changes in the moral and policy arguments. In some cases, like in the military, harmful consequences are still asserted and believed, and in those areas the policies have been difficult to change.

In addition to the general factual (or non-factual) arguments, there are two other important aspects of sexual politics:

1) *The government usually plays a relatively passive role in sexual politics, responding to the passions of the majority rather than leading them or attempting to control them.* In three highly emotional areas of politics—religion, sex, and drugs—the government plays different roles. In religion, the national government tends to limit the power of majorities to establish dominance over minority religions or the non-religious. In the drug area, on the other hand, the national government has usually played a leading role, enforcing policies that are stricter than many local groups want. Local initiatives, like marijuana for medical purposes, have been overridden by the national government. Also, it is the government that is largely leading the public relations war against drugs. In the sexual area, the federal government plays a more passive role, deferring to strong and dominant majority passions. If passions are not high, or if there is a strong division of opinion, it will attempt to exert some control on local groups (as in the case of adult pornography or in the protection of women), but the government will not attempt to protect weak pariah groups. That is probably because, unlike minority church groups, deviant sexual groups—like homosexuals in the 1950s or feminists who advocated birth control at the beginning of the century or pedophiles today—are thought of as evil. The Comstock Laws, or the white slavery legislation, demonstrate that the government will sometimes attempt to implement majority desires, but it rarely leads or restrains.

2) *Men have been seen as the primary violators of the moral rules, so there are elements of a gender battle in most sexual issues.* Characteristically, men have been seen as the sexual aggressors while women have been seen as the agents of civilization and decency, serving as protectors of the family and children. The pattern is visible from the social purity movement through the white slavery movement, the battle against homosexuality and pornography, and the fights against child pornography. In the case of pornography it is men that are usually thought of as the viewers.

It is comparatively easy to look at historical examples and see how faulty evidence was used to support a prior moral claim, and to study the role of the government and the gender issues. Since passions are high on current issues, it is far harder to examine them

to see the same forces at work. For example, one of the strongest objections to the Rind et al. report is that it implied that children could consent to sex since it noted that the “relationship between CSA [Child Sexual Abuse] and adjustment varied reliably as a function of gender, level of consent, and the interaction of these two factors.” Though we hold children responsible for many things, and parents know that youths and teens have a mind of their own, the assertion that in the sexual area children are passive and cannot consent is considered true by definition.¹² Denials of this claim are not examined, but are immediately and forcefully rejected. As Rind et al. noticed, many of the claims about the effects of child sexual abuse seemed to be moral claims, stated in a way that did not lead to good scientific investigation.

Child/Adult Sex and the Rind Et Al. Report

As adult culture has become more sexual, our vision of youth has become more sexually pure, and children are the last bastion of the old sexual morality. Women are now seen as sexual beings rather than asexual angels, and birth control has made sex more available for heterosexuals. As pornographers, gays, lesbians, feminists, and others have argued for their own sexual freedom, they have all tried to prove their moral rectitude by excluding children and youths from the new sexual standards they were advocating. “Consenting adults only” was the standard line, and sexual freedom advocate groups granted the argument that children and youths needed to be kept pure. The moral/empirical claims were slowly abandoned for adults, but remained in effect for children. Children were innocent. Because of this belief, a double standard of morality developed, paralleling the double standard that used to exist between men and women.

Though we view it as an almost unquestionable biological fact, the sexually innocent child is a late nineteenth century creation. Historically, children grew up in rural areas and lived in small houses, and often the whole family slept in one bed, so children were aware of sex. They have also often been prized sexual objects from Athenian times through the Renaissance until today. Gay culture often

put a premium on youth, and “chickens” were highly valued by some. In the heterosexual culture, youthful prostitutes were in great demand.

In current culture, sexual relations between young people and adults are strongly condemned, but there are many fantasy indicators of the attraction. Youthful gymnasts, young anorexic models, pretty high school cheerleaders, and the popular coming-of-age stories all focus on the sex appeal of the young. The young themselves are often decked out in fashionable clothes that emphasize an innocent sexiness, and girls’ magazines like *Sassy* and *Seventeen* are filled with sexual advice and advertisements. Though controversial books like *Lolita*, movies like *Manhattan* and *American Beauty*, and photographers like Mann and Sturges deal with the topic, there are strong prohibitions against representing or talking about the sexiness of youth.¹³ Arguments for the protection of the young have become a sign of moral progress, and claims that policies hurt children are damning. Therefore, almost all groups try to associate themselves with the protection of children.

The strongest line of defense for moral claims about the innocent child has been the argument that children were badly hurt when they were used sexually or exposed to sexual images. In the tradition of sexual politics, it was predictable that anyone who questioned the claim would meet moral outrage and anger. That is what happened to “nigger lovers” who questioned the sexual proclivities of black males in the old South, or people who questioned the moral code embodied in the Comstock laws, or feminists who broke with traditional gender roles, or gays who argued for sexual freedom. Like Victorian women, children were believed to need protection for their own good, and claims that sexual behavior had extremely harmful consequences for children have been largely unquestioned and unquestionable. The general fear was compounded by worries about the new electronic technologies that could bring forbidden images and thoughts into the house. In a split image, children were viewed as both innocent and out of control, but both images led to an argument that they had to be shielded from an adult sexual world that, in this context, was viewed as evil. All

of this created a sense of danger that the media and politicians played upon.

According to the new morality, grown-ups are psychologically maimed if they are sexually repressed, but children and youths would be harmed if their innocence were violated. By definition, they were not ready for sex and could not consent to it. Nor could they see it, desire it, or be portrayed as desirable. As the age of puberty decreased, the time period for the youth exemption increased, so that people who once could marry at 12 are now still seen as children at 16 and 17. Additionally, the range of actions that are forbidden has expanded. It is increasingly dangerous, for example, for non-parent adults to hug children or have physical contact with them (teachers, especially males, are routinely warned about this) and Shirley Temple's cute and coy mannerisms would certainly be viewed with suspicion today.

Images are feared, and so is sex and sexual play among children, but the most appalling act is thought to be adult sexual seduction of children and teens. An image of youth as passive in the sexual area, open to adult manipulation and unable to resist, grew up alongside of the image of the rebellious youth who would not obey adult authority in other areas. Definitions always cast the child as a victim even if s/he was a hustler or prostitute. As was discussed earlier, this type of definitional sin is common in sexual politics. The child/adult scenario closely parallels southern fantasies about the relationship between white women and black men.

Definitions combined six and sixteen year olds, characterizing them both as "children" so the behavior of one group could be attributed to the other.¹⁴ They also combined different types of sexual acts under the generic term of *sex*, so the relatively common practices of fondling, looking, and mutual masturbation were confounded with the rarer acts of penetration.¹⁵ Statements about child/adult sex almost always conjured up images of violent penetration with small children, whereas the actual acts overwhelmingly involved non-forced and non-penetrative acts with older children and youths. The definitional slipperiness about child sexuality coincided with a drive to develop precise words for almost every type of adult sex

and for various stages of sex. These definitional issues lead to different statistics and perceptions.

Like all modern sins, child/adult sex was believed to cause grave psychological and physical harm. Characteristically, all future problems the child had would be attributed to the molestation, while all future successes would be considered as the child overcoming the effects of molestation. Many psychologists thought that the harm was so great that the child would repress the memories and not be able to remember the acts when s/he grew up. Others did not argue for repressed memories, but thought that childhood sexual experiences with an adult would lead to grave harm to the psychological structure of the child.¹⁶ The evil effects of childhood sexuality were supported by correlations based on people in legal or psychological trouble that resembled, in many ways, pre-Hooker studies of homosexuality. There were always some counter claims, and examples of children who did not feel that they were hurt, but these were usually dismissed as examples of false consciousness or false memories. Empirical claims of harm in an area of sin are not designed to be tested, and exist mainly to support the dominant moral argument. Sexual moral battles tend to be cast in absolutist terms while political battles admit shades of gray. The transition is fiercely fought.

It was in this atmosphere that the Rind et al. report was released. It claims that a scientific meta-analysis of the most objective available data indicates that most children are not harmed by child/adult sex, though some are, and some are benefited.¹⁷ Moreover, it finds that there is a correlation between child consent and the consequences, thus undermining the definitional argument that children can never consent. Like the Kinsey Reports, it does not ostensibly make a political argument and, as the article acknowledges, it is quite possible to argue that adult/youth sex is morally wrong even if it does not permanently harm the youth. But, in a modern secular world, claims of sin are much stronger if they are backed up by proof of physical or psychological harm.

The Rind et al. report attacked the empirical foundation of the moral claims that were being made and, like the Kinsey Reports, it was vehemently attacked and seen as undermining the moral tradition. The anger was generated against the two reports not because

they were unconvincing but because they, each in their own way, were too convincing. If their analyses were right, they would shake the foundations of the moral claims that were commonly made and largely accepted. To admit the type of arguments presented by Rind et al. into the debate, and to argue shades of gray and issues of definition, was to lose the major battle. The Rind et al. argument did not overtly challenge the moral premise about adult/youth sex, but it did threaten to change the type of argument. That was the danger.

Congress got the issue correctly when it called for research that supported the condemnation of child sexual abuse, asserting that all "credible" research finds that it is harmful. Congress "condemns and denounces" any research that finds that "sexual relations between adults and 'willing' children are less harmful than believed" or that finds that sexual relationships between adults and children "are anything but abusive [and] destructive." These things were true by definition.

Within this framework, Congress "encourages competent investigations to continue to research child sexual abuse." In other words, only investigations that support the pre-ordained, absolute normative construct are allowable. It is a perfect political statement of the role of scientific research in the area, and the reaction encapsulates the fear that empirical claims will undermine the moral norm. The battle to keep despised sexual groups in a pre-political status, so that they are beneath any political consideration as a legitimate group, is the hardest fought one. When moral arguments are based on empirical claims, research that disputes these claims and uses concepts like "level of consent" to replace the *consent/no consent* dichotomy, is an overwhelming danger.

Like all arguments in sexual politics, the feelings against youth/adult sex serve many purposes and agendas. They allow for increased control of youth and create one of the most politically appealing arguments for censorship and control of the Internet. They also serve a purpose in the gender struggles, for the violators of children are overwhelmingly thought to be men. Finally, like all arguments against deviants, the condemnation of pariahs allows the non-deviants to identify with each other as the moral protectors of western civilization. An argument that attacks the empirical claim of great harm to the child will not, by itself, destroy the appeal of

moral arguments against it. But if the argument shifts to an empirical dispute, the absolute moral issue is weakened. Advocates of the sin perspective view it as the moral equivalent of being half-pregnant. That is what the Kinsey Reports did for many sexual issues, and what the Rind et al. report threatens to do for the last great sexual forbidden. That is why there was such a strong reaction against it.

Notes

1. The methodology of the article has been attacked, but it was reviewed both before publication, in the normal peer review process for a highly controversial article, and after publication by the American Association for the Advancement of Science (AAAS). It is safe to assume, therefore, that the superficial methodological criticisms raised against the article in the press and in Congress are invalid. Of course, there may be more valid criticisms raised in subsequent publications, but these have played no part in the political reaction to the article.
2. The controversy over the article has been well covered in the press and on the Internet. A particularly interesting paper on the controversy is Rind et al. (1999).
3. I'm using this term loosely, as it is used in the popular culture. Recent scholarship has demonstrated that the Puritans were nowhere near as puritanical as we make them out to be.
4. Herbert Marcuse (1955/1962), Norman O. Brown (1959), and others like Paul Goodman and Wilhelm Reich, were sexual radicals who wrote major books and articles advocating sexual and erotic freedom and decried the capture of sexual energy by capitalism. The triumph of the economic perspective in the 1980s and 1990s led to the eclipse of these arguments. Authors like Pat Califia (1994) and others have continued the tradition, but have not had the cultural impact of the earlier writers.
5. There was some scholarship that disputed this claim but it was rarely published in mainline journals or by the major presses. It was largely ignored and dismissed as special pleading. There were also a few studies, discussed in the Rind et al. report on pages 25 and 26, that cast doubt on the invariable association of child/adult sex and harm to the child. These were small and had been largely ignored.
6. A discussion of a study in the 1997–1998 school year in which 30 public elementary school teachers were asked to report all incidents of sexual behavior that they observed. The report and discussion took place at the 1999 SSSS conference (Moglia, 1999).
7. Though it is outside of the scope of this article, it is worth noting that art, images, and other popular media are carefully censored too. The Supreme Court has given federal and state governments a great deal of discretion in censoring images that they view as child pornography, and any image that portrays a child as erotically interested or interesting is

likely to be banned. Even possession of these images is largely illegal. Of course, the absence of any erotic images of children strengthens the cultural concept of the sexually innocent child. The lead cases are *New York v. Ferber* (1982) and *Osborne v. Ohio*. (1990). See Mirkin (1999a) for a discussion of this issue.

8. Articles in the race area that suggest that there are innate intelligence differences between blacks and whites sometimes solicit a similar reaction from the left, so neither side is ideologically pure. On issues of great intensity, groups tend to lose confidence in John Stuart Mill's arguments for freedom of speech (in which he defends the value of incorrect statements because in refuting them we strengthen the belief in correct arguments). That argument expresses a faith in human reason, that the truth will win in the end. Today many groups are concerned that erroneous statements will corrupt others, less wise than themselves. Therefore they think that these arguments need to be forbidden.
9. One interesting exception to this rule concerned bestiality. There was a general concern that sex with animals would lead to strange offspring.
10. The relationship is clearly illustrated by the Comstock Laws. These asserted that there would be great social harm from pornography and other sexual material, but made no attempt at proof—the projected harm was a matter of faith and assertion. In the campaign against child pornography and sexual or violent images that might be available to children, the Supreme Court shows a similar pattern. In an interesting 1948 case involving a New York State law that forbade the sale of comics containing violent images to children (the great fear in the post-WWII period) Justice Frankfurter said that no proof was necessary in this area. Though he dissented in this case (*Winters v. New York*, 1948), Frankfurter's opinion on proof has become the majority opinion in child pornography cases.

Frankfurter's dissent argued that the Court failed "to give enough force to the influence of the evils with which the New York legislature was concerned." He claimed that the state could have justified the bill with the following preamble. It sets out the ideological argument for special censorship of children's material and hits the traditional theme of weak character. Frankfurter succinctly sets out the standard of harm that will later become accepted as adequate for censoring material available to children.

Whereas, we believe that the destructive and adventurous potentialities of boys and adolescents, and of adults of weak character or those leading a drab existence are often stimulated by collections of pictures and stories of criminal deeds of bloodshed or lust so massed as to incite to violent and depraved crimes against the person; and

Whereas, we believe that such juveniles and other susceptible characters do in fact commit such crimes at least partly because incited to do so by such publications, the purpose of which is to exploit such susceptible characters; and

Whereas, such belief, even though not capable of statistical demonstration, is supported by our experience as well as by the opinions of some specialists [333 U.S. 507, 531] qualified to express opinions regarding criminal psychology and not disproved by others; and

Whereas, in any event there is nothing of possible value to society in such publications, so that there is no gain to the State, whether in edification or enlightenment or amusement or good of any kind; and

Whereas, the possibility of harm by restricting free utterance through harmless publications is too remote and too negligible a consequence of dealing with the evil publications with which we are here concerned;

Be it therefore enacted that—

Frankfurter goes on to argue that deference needs to be paid to legislative beliefs, claiming that “[s]urely this Court is not prepared to say that New York cannot prohibit traffic in publications exploiting ‘criminal deeds of bloodshed or lust’ so ‘as to become vehicles for inciting violent and depraved crimes against the person.’ Laws have here been sustained outlawing utterance far less confined.”

Similarly, in the *Osborne* and *Ferber* cases, the Court did not demand strong evidence of harm from legislatures as a justification for wide and vague prohibitions of sexual images of children. Assertion and common belief was sufficient. That type of test is not used in other free speech areas. And the ban goes to possession, which is unique in the speech area.

11. The claim is similar to the Marxist argument on false consciousness. “Middle-class Protestant women already involved in benevolent associations to help the poor, widowed, and orphaned soon recast the attack on licentiousness. Unlike male reformers, who usually portrayed the prostitute as a source of depravity and a threat to men’s health, these women claimed sympathy with the prostitute.... Adopting a model of female victimization, they argued that seduction by a licentious male led to many a woman’s fall into prostitution.” It cannot be concealed, reformers wrote, “that the treachery of man, betraying the interests of...woman, is one of the principal causes, which furnishes the victims of licentiousness. Few, very few...have sought their wretched calling.”

It is interesting how the formulas in the sexual area remain the same, but are applied to different victims. Age-of-consent legislation rested upon the belief that men initiated unwitting young women into sexual activity that led to prostitution. Its purpose was to deny men their youngest victims. D’Emilio and Freedman (1997) note that during the white slavery panic “crusaders against vice had so internalized nineteenth century assumptions about female purity that they even discounted the testimony of prostitutes themselves about why they engaged in sex for sale. For example, when George Kneeland studied prostitution in New York...he found woman after woman who gave plausible reasons for entering the life. A former domestic said that she was ‘tired of drudgery as a servant....I’d rather do this than be kicked around like a dog in a kitchen by some woman who calls herself a lady.’ A one-time factory worker told him, ‘there is more money and pleasure in being a sport.’ In response, Kneeland wrote that ‘few girls ever admit that they have been forced into the life as white slaves.’” D’Emilio and Freeman observe that “apparently, it was easier for him and others to believe in a vast underground traffic in women than to accept that working class women might choose sex either for money or the excite-

ment it brought." In the twentieth century, the claim that groups are, by definition, unable to consent has primarily been applied to children.

12. The question of when consent is or is not granted has been enormously important in the woman's movement, of course. In the nineteenth century it was assumed that respectable white women would never consent to illicit sex, so the onus in any sexual liaison was on the male—especially if he was black or foreign. In the late twentieth century, arguments about consent have been central to feminist discussions of sexual harassment and date, marriage and acquaintance rape.

In the case of children, an argument similar to the woman's argument about being forced to accept sex is usually made. Thus D. Finkelhor (1979), one of the intellectual leaders of the CSA movement, has argued that children can never give "true consent" to sex with an adult. They might appear to consent or even cooperate, but the consent is not legitimate. Children lack the information that is needed to make an informed decision, since they usually know neither the mechanics of reproduction nor are they likely to be aware of the social rules surrounding sexual intimacy. They don't know how to pick a good partner, nor about the course that sexual relations are likely to take. Finally they don't know how other people are likely to react to the experience and what consequences it is likely to have for them in the future. "They may know that they like the adult, the physical sensations feel good, and on this basis may make a choice. But they lack the knowledge the adult has about sex and about what they are undertaking. This is something that stems from the very fact of being a child and being inexperienced."

"Further," Finkelhor argues, "a child does not have the freedom to say yes or no." This is true in a legal sense and also in a psychological sense. In a legal sense the child is under the authority of an adult and has no free will. But in a more important psychological sense, children have a hard time saying no to adults "since adults control all of the essential resources." Children's lack of knowledge and lack of power means that in relationships with adults they "are both uninformed and unable freely to say no. By contrast, in relationships with their peers, children are uninformed, but at least there is no inherent power differential. While relationships between adults often involve subtle coercion, adults have great knowledge about the social meanings of sexuality" or at least have access to that knowledge.

Finkelhor is a sophisticated scholar, but of course there is much that can be debated in this definition. Here it is sufficient to note that the idea that children can't consent is largely definitional, and is predicated on the belief that sexual acts will result in harm of which the child is not aware. Rind et al.'s finding that measures of the level of consent produced statistically significant differences gravely undercuts the definitional argument that consent is impossible. Finkelhor, to his credit, recognizes that arguments from consequences are not sufficient and, at the end, brings in the argument that adult/child sex is morally wrong regardless of the consequences.

13. Kincaid (1998) and others have pointed out that we both eroticize the child and put him/her off limits. He argues that "our culture has enthusiastically sexualized the child while denying just as enthusiastically that it was doing any such thing. We have become so engaged with tales of childhood eroticism (molestation, incest, abduction, pornography) that we have come to take for granted the irrepressible allure of children. We allow so much power to the child's sexual appeal that we no longer question whether adults are drawn to children....We see children as, among other things, sweet, innocent, vacant, smooth-skinned, spontaneous, and mischievous. We construct the desirable as, among other things, sweet, innocent, vacant, smooth-skinned, spontaneous, and mischievous. There is more to how we see the child, and more to how we construct what is sexually desirable—but not much more. To the extent that we learn to see 'the child' and 'the erotic' as coincident, we are in trouble. So are the children." (pp. 13-14)
14. The Rind et al. study noted that "problems of scientific validity of the term CSA are perhaps most apparent when contrasting cases such as the repeated rape of a 5-year-old girl by her father and the willing sexual involvement of a mature 15-year-old adolescent boy with an unrelated adult...The tendency by researchers to label cases such as the latter as abuse reflect the slippage of legal and moral constructs into scientific definitions" (p. 23).
15. The Rind et al. study actually found that, contrary to common expectations, penetration was not correlated with outcome. "Although these results should be interpreted cautiously because they were based on a small number of samples, we found that only force and incest moderated outcomes...Penetration, duration and frequency did not moderate outcomes. The near-zero correlation between penetration and outcome is consistent with the multiple regression analysis finding that contact sex did not moderate adjustment. The result provides empirical support for Finkelhor's (1979, p. 103) observation that our society's view of intercourse as the most damaging form of CSA is a 'well ingrained prejudice' unsupported by research" (Rind et al., 1998, p. 45).
16. Psychology often plays a different role in regard to children than it does for adults. For adults, the primary role of psychology is to free people from neuroses and problems that they already have. For children, psychology is often used to project future ill effects that aren't immediately visible. Since the bad effects are a future prediction, psychologists have a relatively free hand. Often they project dire future ills for any event that violates present norms, and the prediction then becomes the basis for strong enforcement of the social rules.
17. Results of the study indicate that "CSA does not cause intense harm on a pervasive basis regardless of gender in the college population...CSA has no inbuilt or inevitable outcome or set of emotional reactions." (p. 46) There are gender differences, and girls experience more severe psychological consequences than boys. However the effects aren't severe for either group, and are greatly outweighed as a predictor of psychological symptoms by family environment factors.

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