

How Our Law Fails the Citizen

by Francis Bennion

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Introductory

We democrats claim to live under the rule of law, by this denoting popularly-agreed law as opposed to that of a dictatorial or theocratic regime. In this article I suggest that our admired democratic system does not do all it could and should to serve its citizens, mostly having in mind the law of the United Kingdom. I have practised this in various ways for more than sixty years, with occasional experience of other Commonwealth countries also. I am considering the lot of individuals, including children, rather than corporate bodies. I will take as typical examples a mature adult (call her Mary) and a fifteen-year boy (Robin).

A democratic state fails if it does not ensure that the law is accessible to its citizens. At reasonable cost, and without undue effort, Mary should be able to find out what the law has to say about any matter that concerns her. (We may concede that Robin might be expected to ask his parents or teachers, rather than go to an official source.)

If there is a specific legal question at issue for Mary, such as whether a benefit has been bestowed or a penalty incurred, the relevant information, together with requisite legal action, should be readily available to her. In particular legal situations, such as projected marriage or divorce, any necessary assistance should be at hand. The law works through courts and other tribunals and, except where there is a necessary exception on grounds such as security or privacy, the workings of the state's tribunals should be open to public view as well as accessible to potential litigants. If Mary is involved in a lawsuit, or wishes to initiate one, expert representation should be available to her, or ancillary help if she wishes to appear in person. The law should not place unnecessary obstacles in Mary's path, such as criminalising her acts where this is not essential for public protection.

All these requirements, and more, should be satisfied in Mary's case if she is to be truly said to be living under the rule of law. They can be said to be included among her human rights, which earlier in our history were known, perhaps more appropriately, as civil rights.¹ Another term once in fashion is natural rights. Like most of our citizens, Mary is very far from enjoying these rights to the full.

Examples of failure

State of the law

No one can be said to be living under the rule of law unless that law is in a proper state. Our law is in a chaotic state. Its defenders might say that it does try to do better. For example, the common law has as a principle of legal policy that law should be certain, and therefore predictable.² The Westminster Office of the Parliamentary Counsel invites us to 'Join the good law conversation'³. But these well-intended efforts are nothing like enough. John Locke said:

To this end it is that men give up all their natural power to the society they enter into, and the community put the legislative power into such hands as they think fit, with this

¹ Fyodor Dostoevsky was sentenced to deprivation of his civil rights for distribution of printed works directed against the government: *The Times Literary Supplement*, 7 Jun 2013.

² See section 266 of F A R Bennion, *Bennion on Statutory Interpretation*, LexisNexis, 5th ed, 2008.

³ See <https://www.gov.uk/government/news/join-the-good-law-conversation>.

trust, that *they shall be governed by declared laws*, or else their peace, quiet, and property will still be at the same uncertainty as it was in the state of Nature.⁴

It is true that there is long-standing scepticism about ‘declared laws’. Anacharsis, a Scythian prince of the sixth century BC, said:

Written laws are like spiders’ webs. They will catch, it is true, the weak and poor, but will be torn in pieces by the rich and powerful.⁵

This still resonates today when one thinks for example of so-called ‘aggressive’ tax avoidance schemes engaged in by large corporations.⁶

One indication of the chaotic state of our laws is that they take numerous different forms, each with its own complex characteristics. So-called ‘unwritten law’ comprises court judgments recorded in many different series of law reports. From some of these judgments there can be pieced together the ‘unwritten’ British Constitution, though there will be disagreement as to its terms.

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So-called ‘written law’ comprises state constitutions, public general Acts of Parliament, private Acts, local Acts, personal Acts, byelaws, delegated legislation, royal prerogative legislation, European Union directives, and many other forms of law. A hotchpotch indeed. That word ‘hotchpotch’ is defined by the *Oxford English Dictionary* as ‘a mixture of heterogeneous things, a confused assemblage, a medley, jumble, farrago’. It well describes the state of our democratic law.

The confusion is exacerbated by inadequate or non-existent indexing, failure to keep the wording of texts updated, failure to note adequately repeals and revocations, failure to give sufficient official explanations, and everlasting tinkering. Mary finds that she needs a lawyer to help her find out what the law has to say about any matter that concerns her; and lawyers are usually expensive. Even supposed experts can experience difficulty in finding out the law. The position is made more complicated when devolution is effected.

Devolution

Take the case of Wales, where Mary lives. Its population is a mere three million, but in the 21st century it was thought fit for partial self-government. This arrived with the passing of the Government of Wales Act 2006. It says there is to be an assembly known as the National Assembly for Wales or *Cynulliad Cenedlaethol Cymru*. (The territory is now officially bilingual, an inconvenient and expensive status achieved through criminal language protests in the 1960s).

Mary, who though not a lawyer is computer-literate, downloads the 2006 Act and tries to understand it unaided. It gives the Welsh Assembly legislative competence, but says that a provision passed by the Assembly is effective only if it falls within section 94(4) or (5) of the Act. Mary notes that a provision falls under section 94(4) if—

- (a) it relates to one or more of the matters specified in Part 1 of Schedule 5 and does not fall within any of the exceptions specified in paragraph A1 of Part 2 of that Schedule (whether or not the exception is under a heading corresponding to the field which includes the matter), and
- (b) it neither applies otherwise than in relation to Wales nor confers, imposes, modifies or removes (or gives power to confer, impose, modify or remove) functions exercisable otherwise than in relation to Wales.

⁴ John Locke, *Of Civil Government* (1924 edn) p. 186. Emphasis supplied.

⁵ *Oxford Dictionary of Quotations* (OUP, 5th ed 2001).

⁶ See 9th sessional report of the UK Public Accounts Committee, 13 Jun 2013.

Mary sees that a similarly complex provision explains the position when an Assembly Measure falls within section 94(5). There is more, a lot more, of the same. Mary gives up trying to understand the Act.

The Welsh activists are not satisfied. They complain that the 2006 Act fails to give the territory its due. The Secretary of State for Wales (a grandiose title for a small territory) has therefore established a Commission, known as the Silk Commission, to enquire into the matter. Some public-spirited people giving evidence to it have argued that an entirely separate Welsh legal jurisdiction should now be established. This, they say, should comprise a Welsh Judiciary, a Welsh court structure, a Welsh Judicial Appointments Commission, a Welsh Courts and Tribunals Administration Service, a Welsh Law Commission and a Welsh Judicial Training Board. I discovered all this in the Newsletter of the Society of Legal Scholars (formerly known as the Society of Public Teachers of Law), of which I am a member.⁷

Some might consider that a small territory of a mere three million inhabitants is getting above itself here.⁸ Mary only thinks of the expense that must be involved, and regrets the added complication. The Newsletter of the Society of Legal Scholars says that ‘it is unusual (if not unique) to have two Legislatures⁹ in the same jurisdiction and with general power to legislate on the same subject matter as part of the same body of law’ and notes ‘the increasing divergence of Welsh law from that applying in England’.¹⁰ Many people live in Wales and work in England. Others work in Wales and live in England. Both lots are perplexed when it comes to having two bodies of law to deal with. Where’s the sense in that? Sentiment yes; sense no.

The legislators

If the laws are in such an unsatisfactory state, it is natural to blame those whose function it is to make them. In Britain as elsewhere basic legislative powers are distributed between the Executive (the Government), the Legislature (Parliament) and the Judiciary (the Courts). An important feature of these powers is that they are largely wielded by persons who are ignorant of the law, described as ‘lay’ persons. Mary is herself a ‘lay’ person, bruised from unsuccessful attempts to understand the law without skilled help. When she discovered the legal ignorance of our so-called legislators she was amazed.

The Legislature makes the bulk of the ‘written’ laws, but the Judiciary also make law (said to be ‘unwritten’), and much legislative power is delegated to the Executive. It is the Executive that controls the submission of bills to Parliament and the making of delegated legislation. Broadly, the Executive (the Government) consists of lay Ministers assisted by skilled and unskilled civil servants. The legal ignorance of many MPs is illustrated by a reproof I administered in a recent letter to

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The Times:

You report that Mr John Baron MP has drafted a letter to David Cameron [the Prime Minister] asking him “to pass a law promising a referendum on Europe in the next Parliament”. Nearly 100 Tory MPs have signed it. These MPs should know better. Mr Cameron does not pass laws; Parliament does. No Parliament can bind its successor, so any such promise would be ineffective. If the Act sought by Mr Baron were passed, the next Parliament would be free to repeal it. Mr Baron’s letter is pointless.¹¹

⁷ *The Reporter*, Spring 2013, p 7.

⁸ Rod Liddle said in *The Sunday Times*, 16 Jun 2013: “The Welsh have an assembly? Who on earth allowed them to do that? And how can we put a stop to it? The answer of course is that we can’t. It is an example of 21st century over-democracy, western style.”

⁹ That is Westminster and Cardiff.

¹⁰ *Loc cit*, p 8.

¹¹ *The Times*, 3 Jul 2012.

Robert Rhodes QC commented on this:

Francis Bennion's reproof of a Conservative MP for asking Mr Cameron to "pass a law" raises an interesting point. It used to be the case that prime ministers said that they would ask Parliament to legislate in respect of a particular point. Now, however, it is common for both prime ministers and ministers to announce that they will enact legislation, taking Parliament's consent for granted. So much for the independence of thought of MPs.¹²

Earlier I had the following letter published. I give it here in full because it illustrates why our law is unnecessarily complex.

In his latest budget the Chancellor of the Exchequer announced that VAT is to be imposed on the cost of alterations to listed buildings. However he gave a commitment that churches and other places of worship would not be affected by this. As a former Finance Bill draftsman I assumed this meant that the Finance Bill would be so drafted as to exclude them. To my surprise I read that Mr Osborne is instead meeting this commitment by arranging for the Government to make a grant of £30m to the listed places of worship scheme. He told the House of Commons: "That will be 100% compensation, exactly as we promised in the Budget, for the additional cost borne by churches for alterations". It is contrary to the rule of law to behave in this way. The wording of this year's Finance Act will be misleading as apparently meaning that the new tax extends to places of worship when in substance it will not. Moreover those responsible for the buildings in question will need to apply individually for a grant, and may have difficulty in getting reimbursed. Since VAT is a continuing tax, the money given to the scheme may run out before all cases have been dealt with. A new bureaucracy will need to be established to administer the arrangement. I thought the Coalition were trying to reduce red tape. The Human Rights Act 1998 requires law to be clear. Our VAT law has been made unnecessarily misleading by a dodgy manoeuvre whose necessity is not obvious.¹³

As the Association of First Division Civil Servants told the Hansard Society Commission on the Legislative Process, and the Commission accepted:

What appears clear to the layman may not be certain in meaning to the courts; and much of the detail in legislation, which can appear obfuscatory, is there to make the effect of the provisions certain and resistant to legal challenge.¹⁴

My article 'The readership of legal texts' elaborates the point:

One of the inexorable constraints on legal language is the need to fit into the language of the existing law. An Act intended to amend the law (as most Acts are) must fit into the existing *corpus juris* or body of law as well as expressing the reforming intention of the legislator. It must fit not only the existing language (which may well be unnecessarily complex if we could start again) but also the existing concepts . . . I say this remembering desperate occasions when I strove to draft a Finance Bill clause so that it fitted effectively into the frightful mess that is the Income Tax Acts and did not cost the country millions in lost tax revenue.¹⁵

How laws are made

There is much public misapprehension about how laws are made. On 2 February 2012 *The Times* published a letter from one Donald Rutherford, who said that MPs could usefully spend

¹² *The Times*, 5 Jul 2012.

¹³ *The Times*, 22 May 2012.

¹⁴ Cited in para 219 of *Making the Law*, the report of the Commission, issued on 2 Feb 1993.

¹⁵ *Clarity*, 27 Apr 1993, p 18, www.francisbennion.com/1993/001.htm. For a summary of users' difficulties and their causes see *Bennion on Statute Law* Longman, 3rd ed, 1990, ch 13, www.francisbennion.com/1990/002/209.htm.

their time ‘consolidating previous, and often ill-drafted, Acts into more codes for each area of the law’. He seemed unaware that Acts are drawn not by MPs but by expert drafters known as parliamentary counsel (of whom I used to be one until I retired). He did not specify in what way the Acts which I and my colleagues have spent our professional lives drawing are ‘ill-drafted’. This seems merely the sort of routine abuse that the topic attracts.

However, Mr Rutherford did have a point. In the days of the British Empire we provided our colonies with volumes of laws periodically consolidated into the sort of ‘codes for each area of the law’ that Mr Rutherford reasonably wanted. This has never been done comprehensively for our domestic legislation because politicians have never thought it worth the necessary time and money. There are no votes in law reform.

Confusions over the Lord Chancellor

The Executive is headed by the Prime Minister, and recent Prime Ministers have treated the law in cavalier fashion. In 2003 I described in this journal how Mr Tony Blair misbehaved over the Lord Chancellor.¹⁶ I explained how an official announcement

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said that Mr Blair had reshuffled his Government and how by a sidewind he purported to abolish the most ancient office under the Crown, that of Lord High Chancellor, keeper of the Great Seal and the Queen’s conscience. The announcement said that for the transitional period, Lord Falconer would exercise all the functions of Lord Chancellor as necessary. Nothing was said about exactly how, and by whom, the numerous statutory and other functions of the Lord Chancellor were to be carried out in future. Answering the resultant uproar the Prime Minister’s official spokesman said that inevitably he did not have the answer to every question immediately and ‘some things had been a little hazy’.¹⁷

Eventually Mr David Cameron recommended Chris Grayling MP for appointment as Lord Chancellor. Professor Graham Zellick¹⁸ drew attention to the fact that section 2(1) of the Constitutional Reform Act 2005 says: ‘A person may not be recommended for appointment as Lord Chancellor unless he appears to the Prime Minister to be qualified by experience’. Was Mr Grayling so qualified? According to his website Mr Grayling read history at Cambridge, then joined the BBC’s News Training Scheme, and worked as a producer on BBC News and Channel Four’s programme *Business Daily*. After a few years in television production, he decided to move to the business side of the media industry, and ran a number of small and medium-sized production businesses before moving to become European Marketing Director at a leading communications agency. He has written several books, including a history of the Bridgewater Canal, a study of Anglo-American relations, and life in England after the First World War. This experience cannot possibly be said to qualify Mr Grayling for appointment to the great legal office of Lord Chancellor. Mr Cameron’s recommendation was therefore in breach of statute and so void. My protest to this effect was ignored.

Mr Cameron’s invalid recommendation contravened the rule of law, which he claims to uphold. In a speech to the Foreign Policy Centre in 2005 he said: ‘Everything we do should be consistent with upholding the rule of law. As a start this means ensuring the consistent application of the law.’ In 2013 he said in a speech to the Council of Europe: ‘We have an ambitious agenda for the coming months . . . to strengthen the rule of law across Europe.’ Clearly it needs strengthening.

By a clumsy manoeuvre Mr Cameron attempted to end the controversy by procuring the appointment of the non-lawyer Chris Grayling MP, to *two* offices, those of Lord Chancellor

¹⁶ *The Commonwealth Lawyer* Vol 12 No 2 (Aug 2003) pp 31-32.

¹⁷ 10 Downing Street website.

¹⁸ *The Times*, 6 Sep 2012.

and Secretary of State for Justice. *The Times* reported: 'Grayling seeks "to draw blood" in changes to judges' pensions'.¹⁹ I protested (vainly of course):

The same person should not be appointed to both these important offices. They have different functions, some statutory. It is important to know which acts by Mr Chris Grayling are performed as Lord Chancellor and which as Secretary of State for Justice.²⁰

Law churning

Current fashions in legislating include what I call 'law churning'. There is a constant stirring up and tinkering with the law so that it is never settled and straightforward. In practice, law-churning makes it far more difficult for lawyers to carry out their role with the confidence they need, as they will often have nagging doubts about whether or not recent legislative updates have come into effect. Law students and their tutors experience the like misgivings.

Law churning happens when civil servants in departments like the Home Office spend much of their time designing new measures to modify existing laws on a piecemeal basis, rather than trying to create major pieces of needed legislation which can stand the test of time. I gave an interview on this theme to the reporter Neasa MacErlean. I said that the UK's Crime and Security Act 2010 was an example of law churning, suddenly placing great emphasis on parental responsibility when children misbehave. She reported me as saying:

Making parents responsible for their children's behaviour is a general principle that should not be dealt with in odd fragments. Also likely to prove controversial are sections aimed at preventing the spread of gang violence. These give powers to the police and local authorities to apply for County Court injunctions against young people aged 14 or above in cases where, for instance, the aim is to stop a young person meeting a named gang member or from going to a particular territory. This brings the criminal law into disrepute. Young people think nothing of getting a notice from a police officer or, even worse, a local authority official. They won't take it seriously at all. This should not be happening.

Neasa went on to say that I recalled the days when 'the might of the law' put a terror into young people. 'He believes that this kind of respect for authority is undermined by moves such as these sections on gang members. He is worried the traditional and much-respected parts of the criminal justice system such as the Crown Prosecution Service, the courts and juries lose some of the respect they command when criminal powers are diffused too widely to other players. So the idea of local authority officers prohibiting young people from going into certain areas, for instance, concerns him. "The Act is giving power to give orders to young people to the wrong people', he stresses.'" Neasa continued:

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Bennion dislikes the shortened processes the government is using in making some laws - apparently developing certain ideas without sufficiently taking into account the likely consequences. He concludes: "The law should be a settled, monumental thing".

Baroness Onora O'Neal questioned the practice of law-churning in her 2012 *Jurisprudence* lecture. She said common complaints are that there is too much new law, much of it hyper-complex and incomprehensible to those who have to comply, and some of it dysfunctional. She added: 'Do governments table Bills prematurely and too casually? Does Parliament provide inadequate scrutiny?'²¹

Slashing Legal Aid

¹⁹ *The Times*, 26 Sep 2012.

²⁰ *The Times*, 28 Sep 2012.

²¹ See <http://www.francisbennion.com/2011/033.htm>.

Mary is greatly worried over the possibility of incurring expense by getting involved in court proceedings. With growing quantities of complex law engulfing many aspects of life, the chances of this happening are correspondingly increased. The public service which is supposed to protect the citizen in this field is Legal Aid. Here again we meet Chris Grayling MP, the legal ignoramus who is currently charged with transforming the legal system of England and Wales.

Grayling suggests, surely mistakenly, that litigants think it does not matter which lawyer you have to handle your legal problems, for example: 'I don't believe that most people who find themselves in our criminal justice system are great connoisseurs of legal skills'.²² He proposes to take away the historic right of legally-aided clients to choose their own lawyer. Here is what the solicitor Malcolm Fowler thinks of that proposal:

Now the cat is out of the bag . . . Is that or is it not an ideologically driven approach? These straitened times are just what the doctor ordered for a Secretary of State capable of such an ill-informed and socially divisive utterance. As so many of us know, those on the receiving end of prosecutions make it their business to know, through various grapevines, who are the most committed and effective advocates and other practitioners . . . Until recently, the Legal Services Commission asserted the untold value of choice of solicitor for those very reasons, and because it was viewed as more cost-effective.²³

Grayling proposes a drastic reduction in the number of lawyers (from 1,600 to 400) who will be allocated Legal Aid work: 'not saving the money is not an option'. The effects of previous reductions in the scope of Legal Aid are still being felt. The lawyer Richard Graham said to Grayling:

Just because we have had a few "well-targeted" legal aid "fat cat" QC headlines, most of which are groundless and without fact does not mean that the general public agree with your views. The facts you have quoted thus far during this issue have been questionable and plain wrong in some cases, you are not willing to engage or listen. You are determined to push this through regardless. Your lack of understanding and knowledge of the criminal justice system is astounding; you bring discredit to the office of Lord Chancellor.

Stanley Brodie QC said in an unpublished letter sent to *The Times* on 8 May 2013 that Grayling's proposals were bound to undermine the fundamental right of every defendant to a fair trial, a right deeply embedded in the common law and reflected in Article 6 of the European Convention on Human Rights. He added:

A fair trial under our adversarial system requires a defendant to have proper representation by a qualified lawyer of his choice, whose function is to protect his or her client and assist the court in ensuring that his client gets one. In criminal cases the fundamental human right to liberty is often at risk, so that a fair trial by a well-informed court becomes an essential protection for a defendant.

An authoritative view is added by Lord Neuberger of Abbotsbury, President of the UK Supreme Court. In a lecture to the Institute for Government he said Grayling's cuts will mean 'longer trials, worse lawyers and the risk of miscarriages of justice'. He added that the proposals would reward lawyers for making trials last longer and have a knock-on effect in court costs. 'Good lawyers save money because they are less likely to waste time in and out of court, to be responsible for miscarriages of justice and to engender appeals and retrials . . . It is a mistake to have a new legal aid regime with a costs structure that will drive out the best lawyers . . . Less legal aid means more unrepresented litigants and worse lawyers, which will lead to longer hearings and more judge-time.'²⁴

²² *Law Society Gazette*, 20 May 2013.

²³ *Law Society Gazette*, 3 Jun 2013.

²⁴ Report by Frances Gibb, Legal Editor, *The Times*, 19 Jun 2013.

A final word about Robin

It would not be difficult to extend this article to book length, but I must refrain. To show I have not forgotten 15-year old Robin I will end with an item which is of more interest to his pubescent self than the shortcomings of our jumped-up Lord Chancellor. It concerns the updating carried out by the Sexual Offences Act 2003, which extended to England and Wales only.

The epigraph for my 2003 book on the bill for the Act, *Sexual Ethics and Criminal Law: A Critique of the Sexual Offences Bill* was:

Sex, a force in all our lives,
demands respect - and sacrifice.

Little respect for sex was shown by the Blair government in

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framing the bill, and little respect was shown for pubescent children under the age of consent (sixteen). My book contained severe criticisms. They were based on the fundamental proposition laid down in my earlier book *The Sex Code: Morals for Moderns*²⁵ that sex positivism or the happy acceptance of human sexuality, seeking its fulfillment, is largely absent from our society. The Government's proposals were not based on any discernible system of morals and values. They were grounded in a low view of human sexuality. They displayed sex-negativism - or even sex hate - in many obvious or indirect ways. They outlawed conduct which the promoters the Home Office concluded is 'unacceptable' That is a weasel word, elastic and varying. It demands the question 'unacceptable to whom?' This the bill did not attempt to answer. If it means 'unacceptable to the majority' that is not good enough. To rank as a crime, sexual conduct needs to be far worse than merely unacceptable to the majority. It needs to be vile and vicious. That does not apply to many of the actions branded as criminal by this bill.

It is near-criminal for parents and teachers to leave young children in ignorance about sex, as so many still do. A 2013 report said of so-called internet porn:

"Internet porn is what you use to find out stuff about sex. It's all we've got," said the 14-year old boy as his friends nodded vigorously. Another asked: "How else are we meant to know what to do?"²⁶

Sexual activity between minors

This new criminal offence created by the 2003 Act, punishable with up to five years imprisonment, deals inter alia with sexual activity between pubescents from eleven to fifteen. It covers a range of behaviour including, for example, any activity that a reasonable person would deem to be sexual or indecent in all the given circumstances. This includes, for example, inducing a child to take off their clothes in circumstances which would reasonably be considered as sexual and *outside the bounds of normal family life*.

The words I have italicised are a giveaway. Consensual sex play between young siblings or friends who are age mates, say within the age range eleven to fifteen years, is considered by the Home Office to be outside the bounds of normal family life. Is that really the common view? The new law leaves vital questions like this to be settled only after years of delay and a final appeal to our highest court of justice, the Supreme Court. That is surely a dereliction of duty by Parliament - handing the decision to non-elected judges rather than deciding it in its legislation.

Antony Grey said in his book *Speaking of Sex* that children are sexual beings and adolescents are highly sexual beings. Adolescence begins well before the age of consent (sixteen), yet the

²⁵ Weidenfeld & Nicolson, 1991.

²⁶ *The Sunday Times*, 16 Jun 2013.

Act insists it should be a criminal offence for anyone, even an age mate, to engage in any sexual activity whatever, even though consensual, with such a 'highly sexual being' as an adolescent aged under sixteen. It is incredible that the Government should really think this is the right way to proceed when laying down our sex laws anew for the twenty-first century.

Many parents would run away from any display of sexuality by their supposedly innocent little children. Yet if they only remembered their own childhood they would recall that a child is incomplete without awareness of its sexuality. Usually nature does not permit such ignorance. We should respect nature, in this as other spheres.

The 2003 Act raises the question what lawful sexual outlets is it supposed that pubescents in the age range eleven to fifteen should have? If these borderline creatures are, as must be admitted, 'highly sexual beings' they obviously require suitable opportunities to fulfil their sexuality. This could be called one of their human rights, if that topic had been fully developed in this area. While many girls may, if unawakened sexually, happily continue in an 'asexual' condition until they reach the age of consent or later, this does not apply to most boys. The Act limits the lawful sexual activity of pubescent boys to solitary masturbation, which surely cannot be right. I believe it is horrifyingly wrong.

A last point on sexual activity between age mates who are both under sixteen concerns gay boys. When the Bill for the Sexual Offences (Amendment) Act 2000, which lowered the gay age of consent to sixteen, was going through the House of Commons Simon Hughes MP for the Liberal Democrats made much play with the fact that what became section 2 of the 2000 Act removed the stigma of criminality, as he put it, from under-16s who became involved in sexual activity with a male homosexual over that age. The 2003 Act repeals section 2 without replacing it. So that safeguard for gay boys has gone. It is puzzling anyway that it did not apply to protect a boy under sixteen who engaged in consensual sexual activity with another under-age boy, which as we all know very commonly happens.²⁷

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Any footnotes are shown at the bottom of each page

For full version of abbreviations click 'Abbreviations' on FB's website

References:

None

²⁷ *Commonwealth Lawyer*, Aug 2013 pp. 19-24.