

THE JUDGEMENT OF ABNORMAL
SEXUAL INTERCOURSE

Eduard Bernstein

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The “Wilde Case” has not as yet reached its judicial end, but as the jurymen could not agree upon one of the vital points at issue, it has been transferred to another jury, and is to take place before them within a few days. The divisions amongst the jury reflect recent public opinion very well. At first the public could not shout “*crucify him*” loud enough, but after this the numbers increased of those who hoped Wilde would be acquitted, in view of the poor quality of the prosecution witnesses, even if he had done the things of which he was accused. And one clergyman - a Christian-socialist, to be sure, the Reverend Selwyn Image; even found the courage to describe the entire *law* under which Wilde is charged, as *pernicious* and to demand its repeal, in a letter to the Church Reformer.

Germany is one of the few countries to punish the offence of which Wilde is accused. As far as moral hypocrisy is concerned, she need hardly cede much to England. But to stick to this particular matter: there are still, even within the German social-democratic movement, very far-

reaching differences of opinion regarding the position society should adopt towards those sexual activities which do not fall within the ambit of what passes for normal. However much the Party endeavours to judge other questions of public life in a scientific and unprejudiced manner, there is little sign of the endeavour to gain and maintain a firm, modern, scientifically grounded point of view, once sexual matters come under consideration. There is more *pre-judging* that *judging*, and extreme libertarianism borrowed from philosophical radicalism alternates with an almost pharisaical, ultra-puritan, morality. Although the theme of sexual behaviour may not be of paramount significance for the economic and political struggle of social-democracy, the search for an objective means of assessing this side of social life as well is not irrelevant. It is necessary to discard judgements based on more or less arbitrary moral concepts in favour of a point of view deriving from scientific experience. The Party is strong enough today to influence the shape of state law, its speakers and its press influence both public opinion and members and their contacts. Thus the Party already has a certain responsibility for what happens today. So an attempt will be made in the following to smooth the way towards such a scientific approach to the problem.

First of all, a few remarks on the expression we have chosen: “abnormal sexual intercourse”. The customary expression is well known, it is

“*unnatural*”. But this itself leads to error. For what is not unnatural? Our entire cultural existence, our mode of life from morning to night is a constant offence against nature, against the original preconditions of our existence. If it was only a question of what was natural, then the worst sexual excess would be no more objectionable than, say, writing a letter – for conducting social intercourse through the medium of the written word is far further removed from nature than any way as yet known of satisfying the sexual urge. Have there not been observed among animals (usually amongst domestic and captive animals, of course, but these are still significantly closer to nature than man himself) and amongst so-called natural peoples practices relieving the sexual urge which would colloquially be termed, “unnatural”? The conventional expression is as illogical, in this case, as the conventional verdict itself. Let us now subject this to criticism in return.

“*Abnormal*” seems a far more appropriate expression than “*unnatural*”. As far as the present subject is concerned, the concept of normality contains as much of the concept of what is natural or correct as is required for its pertinent examination, whilst being more flexible. Also its usage corresponds better with the fact that moral views are historical manifestations which are not directed by what was supposed to have existed in a state of nature but according to what is considered normal for itself at a given stage of development of society.

However, this is not to deny that humans have at all times regarded that form of sexual activity which corresponds with the task of propagating the species as the normal kind. To this extent even people are tied to the law of nature. But there have been times and cultures in which large classes of the population have regarded that task as an unreal idea; in which the law of nature ceased to be the norm. And this much can be said about most of the civilised nations: that in an increasing number of cases, the so-called mating act not only is not concerned with the reproduction of the human race, but this result bound up with it is rather regarded as a most unwelcome outcome and is prevented as opportunity allows. Formally, the original mating act is solidly affirmed as the norm, but in practice, sexual intercourse is carried on for pure pleasure and because it has been emancipated from procreation, it is highly unnatural, even counter-natural. However, law and custom do not enquire into this, but proscribe and punish only certain kinds of sexual intercourse, in which even the appearance of a connection with procreation falls away - which in fact are not merely counter to nature, but also counter to normality, which run counter to the firmly maintained fictional norm. But can this point of view be sustained?

On the whole our knowledge of the connection between the state of society in general and the organisation of sexual life in particular is rather undeveloped. To our knowledge, despite

the amount that has been written on the theme of the forms of sexual activity, nobody has attempted to achieve in this subject what Morgan contributed regarding the clarification of relations between the development of production and family-forms. Anthropologists and ethnographers report on savage and semi-savage societies where sexual manifestations of all kinds are practised unpunished and unashamed and others where they are expiated with punishments which stretch right up to the death penalty. It seems obvious that such various views of what is and is not allowed in sexual intercourse must always originate in the diverse conditions of sexual life, but as a rule it has been thought sufficient to establish the facts without further investigation into their causes. Naturally, it could not escape observation that such manifestations as sodomy occur especially or perhaps almost exclusively amongst pastoral peoples and peasants; moreover, it is a commonplace that sexual excesses increase with increasing riches and luxury. But even this sentence requires considerable qualification. Riches are amassed under very different circumstances and under very different social conditions, through trade, piracy, industry, with the assistance of a slave economy and by exploitation of free labourers. And so, accordingly, are created different conditions for the cultivation and satisfaction of abnormal sexual pleasures. The ancients, whose riches rested upon the slave economy and trade, have, as it appears, tried

everything in this field which fantasy can contrive, so that a modern advocate of sexual freedom, by referring to the "*Hermaphrodi*" of Antonius Panormitia - a 15th century collection of the pornographic passages in the works of the ancients - felt able to say that they had left posterity "*only very little to add*".* As a matter of fact, the experiments on slaves and child slaves that were permitted in Imperial Rome would be quite unthinkable today. They presuppose a disregard for human life which only crackpots have today.

This is not to overlook the contemporary sacrifices at the altar of mammon, which come under a different category. As for the rest, let the conditions of morality in a modern commercial city be compared with that in our industrial cities. Not that there will necessarily be fewer sexual excesses in the latter, but what a different kind they are, and how different is the entire arrangement of sexual intercourse.

On the whole there is certainly taking place in those countries with an advanced culture an ever more powerful equalisation of social appearances. The unparalleled facilitation of trade, and exaggeration of competition are effecting the elimination of the most deep-rooted differences.

To return to the subject, the Romans followed the lead of the Greeks, the Greeks of the

* Hellman, "*Geschlechtsfreiheit*", (Sexual Freedom, trans), p.177.

Egyptians and various Asiatic peoples in cultivating abnormal sexual pleasures. We can only conjecture as to how these first arose. The probability is that at first the scarcity of possibilities for sufficient satisfaction of the sexual drive in the normal way drove people to abnormal acts of sexual pleasure, and this kind of scarcity can be brought about by kinds of circumstances. However, we cannot pursue this matter any further here. Suffice it to say that abnormal sexual intercourse is so ancient and so widespread and is to be found at such diverse cultural levels that it cannot be said with any certainty that it was absent at any stage of human cultural development. Likewise, the oft-repeated theory that exclusively ascribes the more frequent occurrence of abnormal sexual intercourse to so-called times of decay cannot be sustained. Indeed, when Hellman, who was quoted earlier, brings forward the Greek Periclean period to prove the contrary, he is right off the mark with this example, for it is undoubtedly just the Pericles period which ushers in the decay of Athens; the great blossoming of art which Athens then represented may not deceive us here, for art is in general a very treacherous guide to the vitality of a people. But the Athenians were practising boy-love long before Pericles: this did not prevent its national upsurge and furthermore this and similar customs were in use amongst other peoples in epochs of real upsurge.

More is known about the *opposition* to abnormal sexual pleasures than about their rise, at least where the civilised peoples are concerned. And here one aspect is very characteristic.

We have already stated that normal sexual intercourse has counted as having been required throughout the ages for the purposes of procreation, that is, the sexual union of two sexually mature individuals of different genders. But we find from very early times, apart from masturbation, other organs being made use of for sexual pleasure than those physiologically determined for the sex act, whether they belong to any individual of the other sex or of the same sex. Up to the present, the law has as good as ignored, and still ignores, those kinds of abnormal sexual intercourse falling in the first category. As this is entirely a matter of a man using the woman's body, then it is no exaggeration to say that the law regards the female body - with the exception of rape and bodily harm - as something which cannot be sexually mis-used. The practice of female homosexual love has also been ignored in most places and at most times. Quite different was the attitude to homosexual intercourse amongst members of the *male* sex. This has been heavily punished amongst the various negro peoples, Moses forbade it to the Jews (Third Book of Moses, Ch 18, 20), Solon to the slaves, Justinian began to punish it in the Roman state, and finally the *lex Carolina* fixed the death penalty for the practice of *pædicatio* (abuse of the anus) in men or boys, and

this precept has held from the Middle Ages to the present day.

We have a book lying before us by the Viennese professor, von Krafft-Ebing, from which we obtained the facts just quoted. It is called *Der Konträrsexuale vor dem Strafrichter** and in it the author expresses himself as though these facts indicated a *preferential* treatment of the female sex; at least, he only ever speaks of the unfairness represented by the immunity of women compared with the punishment of homosexual activity by men. We see the matter differently: It seems as though the liberty accorded to the female body characterises the *disregard* for the woman, which took effect with the rise of the paternal-right family. It is very understandable that a later, rationalising era accounts for this distinction in the way that it appears to Krafft-Ebing in the light of modern penal codes, but this rationalisation does not detract from the fact that existing regulations are themselves a remnant of a contempt for the woman, whose body was an *object* belonging to the man. And are we any further from this practice today? Mr. von Krafft-Ebing quite rightly says elsewhere that, for instance, Prussian legal usage is contradictory when it takes up the moral point of view where abnormal sexual acts between man and man are concerned. It wants to “*protect the moral state of the person against his own immorality*” and yet

* (“Antithetical Sex and the Criminal Court Judge”, trans.)
Leipzig and Vienna, Franz Deuticke, 1894, 38 pages, octavo.

allows *paedicatio* in women to go unopposed. The latter is not superior morally and aesthetically to *paedicatio* in men*, but on the contrary, in the majority of cases, it is far inferior. If male love is once given, then *paedicatio* becomes an almost inevitable complement. But nobody will wish to assert this moral legal usage over the love of a man for a woman and female *paedicatio*.*

Why does society not intervene against these and other excesses against the female body? It is not ignorance. We will say nothing about what happens in those marriages which confine themselves to two children, but will refer to female prostitution as an example. Everything is allowed to be done with the body of the prostitute, except for the infliction of crude bodily injury. Those considerations preventing invasion of the mysteries of married life do not prevail here. The state supervises the public life of the prostitute and cares for her state of health - no, for the state of health of her sexual organs. The state is not concerned with what the man who buys the prostitute does with her; except, should the man infect her with a sexual disease, it sequesters - the prostitute.

If, however, the contractual freedom between man and woman is so great, that any sexual pleasure which the woman sells her body

* The terms actually used by Bernstein are “*so-called pederasty*” in the first instance and “*pederasty*” in the second instance marked by the asterisks, trans.

for is legitimate, then there is no reasonable ground why a similar contract between man and man should be criminally punished. All the medical authorities declare *paedicatio*, which is in fact proceeded to in very few instances of male love, to be physically unobjectionable. Thus only the effect on the morals of the performers comes into consideration. But all the authorities on criminal law agree that the state and the criminal law does not and cannot watch over morality. One only has to picture where such an attempt would have to lead to be convinced of its impossibility. It is quite sufficient for the law to protect the rising generation of male youth, as it does in France. As long as the female body remains outside the law, there is no argument which can justify the criminal punishment of male love. That argument has yet to be made, for that which occurs daily in the bordellos and prostitution dens under the eyes of the police, is pronounced to be less pernicious to moral standards, than participation in male love. Moreover, in most countries the paragraphs in question remain on paper in ninety-nine cases out of a hundred, and in the hundredth case they are a subsidy to the highly moral occupation of blackmail. Berlin in particular has had experience of this, and one of the Prussian legacies is the relevant paragraph in the Imperial legal code, In those countries which have done away with the relevant criminal regulations, there is no desire whatsoever for their reinstatement.

So much for the legal side of the question. It

Angel Clifford, editor and translator, *Bernstein on Homosexuality*, published by Athol Books, 1977. Posted in 2007 by Studies in Anti-Capitalism.net at www.studiesinanti-capitalism.net

only remains to be considered how public opinion should view cases of male love, how it should estimate them morally. Mr. v. Krafft-Ebing, whose book is a plea for the repeal of the relevant paragraph of the Austrian Penal Law, wants a predominantly pathological view accepted, and that goes for nearly all psychiatrists. In any case, at least this much can be said; that on no account is male love always a sign of a corrupt disposition, dissolution, bestial pleasure-seeking and the like. Those people who immediately bring forward such epithets accept the standpoint of the reactionary criminal laws, which even the drafters defend by reference to existent popular prejudice, of which account must be taken. Rather, in each individual case it must be judged whether it is a matter of dissolute licentiousness or an insurmountable love for one's own sex which must not be judged morally but pathologically.

On the other hand, it is necessary to warn against exaggerating pathological explanations. In the last analysis, everything can be represented as a psychological compulsion, and it is precisely sexual matters that provide the best occasion for this. For in the animal kingdom, do we not see that the reproduction periods are in fact times of an abnormal, pathological, or psychotic state in the animal? But even if the sexual life of humans presents analogies to this, human activity is influenced by other facts than sexual excitement and other such momentary sensations: public opinion, customary institution; and what the

individual thinks is right all have an effect on the will and actions, and at least the people involved thus have the possibility of being able to counteract such practices of sexual pleasure which lead to the enervation of those concerned. That is about all that can be done today. As long as social conditions which, so to speak, threaten natural sexual pleasure with punishment, as long as our entire way of life does constant injury to the requirements of health of body and spirit; then so long will abnormal sexual intercourse not cease. On the contrary it will reveal a tendency to become the normal.