

## Chapter Twelve: Children, sexualisation and the law

In contemporary social life there is little that arouses stronger feelings than the conjunction of children and sex. The sexualisation of children is condemned; the sex lives of children are tightly controlled, even criminalised; and paedophiles are amongst the most reviled criminal group in popular **discourses**. In this chapter we are going to unpack some of what constructs these strong feelings. We are going to examine what appears to be the taboo of childhood **sexuality** and the social, cultural and legal ways that this is responded to in contemporary social life. We are going to do this by examining the contrasting ways that childhood sexuality is figured; what happens when children send 'sexts' to each other; the controversies around paedophilia; and recent approaches to child sex crimes, including the offence of grooming and attitudes to child sexual exploitation.

By the end of this chapter you will understand more about:

- How childhood is constructed, and the role this takes in approaches to sex and sexual crimes.
- Child sexual **agency**.
- The politics and problematics of paedophilia.

## What is a child?

The answer to this question might appear to be self-evident, but what might appear at first to be a relatively straightforward question is more complex than it first appears. In one sense it seems easy to say that a child is simply someone who has not reached the age of majority yet. The age of majority is the age when people have rights as adults, independent of their parents or guardians. It is usually the age when people can vote, gamble, buy and drink alcohol, run for public office, and so on. Reaching the age of majority also brings an end to the period when the **State** has a responsibility to care for a child, for example by providing housing and education, and ensuring protection from **harm**.

According to the European Union (EU) and the United Nations (UN), a child becomes an adult when they are 18. However, in Greece, a person is a child only until the age of 8. After that, until they are 18, they are legally referred to as minors; a subtle difference, perhaps, but one that makes our discussion of what a child is more complicated (see Kierkegaard, 2008). In England and Wales, the age of majority is 18, and at 17 you are still legally a child, even though at 16 you can 'emancipate' yourself from your parents. In the USA, the age of majority is also 18, but you need to be 21 years old to buy and drink alcohol. Most countries of the world have 18 as the age of majority, but in Indonesia, Saudi Arabia and Yemen, you can be considered to be an adult at 15, whereas in New Zealand, 20 is the age of majority and in Singapore, Madagascar, and Bahrain, it is 21.

So, we can see already that what legally constitutes a child is quite contingent on geographical location. This has implications both for understanding how children's engagement with sex is viewed, regulated, and controlled. One key aspect of this is the age that a person can start legally having sex. The age of sexual consent in the UK is 16 and in Germany it is 14. Children in France are considered to be 'sexual minors' until they are 15. Note, this is not the same as having an age of consent that is 15. If an argument that consensual sex has taken place can be made, even young children can be considered to have consented to sex. It was only in 2005 in a case involving the sexual abuse of five-year-old children, that the courts agreed that very young children could never consent to sex (Bulletin criminel 2005 N° 326: 1121).

In the Netherlands, the age of consent used to be 12, subject to certain criteria, but in 2002 was raised to 16. In the USA the age of consent varies from state to state between 16-18, whereas in Brazil and Bolivia it is 14, and in Mexico, subject to certain restrictions, it is 12. Part of what these differences in age show is that there is no age of sexual consent of children that is inherently correct. If the same child can legally consent to sex in Mexico but cannot in Germany, this tells us that what we imagine is an appropriate age for children to have sex, from a public policy perspective, is a socio-cultural construct.

The restriction of children's sexual activity is on the basis that children lack the ability to provide informed consent, due to their age. While on the face of it this may seem to be a straightforward idea, as we discuss below, there are considerable challenges to assuming that age equals the ability to consent. As a consequence, criminal sanctions exist when those above the age of majority – adults – have sexual relations with someone below the age of consent, and in many jurisdictions, those under the age of majority – children – who have sexual relationships with other children. Such sexual engagement is referred to as sexual abuse.

While we do not know exactly how many children experience sexual abuse, the National Society for the Prevention of Cruelty to Children (NSPCC, April 2019) in the UK estimate that 1 in 20 children have been sexually abused, girls are more likely to experience sexual abuse, and the vast majority of children who experience sexual abuse are abused by someone they know. Unicef (2019) estimate that worldwide around 15 million adolescent girls aged 15 to 19 have experienced forced sex in their lifetime. Boys are also at risk, but estimates are limited due to lack of data. Data on sexual abuse against boys is only collected in a small number of countries and boys may also be less likely to be willing than girls to report abuse (Unicef, 2019). Why do you think that might be? What assumptions about **heteronormativity**, masculinity, or homosexuality might be at play in under-reporting?

Legal restrictions of sexual engagement with a child are complicated further, as even when the age of consent is fixed in law, there are still some nuances to take account of. In England and Wales, for instance, there are different regulations regarding children who are aged under 13 who have sex and those aged 13-16. Under the Sexual Offences Act 2003 in England and Wales, a child under the age of 13 can never consent to sex, but a child aged 13-16 who might willingly consent to sex with someone of a similar age, may find their case is treated more leniently in a court of law even though sex with this age group is still prohibited.

Similarly, in the USA the marriage of children is illegal in law. One needs to be 18 years old to get married. Yet in practice, the marriage of children is permitted in several states under special circumstances; when parents have given permission, a judge has consented, or in the case of pregnancy. The anti-child marriage awareness-raising group Unchained at Last reported that 207,468 children were married in USA between 2000 and 2015 (Ferguson, 29 October 2018). In only 14 per cent of the cases did a child marry another child; often children were married to people many years older than them. In Tennessee, in 2001, three 10-year-old female children were married to men aged between 24 and 31, and in 2006 an 11-year-old male child married a 27-year-old woman. In Alabama, a female child aged 14 married a 74-year-old man. Many of these marriages disproportionately concern girls who are married to much older men (Baynes, 8 July 2017). Most of these marriages affect children in poor, rural families. As with child marriage that happens in other parts of the world,

these families might consider child marriage as a solution which provides for a child they cannot afford to look after. Sex is usually considered to be an intrinsic part of marriage so in these cases what we find are sexual adult/child relationships which are sanctioned by the state in a way that they would be otherwise criminalised.

Concerns about the sexual activity of children have a long history. The age of consent has developed over time, perhaps as an expression of this anxiety. It has also been overtly **gendered**, historically focused only on girls entering into heterosexual sexual relations. In the UK, female homosexuality has never been criminalised, and so historically there was not an 'age of consent' for sex between women. On the other hand, male homosexuality was illegal for everyone for most of the twentieth century, and the years before (see Chapter Three for our discussion of the history of criminalisation of men's sexual relationship with other men). When male homosexuality was partially decriminalised in 1967 the age of consent for men was set at 21: five years older than for heterosexual sex. Then, in 1994, the age of consent for male homosexual sex was lowered to 18, and it was not until 2001 that young men who wanted to have sex with men had the same rights as young men who wanted to have sex with women, and the age of consent was set at the age of 16. Historically there has been an inherent assumption that it was girls, not boys who needed to be protected from engagement in heterosexual activity. For example, in England and Wales the age of consent for girls was raised from 12 to 13 in 1875 under the Offences Against the Person Act, which made no mention of boys. Similarly, when the age of

consent was raised to 16 in 1885 by the Criminal Law Amendment Act, the law specifically regulated sexual interaction with girls, rather than boys.

What we see evolving is a complex, sometimes conflicting, approach to dealing with the sexuality of children in law across various jurisdictions. But we also see this complexity in popular and media discourses about childhood sexuality and the perceived increased sexualisation of children. The 'premature' sexualisation of children has been seen as a growing problem, with specific concerns over the effects of sexual marketing and media, see, for example, the 2010 report *Research on sexualised goods aimed at children* commissioned by the Equal Opportunities Committee of the Scottish Parliament. This report found that parents and children had different understandings of what sexualisation, in the context of marketing targeting children, might look like. Some parents expressed idealistic imaginings of how children and childhood should be, evoking a figure of the innocent sexless child. Some parents even felt that sexualised clothing – Playboy branded products, for instance – were responsible for trying to 'groom' children into **sex work** (Buckingham et al, 2010: 49). Children, on the other hand, expressed a desire to be able to interact with sexualised marketing because they knew it was not serious or how they 'ought to' behave (Buckingham et al, 2010: 60). Indeed, they expressed rather normative and critical views of other children who wore Playboy thong-style underwear, for instance, in sexualised ways (Buckingham et al, 2010: 63). These different interactions with sexualised marketing demonstrate that children are savvy consumers. It also

demonstrates that the different relationships that parents and children have with sexualised marketing make for different interpretations of the same product (Buckingham et al, 2010: 4).

## **Thinking about childhood sexuality**

Childhood sexuality – like all sexuality – and childhood in general, is socially constructed; that is, there is nothing (or not much) that is ‘natural’ about childhood. The social construction of attitudes to sex and children informs some of the way that childhood is treated in law. Adopting a quasi-historical analytical approach, Philippe Ariès (1962) argues that the notion of childhood was invented as a product of **modernity**. That is, before the nineteenth century, in **Western** contexts, childhood was not treated as a distinct stage of life ‘the idea of childhood did not exist’ (Ariès, 1962: 125), and children were treated as small adults. Part of the reason for this is related to high child mortality rates which meant that children were treated indifferently, or neutrally, until they had survived infancy. Then, with the reduction of child mortality, coupled with increased consumerism, the rise of the welfare state, and the creation of laws which protect children’s rights, the modern construction of childhood that we are more familiar with emerged. Ariès’s analysis has been critiqued by scholars who accuse him of romanticising an imagined past where children lived a vibrant existence rubbing along with adults and doing adult things like working, drinking alcohol, and being independent rather than recognising a more nuanced picture of the reality of the lives of so-called pre-modern children.

Nonetheless, in the context of sexuality, Ariès explains at length how sexual episodes in the infancy of Louis XIII of France were recorded by the royal physician as evidence that childhood expressions of sexual desire were not considered to be a cause for concern; not because children were necessarily sexualised, but rather because they were considered to be sexless; unable to understand erotic play as sexualised. Michel Foucault's (1998[1976]: 25) analysis of the construction of sexuality seems to tell a similar story; that with modernity, with the need to create a citizenry, and manage a population (to build a **nation**, see our discussion of this in Chapter Three), came what Foucault refers to as the administration of sex. As we saw in the debates around sexualised marketing aimed at children above, even in contemporary discourses, it is considered that it is inappropriate for children to be targeted by sexualised imagery. In Foucault's analysis, children were kept sexless by making discussion of sex something taboo; forbidden, 'everyone knew, for instance, that children had no sex, which is why they were forbidden to talk about it, why one closed one's eyes or stopped one's ears whenever they came to show evidence of the contrary' (Foucault, 1998[1976]: 4).

The sexuality and sexual expression of children produces such anxiety that it is pathologised. It can be dealt with by the criminal justice system, but more commonly it is medicalised, treated as a fault of the parents, and understood as something to be fixed. Ian Hacking suggests that these identities – like homosexuality – or maladies,

such as people who suffer from the 'once fashionable' ailment of 'automatic writing' (writing that appears to emerge from the subconscious) (1986: 162-3), or suicide (1986, 169) – were 'made up'. They come into being through systems which are in place to identify them, name them, and count them. The 'making up' of people, in this way, draws attention to how these categories become contingent on the political, legal, medical priorities of the moment in which they are conceived (which is why, for instance, Hacking, building on Foucault, argues that before the nineteenth century there was no 'homosexual' – only 'inversion', or the act of 'sodomy', see Chapter Three).

[START TEXTBOX]

Foucault was writing about scenarios which evolved over the last few centuries. Do you think they still apply today? Consider what you think would be an appropriate response to the following situations:

1. Two five-year-old boys kiss, suck and play with each other's penises at the home of one of the children.
2. A seven-year-old girl encourages her four-year-old brother to undress with her so that they can cuddle each other naked.
3. A nine-year-old girl appears to flirt with, or express a crush on, an adult friend of her parents.
4. A baby girl appears to rub her vagina against her toys in her crib.

5. A 12-year-old boy and a five-year-old boy kiss, suck and play with each other's penises at the home of one of the children.

What is going on in each scenario? Which scenarios would be a cause for concern for you? Is anything wrong with these children? What should we do about them? Reflect on your reaction to the scenarios.

If you are feeling unnerved or uncomfortable by the thoughts of children behaving in such a way, then you are not alone. Foucault (1998[1976]: 6) argues that childhood sexual expression causes such anxiety that it is completely repressed in contemporary society. What do you think of this idea? Do you agree that childhood sexuality is *wrongly* silenced? The idea that children might desire sexual contact is almost abhorrent in much of our thinking, but is this in part because of the idealisation of childhood as a time of innocence?

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Ken Plummer (1991: 263) suggests that what is going on is that children are sometimes sexual and sometimes not; they have the 'potential or capacity for something that can be called sexual', but just because this capacity for, instance for 3-year-old boy to have an erection, or a baby girl to have what appears to be an orgasm does not mean that they are intrinsically sexual in a way that is understood by adults. Plummer explains that the social construction of sex, including the way that adults talk about it when around children, construct the symbolic and social meanings of sex.

As a child gets older, even if they are still very young they, 'come to appreciate that sexuality is not a neutral value-free zone, but one heavily embedded in judgements and emotions...a child comes to understand that sexual matters are not a matter of public knowledge; they must be pushed into private thoughts and private spaces' (1991: 239). Paul Flanagan (2014) confirms this: in a study of how parents and teachers of primary school aged children react to scenarios like the ones we outlined in the task box above, he found that adults have a tendency to interpret child sexual behaviour through an adult lens, rather than interpret actions as a child might do. Given that children have an evolving sense of sexuality they may not ascribe the same meaning as adults to the acts that they participate in; do we need different tools with which to think about the sexuality of children?

In 1989, 140 countries of the world signed the UN Convention on the Rights of the Child (UNCRC) to accord specific human, civil, and social rights to children. Currently 196 states are party to the UNCRC including all members of the UN except the USA who remain the only state to have signed, but not ratified, the convention. The treaty requires states to implement laws which protect children against abuse and neglect, exploitation, slavery, trafficking, and participation in warfare. It protects children's right to their identity – to know who they are – and the right to recreation, leisure, education, legal protection, and the promotion of their well-being. Children have the right to freedom of expression, the right to privacy, and the right to lead lives which are not unduly interfered with. Though the elements of the treaty are not necessarily

implemented successfully everywhere, according children these rights recognises the specific status that children have as people who are potentially vulnerable, whose developmental capacities are evolving, and yet who have some agency. In law, this usually means that they cannot be subject to the death penalty, that the corporal punishment of children is prohibited or regulated, and that they must be protected from abuse.

We have already seen how childhood, as a construct, is partially contingent on socio-cultural contexts. Part of this also means that there are socio-cultural differences across the globe which make the application of the UNCRC complex and uneven. The case of child marriage, outlined above, is just one example of this. It is important to bear in mind that these differences mean that approaches to childhood sexuality cannot be the same in all geographical locations, and that moreover, narratives from **post-industrialist** countries we usually refer to as the **Global North** should not dominate our thinking about these issues.

Risk, we know from Chapters One and Nine, is central to the regulation of **sexual practice**. Here, Sonia Livingstone and Monica Bulger (2014) note that in the context of digital media, and the exercise of children's rights in general, policy-makers have adopted a risk-averse approach and discourage the use of digital media as part of teen sexual practice in all circumstances. Instead, the authors suggest that an approach which takes into consideration that some element of risk is acceptable should be

adopted, and that an interplay between building resilience and calculated risk-taking would foster approaches which more readily reflect how children interact with the world. Children, note Bulger et al (2017: 760), are too often figured as ‘passive innocents’ in the online realm. We see this in our discussion of online grooming in Chapter Seven. Children’s agency, and capacity to act, ought also to be recognised in the context of children’s rights. When talking about sexuality, we see these nuances play out in debates about sexting among children (Lampe, 2012; Lee et al, 2013; McLaughlin, 2010). But they are also at play in the arguments made by pro-paedophile activists (O’Carroll, 1980). We will see more of how this unfolds in the following sections.

## **Sexting teenagers**

Sexting can be defined as the sending of ‘sexual communication with content that includes both text and images’ (Wolak and Finkelhor, 2011: 2). As we begin to see in the discussions in Chapter Eleven about digital sex, sexting has become a popular, normalised form of flirting (Lee et al, 2013: 45). Janis Wolak and David Finkelhor (2011) identify a typology of sexting to better understand the phenomenon. They focus on ‘youth-produced sexual images’ – images of children taken by children – and distinguish between ‘experimental’ and ‘aggravated’ sexting (where the sexting is accompanied by a crime; for instance, an adult is involved, or a child extorts or abuses the person in the picture). Their typology is summarised in Table 12.1.

[Table 12.1 HERE].

Yet, in the context of sexting between, or including children, sexting poses a specific problem for the administration of justice (McLaughlin, 2010; Lampe, 2012; Lee et al, 2013). Consider and compare these different sexting tips found online.

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Taken from 'Sexting: The Ultimate Guide' (Jalili, Jan 1 2018).

1. Timing is everything.

It's best to be aware of what your partner's doing when you want to initiate if they're out to lunch with the family— not the best time to roll out a steamy sext.

2. Take it slow.

Sexting is all about the build-up. Begin the conversation with an opening that indicates you're ready to play without revealing too much. Sending a selfie of your cleavage, for example, with a simple message of 'Hey you' can grab their attention while making your intentions clear of what this thread can become if the person is willing to answer back.

[...]

4 Keep some sexy pics locked and loaded in your library.

Keep a set of stock selfies so you don't have to deliberate in delivering an image. You want responses to be quick and lively.

Taken from 'Tips for dealing with teen sexting' (ConnectSafely, May 7 2018).

- The safest way to avoid a picture getting into the wrong hands is to never take it or share it. Sadly, there are cases (sometimes called "revenge porn") where someone shares pictures meant only for them — sometimes after a breakup.
- Never take and send an image of yourself under pressure, even from someone you care about.
- If a stranger asks you to take a revealing picture, it could be a scam that could lead to further demands and threats ("sextortion"). Do not respond and consider reporting it to the police, [and] your parents. It could be a criminal who has exploited other people so you're helping others by alerting authorities.
- If a sexting photo arrives on your phone, first, do not send it to anyone else (that's not only a violation of trust, but could be considered distribution of child pornography). Delete the photo(s). If it would help – especially if you're being victimized – talk with a parent or trusted adult. Tell them the full story so they can figure out how to support you. Ask them to keep you involved.
- If the picture is from a friend or someone you know, then someone needs to talk to that friend so he or she is aware of possible harmful consequences.

You're actually doing the friend a big favor because of the serious trouble that can happen if the police get involved. Get the friend to delete the photo(s).

- If the photos keep coming, you and a parent might have to speak with your friend's parents, an attorney, or school authorities.

Analyse these two pieces of advice. What similarities and differences are there between them? What do they assume about the reader? What do they assume about sexting? [END TEXTBOX]

We might argue that these two pieces of advice reflect a double discourse about sexting. Sexting itself is considered to be a normal part of fostering an erotic encounter for adults (the first piece targets and adult readership), but for children (teenagers) the erotic potential of sexting is curtailed by the risk that it poses to the sexters. The advice is often, simply, not to do it; the second text above mentions different crimes that a sexter might fall victim to inadvertently. Whilst the first advice box suggests that sexters might want to keep a private gallery of sexy photos to use when they are sexting, for people under 18, the advice is to delete any evidence of sexy photos from their devices.

Jessica Ringrose et al (2013) question the way that discourses around sexting safety turn on the notion that consensually-sent sexualised images carry with them a stain of shame if they are discovered. In a social context where the expression of sexuality –

particularly for women – is shameful and the sexual practice of children in particular is taboo, narratives around children who sext are laced with anxiety about harm, shame, and risk to reputation. Of course, there is a double standard between male and female children’s experiences of shame and reputation-management in the context of sexting, but there is also a conflicting narrative between what expression of sexuality is permissible for children and what is permissible for adults. Do you think that this is reasonable distinction to enforce? As we noted above, there are many things that children are not able to do that adults are. Should sexting simply be among them? But if so, where does that leave the emphasis in agency, privacy, and a right to freedom of expression that is protected by the UNCRC (Bulger et al, 2017: 760)?

In law, this disjuncture can lead to young people who produce visual sexts (selfies of themselves naked, or of parts of their naked bodies), and who send them to someone else – even their own girlfriend or boyfriend – being prosecuted under laws against the production and distribution of child pornography (Lee et al, 2013). As research by Bulger et al (2017), Joanna R. Lampe 2012, and Murray Lee et al (2013) demonstrates, this is a legal issue that affects children in all sorts of national contexts, not just the USA and UK where the majority of these debates seem to take place. For example, in South Africa, legislation aimed at criminalising adults who solicit or share child pornography is used to criminalise people under the age of 16 who send nude pictures of themselves. Children in South Africa have their rights to privacy and freedom of expression protected under the national constitution, so children’s rights activists

have argued that children who send sexts to each other ought not to be criminalised (Bulger et al, 2017).

Bulger et al (2017) and Julia H. McLaughlin (2010) both note that in some jurisdictions, for instance the USA, children who commit serious crimes can find themselves tried and punished as adults. This means that for a serious crime like the circulation of child pornography, a child might find themselves tried and convicted in an adult court for a crime that they were only able to commit because they were children. This can mean that children who are accused of sexting crimes end up finding themselves on sex offender registers. A BBC investigation using Freedom of Information request to police forces in England and Wales found that between 2014 and 2017 over 4,000 children had been investigated by the police due to sexting. While the most common age of those involved was recorded as 13-14 years, nearly 400 children under the age of 12 were spoken to by police during the time-period, the youngest person being a boy aged five (BBC News, 11 July 2017).

In an Australian context – and the same is likely to be true elsewhere – Lee et al (2013) also observe that part of what fuels the anxiety about sexting and young people is a ‘moral concern’ about childhood expressions of sexuality. Borrowing from Foucault’s (1998[1976]) observations about the way that the sexuality of children is a source of anxiety in the service of nation-building, they suggest that policy, family, and legal concerns about children who send sexts to each other – and the description of

this as child pornography – actually expresses another socio-cultural anxiety; the anxious need to create a docile, self-regulating, self-censoring, obedient citizen (Lee et al, 2013: 42). If people agree that sending sexts is something to be ashamed of, that it is risky, and that these risks might ruin their chances of ‘running for Congress’ (see Ringrose et al, 2013: 319) then contemporary injustices that emerge as a result of squeamishness about sexuality continue to be perpetrated. At their fullest extension, it is because of these injustices that slut-shaming, victim-blaming, and sexual harassment, for instance, still exist.

[START TEXTBOX]

### **Debate the issue: Should teenage sexting be decriminalised?**

Consider:

- What do you think about this suggestion by Lee et al (2013)?
- Does it surprise you that public policy, the State, even laws created to protect children would be used to control childhood sexuality in this way?
- Is image-based teenage sexting the same as child pornography?
- At what point does the creation and sharing of a consensual image-based sext become pornographic?
- Does it depend on the explicitness of the image? On whether it is a selfie or taken by someone else? On whether the recipient is an adult or not? Or when it is circulated as an act of ‘revenge porn’ (see Chapter Eleven for more discussion of ‘revenge porn’)?

- Is it socially damaging to remove the stigma of sexting? Would decriminalising sexting simply give young people free reign. If so, what are the problems with this? Lampe's (2012: 726-7) proposed statute might help you in your thinking.

[END TEXTBOX]

## **A scandal**

In 2012, a paedophilic sex scandal erupted in the UK which appeared to fundamentally alter the way that sex, celebrity, and abuse were thought about in the public imagination. Claims of sexual assault perpetrated by a famous, deceased television personality and entertainer emerged. Jimmy Savile was, in his life, what popular media in the UK like to call a 'national treasure', meaning that he was popular, respected, and held a place in the hearts of people who knew of him. In the 1980s, Margaret Thatcher, the then Prime Minister of the UK, nurtured a close relationship with Savile and credited him for his benevolent work with sick and disabled children. In 1990, he was knighted by the Queen for his services to charity work. It later turned out that he had been using his position of trust as a trustee of a children's hospital to sexually abuse the patients therein. He assaulted female children who appeared on his TV show and on the various media-related public appearances that he made around the country in the 1970s to the 1990s.

In the wake of these accusations, hundreds of similar claims of sexual abuse perpetrated by other male figures in the public eye emerged. Politicians, entertainers,

DJs, and other TV personalities were accused, and many were subsequently found guilty and imprisoned for sexual assaults they perpetrated thanks to the impunity of their celebrity status in those decades (see Independent Inquiry into Child Sexual Abuse, April 2018, see also the extended discussion we have about this in Chapter Seven about sexual exploitation and the media). When reflecting on the way that attitudes to this kind of sexual assault against children have evolved, consider the observations that Hacking (1986) makes about the way that social, legal, medical, and political changes construct people, and our ideas about people.

Alongside these scandalous revelations in 2012, came the news that in 1976 a support group which sought to protect and promote the rights of paedophiles received the endorsement of the National Council for Civil Liberties (now called Liberty) and submitted a claim to parliament that 'childhood sexual experiences, willingly engaged in with an adult, result in no identifiable damage. The real need is a change in the attitude which assumes that all cases of paedophilia result in lasting damage' (Henley, 3 January 2013). During the Savile scandal, various media sources reported that many politicians who were serving in Tony Blair's government (1997-2007) also supported these claims for paedophiles' rights. These claims were made in the context of very specific shifts in the sexual landscape in the UK (Weeks, 1981). Homosexual sex between men had become legalised, and the availability of the contraceptive pill meant that more women and men could have sex without fear of pregnancy. This meant that pre-marital sex was more common and alongside the call for recognising

the rights of paedophiles to enter into relationships with children, there were calls to reduce, or even remove, the age of consent. In this section we are going to unpack these ideas in dialogue with some what we have already said about sexting and childhood sexuality, above.

### **A radical case for paedophilia?**

In order to help us understand these controversial (you may think horrifying) ideas better we draw on the book written in 1980 by pro-paedophile activist Tom O'Carroll and the politics and purposes of the Paedophile Information Exchange (PIE) of which he was a founder member. The PIE was an organisation established in 1974. It was intended as a support network for men and women who were paedophiles, to be able to meet each other and to help each other find strategies to live as paedophiles in a world that despised them. It also acted as a political lobby group fighting for paedophiles' rights. O'Carroll uses his text as a vehicle to explain more about how he experiences paedophilia as a sexual orientation. He writes:

I have been sexually attracted towards children, especially young boys, since I was a child...from six years onwards I recall consistently rejecting the overtures of little girls who said "I'll show you mine if you show me yours" – I would have been ashamed to do anything so rude – but beyond the age of 10 or so, the thought of other boys' bodies began to excite me beyond my power to resist. My school days have in fact been the most sexually active ones of my life to date. (1980: 9)

Later he continues:

I [was]...sustained by just one slender hope; the hope that I might somehow make a go of marriage, and raise a family of my own. For then I could be a good daddy. I'd be able to express my love physically enough by hugging the children, and bathing them, and changing their clothes. They would never need to know that [this] was a sexual turn on for me. I would hide it for their sake...The family doctor thought that this was a good idea too. He supposed that exposure to women would give me a taste for them... [and that] I would soon outgrow this nonsense about boys. (1980: 11)

O'Carroll uses his book to come out as a paedophile and to make the case, over the course of 13 chapters for why paedophilia – sexual and romantic attraction towards children – should be recognised as a minority sexuality, in the same way that politicised homosexual groups were also advocating for themselves at this time.

[START TEXTBOX]

Read again how O'Carroll explains paedophilia above. Note your thoughts about it.

Many people think that paedophilia is a disgusting outrage. Here, we want to take our analysis a level further.

- Why do you think the way you do about what O'Carroll says?
- What, in what he says, or does not say, helps you to come to this conclusion?

- What do you think of the treatment that his doctor suggested for him?

[END TEXTBOX]

Drawing on an array of source material, O'Carroll posits that children are sexual beings. Citing Sigmund Freud (1905) and Alfred Kinsey (1998[1953]), he explains that children and babies have sexual desire and can express sexual pleasure. Kinsey's report of the masturbation practices of three-year-old children is cited at length. The sexual practice of children is not considered to be harmful, and is, indeed, good for them, according to Kinsey et al (1998[1953]). O'Carroll also cites examples from different communities where child sexual practice takes place. Among the Trobriand in North West Melanesia, or in Polynesia where anthropologists including Bronisław Malinowski (2002[1929]) and Clellan S. Ford and Frank A. Beach (1951) note that sex between children and the masturbation of children is something that happens without causing too much concern to others living in the community. He uses these examples to make the claim that children have their sexuality curtailed in what he calls '**Western**' societies. Rehearsing similar arguments to those upon which the UN has formulated the notion that children have rights (though, remember, that treaty was signed long after O'Carroll published this book), O'Carroll suggests that the prohibition of sex with children is an infringement of the rights of children to freedom of expression and the **power** to decide what they do with their bodies. Note that O'Carroll is interpreting childhood sexuality as equivalent to adults'; this is in contrast the argument made by Plummer (1991), as we saw above.

O'Carroll makes a number of other observations that make the case for legalising paedophilia. For O'Carroll, there is a distinction between paedophiles (child-lovers) and child molesters. He explains: 'there is much in consensual paedophilia, as opposed to child molesting, that presupposes a gentle, almost feminine type of sexual expression rather than one which conforms to the masculine stereotype of dominance and aggression' (1980: 35). O'Connell is referring to non-penetrative sex that these adults have with children, here, and this is what he means by 'feminine' sexual expression. Indeed, O'Connell counsels against having penetrative sex with a child under 12 (though according to the PIE's own policy proposal, children as young as 4 might be able to consent to penetrative sex). Paedophiles love children, he argues, and would not do anything to hurt them or to abuse them. Just as men who rape do not do so out of desire, but rather as an expression of abusive power, so too, child molesters are not all paedophiles, and not all paedophiles molest children. Paedophiles who want to enter into caring and consensual relationships with children should be able to do so. O'Connell suggests that most paedophiles are not attracted to very young children (under 4 years of age), and that most develop relationships with children who can verbalise their desire.

O'Connell argues that if children have the right to say 'no' to sexual contact – kissing a family friend or receiving a hug from an auntie or uncle – then they should also have the right to say 'yes' to a sexy massage, masturbation, or oral sex with an older person.

Even babies, O'Connell concludes, might enjoy having their genitals tickled by their parents as part of the everyday intimate care of such young children (washing, dressing, nappy changing). Their consent should not need to be sought in an explicit manner for something as harmless as that. It might be helpful to go back to Chapter Four to contextualise O'Connell's arguments within our discussion of the concept and complexities of consent. We discuss consent in the context of O'Connell's manifesto below.

O'Connell's book is engagingly written and is a tightly-argued call for paedophile's rights to be recognised. It espouses **sex-positive**, sexually liberal positions which seem to follow the queer and feminist epistemology that we encountered in Chapter Two; that is, O'Connell argues against **patriarchy** and heteronormative ways of relating. He argues for sexual agency and the rights of gay men and women to be recognised in law. He demands that there be more discussion of sex and sexual practice in schools, for instance, to take away taboos around frank sexual discussions; active in the 1970s and 1980s. O'Connell was writing at a period when it was forbidden for schools to talk about non-heterosexual sexualities in sex education classes, it is only in recent years that sex education has become more pluralistic and diverse (see Chapter Three for our discussion of this). He argues that women should have access to abortion on demand; something that feminists still argue for, and women still do not have the right to. He argues that we should strive politically and socially to eradicate the shame and stigma associated with sex, desire, and what we do

with our bodies. He argues that children should not be taught sexual shame. Much of this commentary is laudable. We may even agree with it. So, if we want to object to his thesis, we need to give consideration to the basis of our arguments, without falling into the myopic hysteria that O'Connell accuses his critics of. Do we want to counter his thesis? If so, on what basis would you go about this? We are aware that such a consideration may make you feel uncomfortable, however, we want to remind you that discomfort over a troubling idea cannot alone create a foundation for a strong rebuttal to an argument we may not like.

### **Consent**

Some might argue that children – especially those under the age of 13 – cannot consent to sexual activity. They may say 'yes', they may look like they want to participate, but because they are so young, they are not developmentally or socially able to 'agree by choice [with] the freedom and capacity to make that choice' (using the definition of consent in the Sexual Offences Act 2003, section 74 applicable in England and Wales). O'Connell argues that children develop and understand the world at different paces, so some children, perhaps, cannot consent to sex at the age of 11, whereas others of the same age will be able to understand what consent means and the consequences of that choice. O'Connell responds to the suggestion that sex sometimes has consequences such as pregnancy and diseases, the risks of which young people may not fully comprehend by suggesting that school sex education should be better, doctors be better trained to deal with children's sexual health issues

and that abortion should be more readily available. These might all be good ideas, but they neglect the affective and emotional aspect of sexual practice; that there might be consequences beyond the physical to sexual encounters which go wrong, for instance, or which leave people feeling vulnerable or rejected. They also neglect practical consequences of pregnancy in childhood; that it comes with serious health implications (see World Health Organisation, 2020), and that abortion, even if undertaken willingly and in a supportive environment, can be a traumatic experience for someone undergoing it. The robustness with which adults might meet such an experience is built in childhood through the experience of living, so it is impossible for a child – especially a very young child – to consent to sex with a realistic appreciation of the potential consequences of that choice.

## **Power**

One obvious objection might be that between adults and children there are imbalances of power. Financially, socially, politically, physically, adults have more power than children. The fact of this power imbalance is what enables abusers to molest children in the first place. Adults' better understanding of the world means that they are better able to manipulate children to abuse them, or simply to get them to do what they want them to. We can see the imbalance of power between adults and children in the reasons that children give for not reporting their experiences of sexual abuse. The education programme Thinkuknow (n.d.) from the National Crime Agency, UK, outlines reasons why children did not tell anyone about their abuse:

I might be seen as different.

This is going to cause problems in my family/community/school.

I may be taken away from home.

I don't want the police or social services involved in my life.

I don't want the abuser to get in trouble (because of feelings of loyalty, love, fear etc).

I'm going to be blamed.

Images will be found which I'm embarrassed about.

I won't be believed.

I won't be taken seriously.

He/she is going to hurt or embarrass me or my family or someone else.

If we imagine that a child can consent to enter into a sexual relationship with an adult, then that relationship can never be one of equals and therefore is inherently unjust.

O'Carroll tries to deal with this in his ninth chapter, where he argues that in a heterosexual couple, some women are financially, socially, and physically weaker than their male partners, but we do not stop them from entering this partnership, and nor should we. O'Connell also notes the ways in which children manipulate adults to get what they want. Are there any limitations to these arguments?

One thing, for instance, that O'Carroll does not address is the way that the power imbalance between adults and children is structural, and in many ways, with good

reason. Ever since The Factory Act of 1833, child labour for children under the age of 13 has been abolished in England and Wales (where O'Connell bases his argument). Children are now not usually allowed to work before the age of 16. So, in an adult-child relationship a child could never be the social or economic equal of their adult partner; they would always be dependent on their partner for their sustenance. Even if, as in the example that O'Carroll (1980: 130-3) presents, children offer to exchange sexual favours for presents and treats (child sexual exploitation is what we call this now), this does not mean that they hold equal power in the relationship. This is different to O'Carroll's example of the wholly dependent wife or girlfriend who could in principle be financially and socially independent, even if she is not in fact.

### **Incest**

A third objection might be to the way that O'Connell's thesis seemingly transgresses the incest taboo. In his opening chapter – cited above – he talks about having his own children with whom he might express his sexual desires. In the USA, the Childhood Sensuality Circle (an equivalent group to PIE) developed a Child's Sexual Bill of Rights in which they state that children should have a: 'choice of a sex partner: every child has the right to loving relationships, including sexual, with a parent, sibling, or other responsible adult or child, and shall be protected and aided in doing so by being provided with contraceptives and aids to prevent venereal disease' (cited in O'Connell, 1980: 112). To many people the transgression of the incest taboo would be unacceptable, and yet nowhere in his otherwise well-written tract does O'Connell deal

with this head-on. The incest taboo is universal, and its purpose is to foster exogamy and the building of cooperative societies and worlds. Incest reduces, rather than expands, kinship ties and support groups. In a modern, **capitalist** society perhaps this matters less, but incest taboos are fundamental, and it is no wonder that many people will balk at this suggestion; it is telling that O'Connell offers no counter arguments.

### **A sexual orientation?**

We started by asking whether or not paedophilia is a sexual orientation. One of the ways that groups like PIE were able to get the backing of groups like Liberty was because they framed their cause as one of minority rights. Aligned to the **LGBT+** cause, PIE supported gay rights and claimed to be supported by pro-gay rights groups, such as the Gay Liberation Front, MIND, and the Albany Trust (a specialist counselling and psychotherapy charity, focusing on a positive approach to sexuality and relationships). Many gay activists were horrified that the PIE had become allied with them; to say that paedophilia was like homosexuality was an outrage, they argued. One response to O'Connell's plea for a radical politics of paedophilia is that paedophilia is not a sexuality. It is a condition, or a vice; something that must be overcome, or treated, but not legitimised. What do you think?

Michael C. Seto (2012: 232) has given some thought as to whether or not paedophilia is a sexual orientation. Defining a sexual orientation as the 'directions of a ... person's sexual thought, fantasies, urges, arousal, and behaviour'. He argues that sexual

orientation is established by early age of onset; by the expression of sexual and romantic desire; and by being stable and not altering over time. He finds that paedophiles do report a paedophilic sexual expression which is akin to a sexual orientation, but that one of the problems with this is that paedophilia arouses such strong sentiment against it, that it is 'unlikely to ever be accepted' (Seto, 2012: 234). Instead, given that paedophilia might be a sexual orientation, he argues that it is one that should be met with more compassion and understanding – even tolerance – than aggression. Do you agree that we should be more tolerant towards paedophiles? Or do you think that the social hatred of paedophiles serves an important purpose? If so, what might that be? And why do we need it?

In 2005 a German project called Prevention Project Dunkelfeld was launched. It operates from the basis that paedophilia is a sexual orientation, but that the sexual abuse of children is a choice. The Berlin-based project targets men and women who have sexual desire for children but who are not registered paedophiles who have been convicted of sex crimes. These are known as existing in the 'dunkelfeld' or 'dark field'; an obscured figure of sexual child abusers who have not been reported to the authorities (Beier, 2018: 1065). In 2017, 8479 people applied to be treated by the Dunkelfeld project. Of these, 1418 received treatment (Beier, 2018: 1066). Through therapy, participants in the project learn 'impulse control by using cognitive-behavioural techniques, sexology concepts, and pharmaceutical options' (Beier, 2018: 1066). Analysing the project, Klaus M. Beier suggests that preventative projects which

help people who want to avoid becoming criminals because of their sexual orientation are more likely to be effective in the long run than those which stigmatise by criminal prosecution after the fact. But he notes that this is also only possible in the context of a jurisdiction that does not have compulsory reporting laws around paedophilia. In the USA, India, and Canada it is mandatory to report paedophiles to the authorities. In Germany, where it is not, paedophiles can benefit from the confidentiality of the Dunkelfeld treatment to better manage their sexual desires. Note that this also marks a shift away from thinking about crime and **deviance** through the criminal justice system and towards a **public health** perspective.

[START TEXTBOX]

- What are the positives and negatives of an approach like Dunkelfeld?
- Do you think this sort of therapy-based intervention could perhaps replace imprisonment for paedophiles who are convicted?
- Can you think of any other paedophile treatments that you are aware of, or that you think might work?

[ENDS TEXTBOX]

Even if we understand paedophilia as a sexual orientation and we try to treat it as such, it must be noted that it is always an adult's expression of desire, and this one-sidedness is part of its problem. Though O'Carroll's (1980) text cites examples of children who give accounts of entering into rewarding and desired sexual

relationships with adults, even if we were to hold that this was possible, there is as yet no way to adequately theorise and understand child sexual attraction to adults, to examine what forms this might take, or indeed, if this can be understood as a consensual and wanted sexual expression at all (see Plummer, 1991; Flanagan, 2014).

### **Contemporary responses to sexual offences against children**

In recent years – and certainly since public awareness about sexualise grooming and child sex trafficking gangs increased – public policy responses to the problems of child sex abuse have developed relatively rapidly. Sylvia Kierkegaard's (2008) overview of international legal responses to child sexual exploitation reveals the extent to which the Internet in particular has facilitated sexual violence against children. Between 2017-18 in England and Wales, police recorded more than 9,000 child sexual offences which had an online element. Child sex crimes with an online element made up 16 per cent of the total number of recorded child sexual offences (NSPCC, 23 January 2019).

Legislation has been created by the EU, the UN, and the USA to protect children from sexual exploitation; to make explicit images of children (sometimes referred to as child pornography) illegal; and to criminalise the sexual exploitation of children for financial gain. In 2006, the Child Exploitation and Online Protection Command (CEOP) was created to protect children in England and Wales from malicious online activity by adults seeking to exploit them sexually. Similar official bodies, including End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes

(ECPACT) in the USA, and the Amendments to the Penal Code in Singapore in September 2007 include a grooming provision that would make it an offence to meet or travel to meet a minor under 16 years of age after sexual grooming (MHA 2007). However, these laws operate differently in different national contexts. We talk more about grooming in Chapter Seven, so we finish this chapter by considering international responses to other (non-grooming) online child sex crimes.

### **Explicit images of children**

For much anti-pornography legislation, a child is defined as someone under the age of 18. Producing, procuring, distributing, and possessing explicit images of children is illegal. Different countries can use various *exclusions* to permit some pornography featuring children; for instance, if the actors have reached the age of consent in that country. This exclusion creates one of the problems that law enforcers might encounter when attempting to tackle the distribution of explicit images of children. According to Kierkegaard (2008: 53), the majority of pornography is produced in Russia and the USA, which means that people in those European countries which are signatories to the EU legislation on pornography may still be able to access pornography that is illegal in their country of residence, and the place they are consuming that porn. This point is particularly pertinent in light of data from the website *Pornhub*, which revealed that the term 'teen' is consistently one of the most popular search terms, across geographical locations (Pegg, 2016).

Some may question the 'harms' of witnessing child pornography. After all, the viewer is not themselves hurting a child through sexual activity. However, as Yaman Akdeniz (2016) outlines, explicit images or video of a child creates a permanent record of sexual violence and abuse that an actual child has experienced. As we noted in Chapter Eleven, once deposited on the internet it is there forever and can be seen by anyone. The creation and viewing of such content supports child trafficking, paedophile rings, and the grooming of children. Furthermore, there is a connection between viewing online images of child sexual abuse and committing sexual violence against children in the offline world (Babchishin et al, 2015).

### **Virtual rape**

Pornography which features simulations of children, or digitally modified pictures of children's faces imposed onto adult bodies (realistic images of non-existent children) are also criminalised. Similarly, written pornographic stories featuring sex with children is prohibited in some states, though not everywhere.

There is a concern over cybersex with fake children. We deal more explicitly with cybersex in Chapter Eleven, but here it is worth considering the example that Kiekergaard gives (2008: 44); so-called 'age play' in virtual worlds such as *Second Life* in which adults can play characters as children in order to enter into paedophilic relationships within the game. It is true that games like *Second Life* are much less widely played than they used to be, but Kiekergaard's thesis is still worth considering,

perhaps in the context of more contemporary role player games. Is the rape of avatars of children in games like *Second Life* something that should be taken seriously by law enforcers? The Criminal Justice and Public Order Act 1994 which operates in England and Wales criminalises 'images... which appear to be a photograph' and other 'pseudo-images'. As with other parts of the EU, the virtual images of children being raped are illegal.

[START TEXTBOX]

- What is, do you think, the harm of pornography which depicts sex acts with children who do not exist?
- Do you think that pornography featuring children under the age of 18 but over the age of consent should be legal?
- Are there any political, or practical objections that you can think of regarding these laws?
- Should it be illegal for sexual engagement with children to be represented in computer games where adults create avatars of children?
- What social harm do you think there might be in people having virtual sex with virtual children?

[END TEXTBOX]

Due to limited space, we are not able to explore the numerous issues that surround explicit images of a child, including the wider social implications and victimisation

that comes from such visual media. If this is an area you are interested in exploring further, we recommend you take a look at the work of Akdeniz (2016) and Max Taylor and Ethel Quayle (2003). We discuss issues related to pornography in general in more depth in Chapter Thirteen.

### **Child sexual exploitation**

As noted above, in the UK we do not use the phrase 'child **prostitution**' anymore. The terminology implies that children choose to be sex workers or prostitutes, when in fact it is now becoming more readily accepted that children who are sex workers are usually girls who are being exploited, either by their family, their friends, or a boyfriend. These children are, instead, said to be sexually exploited. In 2012, the Department for Justice in the USA reported that there were 100,000 children being sexually exploited, of whom some were as young as 9 years old (Frundt, 2005; Shared Hope, 2012). Moreover, the Department of Justice found that 55 per cent of respondent to their survey had been placed in detention for offences related to their sexual exploitation, so that rather than receiving support as victims of sexual exploitation, they are simply taken out of it by being locked up (Shared Hope, 2012: 22). They also note that some children do not recognise that they are in an exploitative situation, and many girls who are exploited believe their abuser to be their boyfriend, or to have their best interests at heart (Shared Hope 2012: 26).

In 2011, CEOP published a report which also countered dominant narratives. At the time, the police and social services had a tendency to consider that children who were prostitutes were troubled children who had chosen to make this lifestyle choice. Until 2011, children who were being sexually exploited by their friends or family went largely unnoticed because their other disruptive behaviours suggested to schools and to social workers that they were simply troublemakers.

Instead, the CEOP report stated that children who are runaways, who are truants, who use drugs and alcohol might, instead, also be being sexually exploited. CEOP reported that few police forces or children's services kept records of suspected instances of child trafficking, grooming, and exploitation. As a result, child sexual exploitation in the UK had continued largely unnoticed. Instead, children who are being sexually exploited might find themselves harassed or arrested by the police for the anti-social behaviours associated with sexual exploitation that they are involved with. We explored more of this in Chapter Seven.

[START TEXTBOX]

- What do you think might be appropriate responses to help children who have been sexually exploited?
- What support groups or agencies should be involved?
- What might the challenges of supporting a child in this situation be?

[END TEXTBOX]

## Summary

Sex crimes committed against children are multiple, and varied, and committed by people in their families, people in their neighbourhoods, people whom they are friends with, and people whom they meet online as well as, rarely, complete strangers. Sometimes children are sexually abused by paedophiles, sometimes by adults who are not paedophiles, sometimes they are the abusers. In this chapter we have seen that whilst children are certainly more vulnerable than most adults in matters of sexual abuse, they can also be agentic in their sexual expression.

We have seen how the context of the age of a child can affect how their sexual behaviour, or their experience of sexual abuse is encountered. Different ages of sexual consent, different definitions of what counts as a 'child', different rights and exceptions (in the context of child pornography, for instance, or child marriage) in different countries makes it difficult to determine what we are talking about when it comes to crimes and what should be done in response to these crimes.

The dynamics of suspected sexual abuse against children are also not clear cut. Certainly, children are more vulnerable than adults to sexual, physical, and emotional abuse because they are learning to live in the world and have an evolving sense of sexuality and desire. But children develop at different rates and can experience sexual arousal and pleasure, even at very young ages. Contemporary social and political

approaches which attempt to address child sexual abuse do not, generally, take these elements into consideration. This can result in the criminalisation of children's sexual practices. The contemporary construction of children as innocent, naïve, and in need of protection contributes to this. Part of the reason why there is this anxiety about the expression of sexual desire in children is because of the need to control the population, and to police sexual expression in ways that manage who has sex, how they do it, and whether they are deviant or not (remember Gayle Rubin's (1984) hierarchy of sexual practice from Chapter One). The construction of childhood as sexless (Aries, 1960), or the repression of sexual expression, is one of the ways in which this happens (Foucault, 1998[1976]). We need to continue the work of problematising the way in which we think about this in our study of what should be criminalised, and what should not be, when it comes to children and sex.

## **Review Questions**

- How should the sexuality and sexual expression of children be controlled?
- Why do you think that the sexuality of children is something that causes so much anxiety?
- Are sex crimes perpetrated against children worse than sex crimes perpetrated against adults? Give reasons for your answer.
- At what age should children start learning about sexual relationships in school? What sort of information do you think would be appropriate for different age groups?

**Other chapters that this links to:**

Chapter Three (Sex and crime in time and space)

Chapter Four (Consent and its discontents)

Chapter Five (Sex and institutional cultures of abuse)

Chapter Seven (Sexual exploitation and the State)

Chapter Eleven (Digital Sex)