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# A Moral-Philosophical Perspective on Paedophilia and Incest

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## Introduction

It is generally known that children are sexually abused and harassed on a large scale. Let us just mention two examples that will illustrate issues to be raised in this contribution. The organisation End Child Prostitution in Asian Tourism, which was founded in 1990, estimates that one million children are involved in sex business in Asia, with 300,000 in both India and Thailand (*Los Angeles Times*, 13 July 1994). And on the basis of an analysis of 19 large-scale researches, Finkelhor (1994) concludes that at least 20% of American women and 5–10% of American males have been sexually abused in their youth. In 90% of the cases the perpetrator was male. Moreover, 70–90% of the perpetrators were an acquaintance of the child. The motives for having sex with children are rather divergent. For example, some men believe that this form of sex promotes their health eventually, while others hope to avoid the danger of a deadly infection in this way. Again, others are incestuous fathers or have a paedophile disposition. In Western societies we mostly have to deal with the latter categories. In this contribution we will take paedophilia and incest as paradigm cases of, respectively, ‘sex with children’ and child sexual abuse.

‘Incest’ and ‘paedophilia’ are two different terms: ‘incest’ refers to ‘sexual intercourse between two persons regarded as too close to marry each other’, whereas ‘paedophilia’ is defined as a sexual disposition, as ‘sexual love directed towards children’ (*Oxford English Dictionary*). Given the issues we will raise in this article, we have to further specify the former term. Following Becker (1994, p. 176) we take ‘incest’ to refer to sexual acts, which may or may not include intercourse, between members of a family other than husband and wife. Incest may occur between two adults, but in this contribution we will restrict ourselves to sexual acts between adults and children. The two terms, so it seems, have different descriptive meanings and do not necessarily refer to the same class of persons; paedophiles need not necessarily be involved in incestuous relationships and adults who have sex with their pubescent children are not necessarily paedophiles. However, according to Abel *et al.* (1988), there probably is a considerable overlap between the two classes. His research data raise serious doubt regarding the presupposition that the perpetrators form two distinct groups. In this study of 159 involved in incest, 49% also had extra-familial sex with girls and 12% with boys. Besides, 19% of these perpetrators had also raped women. The supposition that men have incestuous relations as a result of familial relational problems can be disputed since a majority of those

committing incest (59%) confessed to already having a sexual interest in children during their adolescence.

With reference to the supposition that the two classes of perpetrators overlap we raise the following question: are these forms of child sexual abuse morally impermissible, and if so, are they immoral to the same degree? In this paper we will try to explicate the immoral character of these two phenomena and to understand paedophilia and incest from a moral perspective. It is generally understood that the justifying reasons the perpetrators give for their behaviour are rationalisations and that these sexual behaviours are morally impermissible (and even perverse) (cf. Goodwin, 1989; Spiecker & Steutel, 1997). But how can the latter qualification be justified and are the same moral justifications valid for both intra- and extra-familial sex with children? Are both classes of perpetrators blameworthy to the same extent? Or is it possible to make a morally salient distinction between the two forms of child sexual abuse?

According to Finkelhor (1984), in the recent past the advocates for the problem of child sexual abuse did not have to examine the assumptions of their position: 'They have not had to think through the moral issues clearly in their own minds because the weight of traditional morality supported their point of view' (Finkelhor, 1984, p. 14). In trying to warrant the normative claim that sex with prepubescent children is morally inadmissible, we will have to start with explicating our conception of both morality and of morally (im)permissible sex. Then we answer the question of whether the same justifying reasons for conceiving paedophilia morally reprehensible are also valid for incest.

### **A Conception of Morally (Im)Permissible Sex**

The term 'morality' and its cognates are used in different ways. If, for example, we speak about the morality of orthodox Calvinism or the moral code of the fascist movement, we are using a rather formal notion of morality, which is succinctly explained by Richard B. Brandt (1979, pp. 164–170). However, in this context we are interested in a more substantial or material notion, which seems to be deeply ingrained in common-sense moral thinking. If we use this notion by applying it to the considerations or beliefs of a certain person, we suppose that those reasons or beliefs somehow relate to the well-being or intrinsic dignity of other persons (cf. Steutel & Spiecker, 1997b). As Slote rightly argues, our common-sense morality is characterised by 'an *agent-sacrificing (or other-favoring) self-other asymmetry*' (1992, p. 5). The fact that one of our actions undermines someone's well-being or affects someone's dignity is a good reason for considering that action as morally wrong or impermissible. But from a moral point of view it is not wrong to inflict similar harm to ourselves. That can be called stupid, unwise, irrational or even insane, but it would be odd to call it morally reprehensible. This is the asymmetry that is characteristic of our common-sense morality: ways of acting that are morally permissible when they harm our own well-being or dignity are morally impermissible when they affect the well-being or intrinsic dignity of others. Our common-sense concept of morality is, so to speak, not *self-regarding* but *other-regarding*.

Given this intrinsic relation with the well-being or dignity of our fellow humans, we could argue that common-sense morality involves one fundamental moral principle, roughly speaking, the compounded principle that urges us to consider the well-being of others and to respect their intrinsic dignity. Consequently, a conception of morality will consist in a body of principles that is conceived as derived from, or as a specification of, this one complex basic principle of morality (cf. Steutel & Spiecker, 1997a, pp. 64–65). And the moral conception we are looking for, a conception of morally (im)permissible sex, will involve a set of moral principles which specify what it means to care for and to have respect for persons in the sexual sphere of life. Which principles could that be?

With reference to Belliotti (1993a,b), we think that the core of any adequate conception of morally (im)permissible sex will consist of two principles, which can be called the principle of *mutual consent* and the principle of *non-exploitation*. Other moral principles of course also apply to the domain of sexuality. Think for example of the principle of keeping one's promises, the prohibition to deceive another person and to avoid possible harmful consequences of our sexual activities on a third party. We will first explain and then briefly justify these two principles in terms of the indicated basic moral principle.

According to the principle of mutual consent, sex is only morally permissible if the parties concerned have consented voluntarily on the basis of adequate information. This principle implies that sexual activities can derail in three ways. First, one party (*P*) can *force* another party (*Q*) to (be subjected to) sexual activities. If, for example, *P* uses physical violence or is threatening *Q*, there is no voluntary consent. Secondly, one party (*P*) can deliberately *deceive* the other party (*Q*). For example, *P* feigns all kinds of feelings to persuade *Q* into certain forms of sex or misleads *Q* as to the nature of the act, as a consequence of which *Q*'s consent is indeed voluntary but is not based on adequate relevant information. Thirdly, in sexual activities persons can be involved who lack the *basic capacities* necessary for informed consent. Here we must think of a person who misses the mental equipment to see the pros and cons of different options, to weigh them against each other, and to decide on the basis of such deliberations. A clear example is a severely mentally handicapped person, who does not have the capacities for reasoning and choosing.

This principle is derived from the basic principle of care and respect for persons. It is an appeal to do justice to the autonomy of human beings, in this case to their capacity to decide for themselves whether to take part in certain sexual activities. All behaviour that is contrary to the voluntary consent of the persons concerned, including especially a number of forms of sexual violence and sexual intimidation, are therefore morally reprehensible.

Our sexual life should also comply with the principle of *non-exploitation*. In case of sexual exploitation one party (*P*) abuses another party (*Q*), in such a manner that the sexual interaction is profitable for *P* but at the expense of *Q*, or that the benefit of the interaction for *Q* is disproportionately meagre. The importance of this principle is that moral lapses can be indicated which cannot (sufficiently) be exposed on the basis of the former principle. These lapses relate to the conditions under which the informed consent is accomplished. Even if the first principle is met, sexual

interaction can be immoral if the terms of the mutual consent are wrong. First, *P* can misuse the *destitute circumstances* of *Q*. In many of these moral lapses *Q* will be aware of being subjected to exploitation. But because of being in dire straits or of having bleak prospects, *Q* settles for relatively small benefits. Secondly, *P* can take advantage of the *vulnerabilities* of *Q*. Think, for example, of the possibility of underdeveloped bargaining power of *Q*, or of *Q* being troubled by particular wants or needs *P* is aware of. In case of these moral lapses *Q* will often not realise being exploited.

This principle too can be conceived as a specification of the basic principle of care and respect for persons. For it prohibits forms of sexual interaction in which the other party is merely approached and treated as a means or an instrument for the gratification of one's own desires. But this second principle is as much founded in the other aspect of the fundamental principle of morality, namely, the exhortation not to harm but to care for the well-being of human beings. Even though the other party voluntarily agrees with our proposals regarding sexual interaction, if we realise that this person is seriously endangering her or his long-term interests, it is our *prima facie* duty to forbear from that interaction.

With the help of these two principles we can roughly demarcate the spheres of morally permissible and impermissible sex. These principles also enable us to explicate why paedophilia and incest are morally impermissible. We will start with paedophilia.

### Is Paedophilia Always Morally Wrong?

When do we call a person a paedophile? This question concerns the diagnostic criteria. In the chapter on sexual and gender identity disorders of the *DSM-IV* (1994) paraphilias are defined as recurrent, intense aphrodisiac fantasies, sexual urges or behaviours which occur over a period of at least six months and generally involve: (i) non-human objects; (ii) the suffering or humiliation of oneself or one's partner; or (iii) children or other non-consenting persons (Criterion A). Moreover, the fantasies, sexual urges or behaviours cause clinically significant distress or impairment in social, occupational or other important areas of functioning (Criterion B). If these recurrent fantasies, urges and behaviours involve sexual activities with prepubescent children (in general under 14 years of age) the main diagnostic criterion for paedophilia is met.

After the infamous Belgian Dutroux case (1998), in which paedophiles were suspected of sexually abusing and murdering several children in Western Europe, paedophiles became many a parent's nightmare. Recently this was demonstrated by a massive protest in Germany against the showing of the movie *Lolita* (directed by Adrian Lyne, 1997). The protesters apparently feared that by being confronted with Nabokov's leading character Professor Humbert Humbert some men might yield to the temptations of paedophilia and subscribe to Humbert's complaint that 'the old link between the adult world and the child world has been completely severed nowadays by new customs and new laws' (cited by Kaplan, 1991, p. 441). For Professor Humbert there is nothing inherently immoral in paedophile sex.

How do we evaluate paedophile sexual activities from a moral point of view? Are

such contacts always morally reprehensible? Or is paedophile sex under certain conditions perhaps morally permissible? In this section we shall try to answer these questions by testing paedophile sex against the two moral principles. Before doing so we want to indicate that sometimes different forms of paedophilia are distinguished: the fixated, the regressed, the exploitative and the aggressive or sadistic (Travin & Potter, 1993, pp. 65, 111). It will be clear that the questions we just posed relate only to the first two forms of paedophilia.

Is paedophile sex in defiance of the principle of mutual consent? Our answer is: it is certainly possible but not necessarily so. Many paedophile contacts are not characterised by coercion. Some will even maintain that a genuine paedophile will never resort to violence or threat. Neither is deliberate deception necessarily involved in paedophile sex. It may be assumed that not all paedophiles wittingly misinform the child to attain their goals. Nor do we think that paedophilia is always a form of sex with a person who does not have the basic capacities to make informed decisions. Surely, one can raise the criteria for being able to deliberate and to choose, as a consequence of which each prepubescent child misses the relevant capacities and all forms of paedophile sex become a moral lapse. But then the problem arises that also many normal adults will not meet these criteria, while we still are not inclined to regard sex with such adults as morally reprehensible. However, if we try to avoid this problem by formulating more moderate criteria, then we have to admit that in particular older prepubescent children may well have the relevant capacities (cf. Archard, 1998). Consequently, only sex with *younger* children is inadmissible. In other words, according to the first principle, not all paedophile sexual activities are morally wrong. This is only the case if the paedophile forces the child, deceives the child, or if the child is too young to have the basic capacities for informed consent.

In our view, however, all forms of paedophile sex, including sex with older prepubescent children, contravene the principle of non-exploitation and thus are morally reprehensible. As stated above, this principle is violated if a person misuses the destitute circumstances of another person, or if the person takes advantage of the other's vulnerabilities. Some paedophile contacts are clear examples of the former group of moral lapses: the destitute circumstances of the child are exploited. Think, for example, of sex with children in Third World countries, by which advantage is taken of the miserable circumstances these children live in. All remaining manifestations of paedophilia can, according to us, be regarded as moral lapses of the latter group: they are morally impermissible because there is always the inherent danger that somehow the paedophile takes undue advantage of the vulnerabilities of the child, especially of its limited bargaining powers and underdeveloped capacities to look after its own interests.

Not only paedophile sex is morally impermissible according to the principle of non-exploitation, for the very same reasons the principle also prohibits almost all forms of non-paedophile sex with children, that is, sex between adults and pubescent children who have not reached the age of legal majority. This can be demonstrated with the help of the following example. In 1997 the 35-year-old teacher Mary Kay L., a married mother of four children, was convicted by the court

of justice in Kent (Washington) to six months in jail after she pleaded guilty to two counts of second-degree child rape for having a sexual relationship (and a baby) with a 13-year-old former student of hers (*Time*, 16 February 1998). One could argue that the boy did (have the capacity to) consent—even wanted to marry his teacher—and that the boy did not find himself in destitute circumstances. But it could be argued that the teacher took advantage of certain characteristics (authority, power, dependence) that are inherent in any student–teacher relationship, and which make the child vulnerable. The second principle, so it could be argued, is surely offended against. Needless to say that other moral principles—this was also a case of adultery—were transgressed.

Characteristics of paedophile contacts are: (i) that the relation between the paedophile and the child is asymmetrical, which is expressed in particular by the fact that the bargaining powers of the paedophile are much greater than those of the child; (ii) that the prepubescent child is only to a limited extent capable of looking after its own interests; and (iii) that the paedophile by definition has a paedophile disposition and as such is bent on having sex with children. The relation between parents and children is also characterised by (i) and (ii). Condition (iii), however, is not typical of such a relationship. It is precisely this inclination that stimulates the paedophile to behave towards the child in an exploitative way. And the typical vulnerabilities of the child, in particular its limited capacities to both negotiate and to promote its own interests, actually make such an exploitation possible. This rough characterisation of paedophile contacts allows us to indicate what is the moral crux of incest: next to (i) and (ii), the parent is bent on having sex with his child (and might have a paedophile disposition). The child molester and the parent are one and the same person. This seemingly self-evident observation, however, has incisive moral implications.<sup>1</sup>

### **Why is Incest Always Morally Evil?**

*A fortiori* the presented moral considerations regarding paedophilia seem to apply to incest. It was argued, however, that according to the principle of mutual consent only paedophile sex with *young* children can be conceived immoral. This restriction, however, is not applicable for incest because the relationship between parents and children, including the older or pubescent child, is characterised by dependence and authority. These latter features hardly allow for ‘real’ consent (cf. Archard, 1998). Moreover, next to these characteristics, we believe that the parent–child relationship has other specific moral qualities that do persist at least until the child has reached adolescence. Before explicating these conditions, we will shortly discuss Belliotti’s view on incest in which he underscores the principle of mutual consent.

Incest, according to Belliotti, typically constitutes rape: it involves all the physical and psychological horrors accompanying rape (1993b, p. 246). Though it also includes abuse of the parental/custodial role and betrayal of (step)parents who present themselves as trustworthy, the core of incest’s immorality is non-consensuality. Incest is viewed by Belliotti as an especially venomous form of rape; it lacks libertarian agreement and involves other harms as well: ‘it retards gravely the

child-victim's self-development, it unjustifiably produces deleterious third party effects, and so on' (Bellioti, 1993b). Though (in the United States) having sex with a girl below the age of consent is called statutory rape (*Oxford English Dictionary*), rape in our common-sense meaning implies an element of violence or force. However, just as in some cases of paedophilia, the latter is not a necessary condition of incest. But Bellioti does raise one crucial issue, the betrayal, that we consider a negation of one of the basic moral qualities of the parent-child relationship. Which are these characteristics?

In trying to understand the ways in which genes and the environment work together in typical human development, Scarr (1992, p. 5) defends the view that normal development (of the child) does occur in a great variety of human environments, but not in those lacking 'average expectable conditions' under which our species has evolved. For infants and older children these species-normal environments include, among other things, protective, parenting adults, a supportive family and a supportive group into which the young child will be socialised. A rearing environment, Scarr underlines, that falls within the limits of normal environments is crucial to normal development (Scarr, 1992). In our view, Scarr's seemingly thin description implies rather thick moral concepts. We will spell these out very briefly. For a child to develop into a normal person certain (minimum) conditions have to be fulfilled; there must be adults who behave like parents, i.e. who provide the child with personal and unselfish care and attention, who offer a secure basis and stimulate the socio-moral and cognitive development of the child. All these (so-called 'normal') conditions could also be conceived as moral characteristics (or the specific 'moral climate') of a normal rearing environment. On the basis of these conditions the child can develop a secure attachment and an attitude of trust, both of which are necessary conditions for a normal development. Because in the case of incest the parent is the molester, the realisation of these conditions is greatly endangered and to the extent that these are already fulfilled they will deteriorate. What once was a secure attachment then turns into an anxious and insecure one; personal care and loyalty will not be perceived or sensed as unselfish and unconditional anymore. Without exaggeration one could characterise this process as a total collapse of (the system of) rearing conditions and at the same time of those of family life. In other words, incest almost inevitably leads to an abnormal development of the child. If incest is a perversion, as the philosopher Scruton argues (1986, p. 313), it is a perversion, not of the sexual act, but of the familial relationship. In this violation of a domestic tie the moral nature of incest is revealed: in incest the existing filial relation is destroyed and another, which is incompatible with it, is superimposed upon its ruins. Incest leads to a devastation of the 'average expectable (rearing) conditions' and therefore can be conceived as a serious breach of the principle of non-exploitation: the parent takes advantage of the vulnerabilities of the child.

In other words, different from paedophilia, *all* cases of incest are contrary to the principle of mutual consent. Moreover, often incest is even *more* morally bad than paedophilia because it more often seriously violates the principle of non-exploitation. Nevertheless, we think that its immorality is not yet fully fathomed or



understood with the help of these principles only. Given the specific nature of the pedagogical or filial relationship, i.e. the deep attachment and loyalty of the child to its caretakers on the one hand and the unconditional love and care of the parents on the other, we believe that the principles of mutual consent and non-exploitation do not fully grasp (or 'fit') the immorality of incest. Much more, so it seems, is at stake than a violation of the two mentioned principles, namely *a fundamental breach of the principle of trust*. It could be argued that the principle of trust can be deduced from (or is a specification of) the principles of mutual consent and non-exploitation. In this context, however, we prefer to conceive the principle of trust as an independent principle, i.e. as a relatively independent specification of the basic principle of care and respect for persons.

Trust is often conceived as a necessary condition for the child's development. Children normally trust that their parents will not lie to them and will not be driven purely by their own self-interest or pleasure (Spiecker, 1990). Usually their trust in parental inclinations and powers is almost unlimited. Such trusting, Slotte observes (1992, p. 49), is only a desirable characteristic in the young. It is a childhood-relative virtue, as the same trait seems actually to be a vice or anti-virtue in relation to adulthood. If there is a tinge of truth in this observation, a breach of the child's trust(ingness) cannot have but rather severe consequences. Alas, the often grave effects of incest for the development of the abused child are almost invariably in accordance with this supposition. In incest the moral foundations or conditions for a (normal) social and moral development of the child are undermined and destroyed. Often precisely those conditions that will enable the child in due time to acquire the basic capacities that underlie the principle of mutual consent are broken down.

## Conclusion

Though the classes of perpetrators of incest and paedophilia can overlap, the justifying moral reasons for considering both forms of child sexual abuse to be morally reprehensible in our view do not fully coincide. The principles of mutual consent and non-exploitation both apply. However, in cases of incest the degree of exploitation often is more grave. Moreover, the immorality of incest is intensified or deepened because it is a breach of the principle of trust. Though there may be considerable overlap between the classes of paedophiles and those involved in incestuous relationships, from a moral perspective the latter class indulges in activities that are far more worse.

## Note

1. An anonymous reviewer pointed out that there have been many challenges to the idea that voluntary consent is readily and easily available to adults, independently of their relative social structural positions. According to (radical) feminists, for example, even heterosexual relations among adults in patriarchy do not meet the condition of voluntary consent. Because of structured gender inequality, women cannot really give their consent and, consequently, heterosexual encounters are expressions of men's sexual subordination of women. Though we

cannot go deeply into this standard feminist criticism in the present context (see Archard, 1998), we would like to note that, according to this view, women who indeed with all their heart consent to a heterosexual act should be considered victims of a 'false consciousness'. These women are 'alienated' from their true self and need to be 'redeemed'. This (biblical and Marxist) scheme of arguing, including the universal claims, is well known and ultimately rests on certain dubious essentialist assumptions. Moreover, the claim that 'unenlightened' women cannot really consent to sexual encounters does not really undermine our arguments that young children surely cannot. After all, the radical feminist criticism does not imply that the notion of voluntary consent has no application at all, be it that it is reserved for the happy few.

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