

The Queer Case of Sexual versus Religious Rights

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Let me begin with two, not particularly enlightening, observations. Both relate to our current obsessions which help contour the world in which we live (at least in the Western world, but with growing ramifications elsewhere). Firstly, we are witnessing, increasingly, the 'sexualisation of society'. This bit of sociological jargon denotes that sex is everywhere we look: sexual imagery, selling points, branding, innuendo.

Sex is on the cover of many popular magazines, while trashy newspapers tell the latest saga of which soccer player, which celebrity, which Big Brother winner has been doing what with whom. Seemingly we like a bit of titillation to spice up our mundane lives. Ultimately, we might blame the so-called 'sexual revolution' which emerged during the 1960s. However, in this post-modern world such a legacy of the counter-culture of the baby-boom generation, from which the sexual revolution arguably stems, is now diluted and tamed, mostly for economic gain.

Sex sells, and in more ways than one. Now car insurance salesmen appear in television adverts with only a clip board to hide their dignity. There is a certain cultural confusion to be observed too. We may have concern that eight year old girls wear make-up and thongs. And this is apparently in an age of rampant paedophilia. There are one or two moral panics trying to get out here somewhere. But that is all by the by.

What is worth noting however is that academia has caught the bug of obsession with the subject of sexuality and is drawn into the culture of sex. This is certainly true of sociology. Now there is a post-modern pick 'n mix across the various specialisms. We have Identity and Sexuality, Education and Sexuality and, more obviously Gender and Sexuality.

I am a sociologist of religion for my sins. Against my inclinations I find myself in the new research area of religion and sexuality. There is a 'demand' out there, a demand to know where religion connects with sexuality, Sexuality, dare I say it, has become a 'sexy' topic. And, like all new academic paradigms there is a vested interest somewhere in the mix. I too have succumbed and tied this area of inquiry to that of rights, both 'human' and 'civil'. Hence the focus of this paper.

The counter-culture also carried the message of rights. Rights has become the second of our cultural obsessions. The rights of women, ethnic minorities, the disabled, and gay people. All quite correct. Who could disagree? Yet there may also be a few vested interests in here too. I will, of course, have to justify that claim and will attempt to do so below. For the moment we can notice that in the Western world such rights have for some time now been enshrined in liberal democratic legislation and national constitutions, later becoming the touchstones of international conventions.

It is in the West that the rights agenda emerged in earnest. The American constitution of 1787 provided the framework for the organization of the United States government and for the relationship of the federal government with the various composite states and its citizens. The first ten amendments were concerned with

civil rights and collectively became known as the Bill of Rights. The first amendment to the American constitution reads 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech'. Of course they were more religious days when matters of faith were central to the lives of so many people. Religious rights nonetheless remain a key issue in the USA and as we shall see, to a lesser extent in the UK.

Sexual Rights

Sexual rights constitute a new-comer to the world of rights, forcefully advanced by such campaigning groups as Amnesty International. Sexual rights are human rights, now translated into civil rights. Sex is very natural, very human. But what are sexual rights? The Institute for the Advanced Study of Human Sexuality based in the USA, running undergraduate and post-graduate on the subject, advances the view that they include 'the freedom of any sexual thought, fantasy or desire'; 'the right to sexual entertainment, freely available in the marketplace, including sexually explicit materials dealing with the full range of sexual behaviour'; 'the right to be free of persecution, condemnation, discrimination, or societal intervention in private sexual behaviour'; and, interestingly, 'the right not to be exposed to sexual material or behaviour'.

Anything goes if you are interested. Perhaps all of this is not what the layperson understands by sexual rights. Such a list, however, indicates how complex the world of rights has become. For most of us sexual rights probably means the non-sexual rights of LGBT people (that is 'L' = Lesbian, 'G' = Gay; 'B' = Bi-sexual; 'T' = Transgendered or Transsexual – to which can be added 'Q' = Queer; 'I' = Intersex; and 'Q' again = Questioning [of one's sexuality]). We may think about sexual rights largely in this way because of the proliferation of legislation which directly or indirectly attempts to safeguard LGBT rights. They touch us all.

We can mention a few in the UK through laws protecting LGBT rights not dissimilar from those found elsewhere in the Western world. The UK has admittedly not always been at the forefront. Indeed, in good old British style we have tended to lag behind, watching, in a guarded fashion, what is happening elsewhere before taking the plunge of endorsing radical reform. The Employment Equality Regulations (2003) and Equality Acts of 2007 and Equality Act of 2010 all aim at advancing equality, alongside tackling discrimination in the areas of employment and public administration. The Adoption and Children Act (2002) and Civil Partnership Act (2004) procure non-heterosexual rights in terms of adoption, parenthood and the legal status of partnerships, while the Gender Recognition Act (2004) addresses matters related to gender reassignment. These are just a few of recent developments.

Why have these non-sexual rights come to the fore? Like all other rights we must think in terms of time and place. They are a product of a wider social environment including the sexualisation of society. We can now talk of sexual matters once forbidden. The push for rights has also come from vociferous LGBT lobbies like Stonewall (named after a serious of riots by gay protesters remonstrating against police persecution in New York in 1968). Then there is the scientific evidence related to human sexuality. Some people are 'born that (LGB or T) way' rather than their

sexuality being a matter of personal choice with all of the moral dimensions implicated thereby. If it is natural to some, then it is a natural right to be LGB or T and express that orientation, a right that should be hedged around by legislative protection.

Problems remain and this is clear in the Equality Act of 2010. It is potentially a mine-field. While it outlaws discrimination against people in regard to their sexual orientations, the Act also outlaws discrimination against people of religious conviction. One of the problems relates to the practice of religion in the workplace (such as a space for Muslims to pray at certain specified times of the day).

However, what constitutes practice? Should those of one faith or another be allowed to evangelise? Can a religious person pray for another in need? There have been cases of nurses praying for patients (as in a hospital in Weston-super-Mare in 2010) who have found themselves in hot water and even suspended from their jobs. One thing they certainly cannot do is speak out against non-heterosexuality on the grounds of religious conviction.

Religious freedom of speech

UK legislation takes some account of religious views of LGBT people such as permitting the restriction of provisions of goods, facilities or services by a Christian minister in performance of duties on the grounds of religious conscience (The Equality Act, 2010 [Regulations 14, 4 (c)]). But this only goes so far. The Christian conservative organisation, The Christian Institute, supported the case of a certain Dale McAlpine who was charged in 2010 with causing ‘...harassment, alarm or distress’ after a police community support officer overheard him reciting a number of ‘sins’ referred to in the Bible, including blasphemy, drunkenness and same-sex relationships. McAlpine, renowned for preaching from the top of a stepladder in Workington, Cumbria, was alleged by the police to have made the remark in a tone loud enough to be overheard by the public. He was charged with using abusive or insulting language, contrary to the Public Order Act of 1986 [Sections 5 (1) and (6)] (originally enacted to tackle violent rioters and football hooligans). A solicitor-advocate for the CI stated it was not a crime to express the belief that homosexual conduct is a sin: ‘The police have a duty to maintain public order but they also have a duty to defend the lawful free speech of citizens....Case law has ruled that the orthodox Christian belief that homosexual conduct is sinful is a belief worthy of respect in a democratic society’.

There have been many similar cases of Christians speaking out against LGBT rights as a result of religious and moral conviction, pointing to the few biblical verses that would seem to condemn homosexuality in particular. However, it is not just Christian individuals and groups that have a problem with homosexuality. It is historically condemned by Islam. LGBT Muslims have their own LGBT rights groups but they largely take a low profile, fearing recrimination within their communities. Matters of discriminating against or condemning LGBT people by other Muslims have not yet surfaced in earnest. However, it might have been prudent if the 2010 Act included the health and safety warning ‘....light the blue touch paper and retire immediately’.

Human vs Religious Rights

In taking a global perspective Hinduism would appear to be a very queer case. The British Council of Hindus has come out in favour of LGBT rights. But many of their co-religionist in India and elsewhere have not. In 2009, the High Court of Delhi issued the controversial ruling that homosexual intercourse between consenting adult males no longer constituted a criminal offence, a transgression hitherto punishable by up to 10-year prison sentences. Section 377 of the Indian Penal Code (instigated in 1860, and commonly known as the 'Anti-sodomy Law'), criminalised same sex-sexual behaviour irrespective of age and consent. Also known as 'Macaulay's Law', it was first framed by British colonial administrator Thomas Babington Macaulay in the name of advancing Christian civilisation.

Repeal of Section 377 came in the face of extreme pressure placed on the Indian government by human rights groups arguing that the law was discriminatory and an infringement of fundamental rights. Not all Hindu leaders are in agreement. Swami 'Baba' Ramdev, famous for his international yoga camps attended and watched on television by an estimated 85 million people worldwide, making him one of the most celebrated Indian figures, criticised the Indian High Court ruling. Ramdev claimed that 'These are unnatural (homosexual) acts not designed for human beings'. Not a 'natural' act, hence not a human right.

Others had different opinions. The Gay and Lesbian Vaishnava Association (GALVA), an international organization which works to provide information and support LGBT Hindus came out strongly in favour of the repeal of Section 337. GALVA's advance of LGBT rights are supported by reference to Hindu motifs. On its web-site can be found references to gods with homosexual attributes, gods with lesbian inclinations, bi-sexual gods, transgendered gods, and those who can't make up their minds gods. There are reminders on the web-site that ancient Hindu temples depict people doing all sorts of things to each other. GALVA also points out that non-heterosexuality *is* natural otherwise it would not have been brought into existence by a benevolent deity, Through Western eyes this is all a bit odd. For one Indian commentator, Geeta Patel, its extremely odd. Both those advancing and opposed to LGBT rights in India, she observes, are working with sexual categories such as 'lesbianism' which have no equivalent in the Hindu language. They are Western sexual categories.

A Task for Sociology?

What has all this to do with sociology? Actually quite a bit. Nonetheless, rights issues have proved to be a neglected area of research and a fair amount of work has yet to be done in the name of the discipline. Nonetheless, one thing that is obvious is the recurring matter of time and place. Rights are social constructs (to use another piece of sociological jargon).

In 1995 Bryan Turner penned an influential article as part of the Symposium: Human Rights & the Sociological Project. It proved timely in setting an agenda for further theoretical sociological advancement in the rights field. In his paper, to put matters succinctly, Turner interpreted the global inception and extension of human rights

since the nineteenth century as predominantly a result of observable processes of social evolution (a troublesome term for sociologists these days) and accompanying power relationships. In particular, those rights generated by the growth of the nation state, and bourgeois civil society upon which it was derived, both proved to be in line with the ethos of individualism that provided the bedrock of early conceptions of rights in their 'civil' form. In the USA, these were 'limited' rights not only in the sense of protecting the citizen from the state over-stepping its mark in private affairs, but in the sense that the rights of blacks and women were not included. In the home of the brave it took a bloody civil war to sort at least some of it out.

Turner also expounds how matters of 'rights', originally delimited to civil rights, have historically been linked to those of citizenship in the Western nation state. Later, while such nations readily endorsed (selected) aspects of the broader remit of human rights, such rights may similarly be deconstructed as largely the product of Western cultural sensitivities. More recently it is evident that what constitutes a 'right' has expanded throughout liberal democracies and this development is seemingly connected to further aspects of social evolution in late-modernity, not least of all its increasingly pluralistic nature and related 'interested parties'. For Turner, '...rights constitute an important discourse of modern social movements and a major institutionalisation of political claims within a democracy' (Turner 1995, 1) and bond with matters of socio-political development as Western nations continue to reach higher levels of economic and cultural sophistication. Moreover, issues of rights are increasingly embraced by modern social movements in the struggle for political power and public recognition where political claims, within the liberal democratic setting at least, become a legitimate resource and are underpinned by a paralleled rhetoric of rights (Turner 1995, 2-3, 7-8). Put otherwise, in the contemporary world the discourse of rights relate not only to the matter of rights in terms individual liberty, of which freedom of conscience and freedom of religious conviction and expression are prime examples, but an ever expanding wide range of rights frequently associated with particular social groups.

There can be little doubt that many campaigning groups in Western democracies advance themselves as furthering a general public interest whatever their substantive 'cause'. A key example is the pro- and anti-LGBT rights Christian now battling for conflicting rights. Conservative Christian campaigning groups cling to freedom of religious conscience and conviction, alongside the biblical foundationalism from which they are derived. A broader strategy is needed however given that the religious basis has little currency in a secular world other than maintaining the bedrock of the right to conscience and conviction. At the same time it is necessary to pathologise and discredit LGBT campaigning groups, labelling them as a marginalised constituency and whose claim to rights rest upon a perceived perverse and essentially immoral life-style choice. Interestingly, the Evangelical Alliance (representing two-thirds of evangelical, Pentecostal, charismatic, and a fair few churches from the established denominations in the UK) stated in response to the former Labour government's *Getting Equal Consultation* that

'It should be clearly understood that our difficulties in relation to homosexuality are quite different and they have nothing to do with homophobia. Our focus is not on the human beings who experience

same-sex attraction but on homosexual *practice*, which we regard as a behaviour choice, together with associated attempts to normalise it. It should be emphasised at the same time that most Christians strongly question assumptions that homosexuality/same-sex attraction (as with religion and belief) falls into the same category as race, sex and disability. The latter are manifestly either innate or outside human control, whilst homosexual practice is not....We are concerned that as a result of proposals to *outlaw* discrimination against people on the grounds of sexual orientation, they will actually end up *requiring* discrimination against people on grounds of religion and belief.

On the other hand, the Lesbian and Gay Christian Movement, which represents LGBT Christian people, has laid out its own views of rights and by appealing to wider universal principles of human rights within the framework of the extension of civil liberties. The organisation has attempted to portray conservative Christians opposed to LGBT rights as homophobic and at variant with progressive secular developments. For instance, following its Faith, Homophobia and Human Rights Conference held in 2008 the LGCM issued a statement calling on

‘...all people of goodwill, of whatever faith or none, to affirm and celebrate human equality in all its dimensions and particularly to work for the elimination of any faith-based homophobia and institutionalised prejudice towards lesbian, gay, bisexual and transgendered people.’

A Final Word

We may see the extension of sexual rights as a product of time and place, just as religious rights were in the less secular nineteenth century. They are seemingly at odds. This raises broad philosophical questions of the nature of rights and their ideological underpinnings, not to mention their cultural context. Moreover, what happens when rights conflict? Should majority rights take precedence over minority rights? What are the implications of one right contradicting another? Witness the present discord in Amnesty International.

The expansion of rights today, in the UK at least, can be seen in the context of developing notions of what it means to live in a Western liberal democracy. The expansion of rights has increasingly become fused with concepts of ‘citizenship’ and ‘social inclusion’ – the touchstones of New Labour (God rest its soul) and the current Con-Lib coalition’s notion of the ‘Big Society’ to which we are called to belong whether we want to belong or not and whether we all truly have a stake in it during these days of extreme austerity. Recession means unemployment. Whatever happened to economic rights? Or was that an invention of the now defunct Soviet Union?

As already suggested, throughout much of the first decade of this new millennium the Labour government saw the extension LGBT rights as part of its wider policy of social inclusion. There was more besides. In 2003, the administration, announced its intension of encouraging faith groups to

participate more in the consultation process of decision-making. To this end the Faith Community Liaison Group was created to instil their views across the civil service and chaired by the Home Office minister responsible for 'civil renewal' within a wide remit. Hence, the same government that had extended non-heterosexual rights was positively encouraging the involvement of influential conservative Christian groupings which opposed them. This development was warmly applauded by such Christian campaigning groups opposed to LGBT rights. Well they would, wouldn't they?

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