

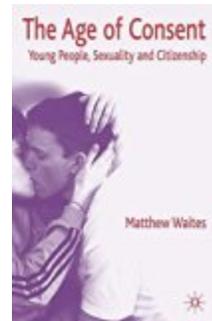
# H-Net Reviews

in the Humanities & Social Sciences

Matthew Waites. *The Age of Consent: Young People, Sexuality, and Citizenship*. Houndmills and New York: Palgrave Macmillan, 2005. viii + 285 pp. \$95.00 (cloth), ISBN 978-1-4039-2173-4.

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## Sexuality and the Law: An Uneasy Marriage

There are many “ages of consent.” But in common parlance, age of consent laws define the age at which a person can legally consent to sexual activity with someone to whom he or she is not married. They are also called statutory rape laws: statutory rape is the crime of having sex with an underage person. The age varies from country to country. Over their history, these laws have been used by a variety of people for a variety of purposes—sometimes to the benefit of young people, and sometimes not. At the site of statutory rape, numerous groups have clashed over gender stereotypes and gendered inequalities, the right to privacy, sexual consent, heterosexuality and homosexuality, abortion and child-bearing, and the role of sexuality in maintaining social hierarchies.

In *The Age of Consent*, Matthew Waites’ objective is “to provide a systematic analysis of how we think about age of consent laws and the regulations of young people’s sexuality” (p. 2). He succeeds in this multidisciplinary account, both drawing upon and contributing to sociology and sociolegal studies, history, political theory, gender studies, sexuality studies, and childhood studies. This work is a welcome addition to a subject area in which there are only two other book-length treatments: one covering the United States and written by a political scientist, and the other covering Europe and written by an Austrian attorney.[1] Waites is Lecturer in Sociology at the University of Glasgow; he focuses mainly on the United Kingdom but also incorporates some comparative material as well. In short, his investigation is original and

his theoretical synthesis is invaluable.

He begins by laying out the theoretical groundwork for his study. Waites has given himself a tall order here, bringing together several literatures and levels of theory. A great strength of the book is the way in which he is able to weave together the theories of these various fields into a coherent whole to illuminate the complexity of the debates over (and changes made to) age of consent laws. His facility and engagement with his cited works is impressive. Much of this section consists in problematizing various terms by assuming their social constructedness and describing contestations over their meanings and usage: childhood, youth, gender, sexuality, heterosexuality, homosexuality, consent, abuse, citizenship. He stresses, however, that as socially constructed as any term may be, it also acts to a degree as a structural constraint in a person’s everyday life. After systematically analyzing the pros and cons of the ways others have approached these concepts, he presents his own choice of terms: “In this study, my tendency to use the term ‘young people,’ to encompass a wide range of ages is intended to displace the traditional assumptions accompanying ‘childhood,’ particularly views of children as non-sexual, and as subjects without any rights or degree of competence” (p. 14). Yet throughout the book, he does not lose sight of young people’s vulnerabilities vis-à-vis sexual activity. He also seeks to disrupt cultural narratives of gender and sexuality and the heterosexual/homosexual binary of sex laws, while acknowledging their power: “An appreciation of gendered power,

and of the ways in which heterosexuality and heteronormativity have historically structured society and shaped law, is vital for the analysis of debates over the meaning of consent in the context of sexual behavior” (p. 18). This thoughtful destabilization of taken-for-granted terms is especially necessary in the area of young people’s sexuality, too often conflated with the politically charged term “child sexual abuse.”

The next chapter examines age of consent laws cross-nationally, illustrating how the specific politics in various countries (and in some cases, the legacies of colonialism) have shaped today’s laws. The ages range from 12 to 18 around the world; across the United States, they range from 15 to 18 and most states have age-span provisions which exempt young people close in age from prosecution. Some countries have separate ages for acts between people of the opposite sex versus people of the same sex—the latter always being the higher age in such cases. There are problems in compiling comparative data, though, because “the formulation of such laws varies both between and within states depending upon, for example, the sex and/or sexual identities of the individuals involved and the kind of sexual act at issue.... It cannot even be assumed that every state has an age of consent for sexual activity per se” and the absence of a law may have a variety of meanings (p. 42). The implementation of the laws varies greatly as well.

The following four chapters track the history and politics of age of consent laws in the United Kingdom, from 1275 through the most recent changes in 2003. There is simply no other work that compiles and analyzes this data at this length, through such a wide range of primary sources, and with this level of detail.

The age was first set at 12 in 1275 and then raised to 13 in 1875. Waites closely examines parliamentary debates over the Criminal Law Amendment Act of 1885, which raised the age to 16. As in the United States at the same time, the change came in the context of public anxieties over urbanization, industrialization, and shifting gender and sexual identities, and was finally sparked by the publication of a tract purporting to expose the “white slave traffic” of young girls into prostitution. The social purity movement (first-wave feminists and those to whom he refers as “male moralist campaigners”) wanted to protect young working-class females from older middle- and upper-class males. Along with women’s rather circumscribed citizenship status at the time, “The lack of decision-making competence attributed to working-class girls was not only generated by the projection of middle-

class cultural assumptions, but also generated through ... evolutionary and biologizing theories [which] ... increasingly denied the agency of the poor” (p.72). The laws prosecuted only men and protected only women: they assumed that males were the active party in sexual activity and females were the passive party. This would include males aged 14 and over according to common law—i.e., those the same age or younger than the female in question, and who might presumably require protection as well, could be prosecuted.

At the same time, although “buggery” was already illegal, a new offense criminalized “the commission by any male person of any act of gross indecency with another male” (p. 81). Known as the “Blackmailer’s Charter,” this became the basis for prosecuting any sexual activity between men. Like the change in the age of consent, Waites writes, this amendment reflected increasing anxieties not only about homosexuality, but also about privileged men crossing boundaries of age and class to find sexual partners.

The next chapter examines the 1922 amendment to “indecent assault” law, which raised the minimum age for sexual activity other than sexual intercourse to 16. Waites convincingly argues, via analysis of parliamentary papers, that this was understood as an age of consent to sex between females. Sex between males was addressed in the famous Wolfenden Report of the 1950s, which partially decriminalized such sex but created an age of consent of 21 to do so. I have deliberately used the terms “sex between females” and “sex between males” because Waites points out repeatedly that although “heterosexuality” is never really named in these debates, “homosexuality” is used to label all same-sex activity—the identity and the sexual activities are conflated by those who discuss and reform the laws. The concern at the time was over the supposed fixity of homosexual identity and the desire to set an “age of consent for homosexuality” above it so as to protect a younger male unsure of his sexuality from being seduced into homosexuality.

But Waites is not completely critical of Wolfenden; he acknowledges that the committee did grant a circumscribed measure of citizenship to homosexual men through decriminalization of private acts for those over 21, and felt that they could not push much further given public opinion at the time (pp. 111 and 115). He concludes, “The imagined sexual innocence and passivity of women aged below 16 was an assumption paralleled by wider assumptions about the lack of female desire. The rationale for the minimum age applying to sex between

men, by contrast, involved a balance between protecting young men, with a presumed potential for heterosexual desires, and creating a private legal outlet for the uncontrollable desires of adult homosexuals.... Both laws, however, represented prohibitions upon activity below the age of consent, without full endorsement of any clear principle of a right to consent and/or equal sexual citizenship for those above” (p.117).

Debates over the age of consent began to broaden in the 1960s as feminists and gay rights groups emerged with their analyses of the laws’ content and implementation, and some of their ideas subsequently entered the mainstream. Waites cites structuralism and post-structuralism as subverting positivist and grand theoretical pronouncements on the nature of society and of the individual, and enabling new and critical approaches to childhood sexual innocence, to patriarchy, to heteronormativity and the fixity of sexual identities, and to the assumed morality of law. But these ideas contrasted with hegemonic psychological and biomedical knowledge-claims, which were given greater weight during a review of sex laws in the late 1970s. The laws were not changed at the time: the age of consent remained 16 for those of opposite sex (and presumably, two females) and 21 for two males.

It was in the 1990s during the “equalization” movement that all of these contrasting cultural assumptions really came to a head. To get at arguments for and against equalizing the ages for same-sex and opposite-sex activities, Waites analyzes a variety of primary sources reflecting the views of child protection groups, child health groups, legal scholars, psychological and biomedical professionals, feminists, gay rights groups, members of Parliament and prime ministers. He also attended the parliamentary debates over the issue. The age of consent was equalized in 2000 in the Sexual Offenses (Amendment) Act. But, Waites cautions, we should interpret this as a victory for the effectiveness of rights claims of equality, not as a victory for heterosexuality and homosexuality being given equal respect, or equal citizenship. “An equal age of consent was not a straightforward step towards full equality, since it was secured through compromise with dominant forms of knowledge operating in politics, law, criminology, biomedicine, social policy and child welfare, and hence with strategic engagement with heterosexuality” (p. 170). His analysis shows that only when MPs were convinced that heterosexuality would not be threatened—namely, because of an acceptance of the idea that one’s sexual identity was already fixed at 16, did they vote for equalization at 16. Further, “emphasis

upon the phrase ‘gay age of consent’ in public debates and the emerging notion of a ‘lesbian age of consent,’ used without consideration of bisexuality or queerness, were indicative of the structuring influence of clearly defined sexual categories” (p. 182).

As in the United States, these and other changes to the U.K. laws were much informed by the protectionist perspectives of children’s organizations, moral conservatives, and some elements of radical feminism. In the 2003 Sexual Offenses Act a new offense was added applying to those over 18 who had sex with those under 16, with a ten-year sentence. A second offense applied to those under 18 who had sex with those under sixteen, with a five-year sentence. The latter in particular could certainly lead to prosecuting young people under the age of consent themselves—people whom the law is supposed to protect. MPs assumed that the legal establishment would use a “light touch” in such situations, but by creating and naming the offense they burden the enforcers of the law with contradictory views of who requires protection and who does not. Waites concludes this chapter by commenting that this policymaking shows the “urgent need to address unresolved tensions between agendas for ‘child protection’ and agendas to promote ‘children’s rights and participation,’” as sexuality is usually defined as a realm requiring only protection (p. 206).

In the last chapter, Waites pulls together his insights about the theoretical and political underpinnings of age of consent debates as well as deconstructions of them; the present-day status of the laws in the United Kingdom, Europe, and the United States; and considerations of the meaning of citizenship vis-à-vis one’s sexuality. He concludes that in reformulating age of consent laws we should “reconsider aspects of the legal moralist tradition, challenge individualism in the light of collectivist political and philosophical traditions including socialism, feminism, and communitarianism, and defend the legitimacy of age of consent laws as instruments through which society can defend the collective interests of young people” (p. 225). He then gives his own recommendation on an ideal age of consent. Balancing concerns about protecting vulnerable young people with respecting individual freedom and privacy; balancing feminist and queer theory with more libertarian perspectives; and taking into account that the average age of first sexual experience with another person is 14 (p. 236), he would set the age at 14 and incorporate a two-year “age span” that would work as follows, “14-year olds could legally have sex with those aged 14-16, 15-year-olds with those aged 14-17, and 16-year-olds with anyone aged 14 or above,

including adults” (p. 238).

As I was writing this review, I was sent a number of articles in U.K. papers, sparked by Matthew Waites’ writing an op-ed in the *Independent* entitled, “The Law Doesn’t Stop Under-16s Having Sex.” In the subsequent days, a flurry of articles, op-eds, and editorials described and critiqued the proposal.[2] One sarcastically critical op-ed was entitled “A Little Sociology Goes a Long Way.” It ends with the presumably rhetorical question, “Gosh, don’t you wish you were clever enough to be a sociology lecturer?” If that were to mean being able to write a book as painstakingly detailed, conscientious, and comprehensive as *The Age of Consent*, then my answer is an unequivocal “Yes.”

#### Notes

[1]. Respectively, see Carolyn Cocca, *Jailbait: The Politics of Statutory Rape Laws in the United States*, (Albany: State University of New York Press, 2004); and

Helmut Graupner, *Sexualität, Jugendschutz & Menschenrechte: Über das Recht von Kindern und Jugendlichen auf Sexuelle Selbstbestimmung*, vols. 1 and 2 (Frankfurt/M.: Peter Lang Publishing, 1997). Graupner also summarized his findings in English: “Sexual Consent: The Criminal Law in Europe and Overseas,” *Archives of Sexual Behavior* 29.5 (2000): 415-461.

[2]. Matthew Waites, “The Law Doesn’t Stop Under-16s Having Sex,” *The Independent*, February 15, 2007; Sarah Womack, “Drop Age of Consent to 14, Says Academic,” *Daily Telegraph*, February 16, 2007; “No to Lowering Age of Consent,” *The Scotsman*, February 17, 2007; Simon Heffner, “A Little Sociology Goes a Long Way,” *Daily Telegraph*, February 17, 2007; Kevin Schofield, “Call to Reduce the Age of Consent to 14,” *The Scotsman*, February 17, 2007; Thomas Smith, “Lower ‘Sex Age’ Call,” *Scottish Sunday Mirror*, February 18, 2007; and Graham Grant, “Scandal of the Children Having Sex at Age of 10,” *Scottish Daily Mail*, February 19, 2007.

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