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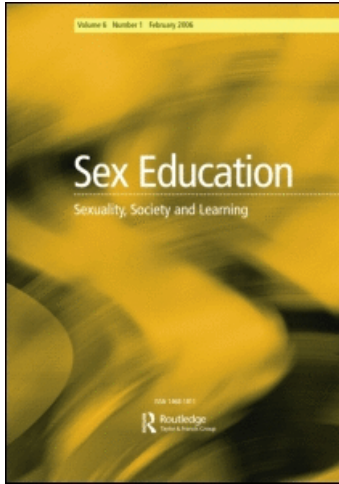
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Sex education, state policy and the principle of mutual consent

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Constitutive of the prevalent sexual morality in most Western European countries is the liberal principle of mutual consent (PMC). This sociological fact may give rise to the ethical question as to whether or not the state has the right to make sure that its citizens will observe PMC, among other ways by prescribing some form of sex education which has PMC as its moral content. With reference to the ambiguity of the term 'morally permissible', it is argued that PMC can be interpreted in two fundamentally different ways, namely, as the freedom to arrange one's sexual life according to one's own values and preferences (PMC(a)) or as the view that consensual sex is morally all right or morally unobjectionable (PMC(b)). The claim is defended that PMC(a) should be taken as part of the public morality, whereas PMC(b) should be seen as a private morality. Accordingly, the state has the right to take PMC(a) as a basis for its educational policy, but the state is not allowed to prescribe any form of sex education that has PMC(b) as its moral content. The importance of the distinction between PMC(a) and PMC(b) is shown by giving an evaluation of the Dutch state's responses to recent public statements of orthodox religious leaders about the moral status of homosexuality. Also on the basis of this distinction, the central differences between liberal orthodox and fundamentalist orthodox religious views on sexuality and the role of the state are pointed out. In this connection, it is argued that any view which takes PMC(b) as part of the public morality should be disavowed as a kind of 'liberal fundamentalism'.

The problem

Nearly all publications on sex and education—whether scientific papers or policy documents, philosophical books or newspaper articles—more or less implicitly support the view that some form of sex education is needed for all children. Apart from this basic but rather trivial consensus, however, almost any claim about sex education is under discussion. As may be deduced from the many publications on this subject, matters of great controversy are, in particular, the question as to which form or content sex education should have, as well as the related question as to who should have the right or authority to determine the form or content of this field of education—parents, teachers, the community, the state, or some or all of them to a certain extent? Our intention is to contribute to this ongoing debate by trying to determine whether or not the *state* has the right to prescribe how its future citizens

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should be sexually educated, and, if so, in which respects. But before embarking on this project, we want to make two preliminary remarks.

First a specification. In talking about the authority of the state with regard to sex education, we will only refer to forms of sex education that are intended to promote the moral growth of the child, in particular by cultivating certain moral attitudes or inculcating certain moral principles. Forms of sex education could be defended that are intended to be morally neutral, like informing the child about biological and medical facts of sex and reproduction, without any moral comment or evaluation, or imparting information about different moral views with regard to forms of sexual behaviour, without taking any stance towards them. However, the kind of sex education that we want to discuss is taken as a part of *moral* education: its aim is to stimulate the growth of the child into a person who will do the right things for the right reasons in matters of sexuality. Accordingly, our central question should be read as follows: Does the state have the authority to prescribe for all its future citizens a form of sex education with a particular moral content?

Next a clarification. If we claim that the state has the authority to prescribe such a type of sex education, we presuppose that its moral content can rightly be regarded as part of the so-called *public* morality. The terms ‘public’ and ‘private’ are used in different ways, not only in common parlance but also in the domain of political philosophy. In this context, we shall define these twin concepts as follows. A public morality consists of principles and virtues which may be defended and promoted by the state wherever and whenever deemed necessary. That is, the state has the right to see to it that these principles are observed, to encourage that these virtues are cultivated and practised, as well as to oppose any view or doctrine that is inconsistent with these principles or virtues. In contradiction to a public morality, a private morality is composed of principles and virtues which on no account may be defended or favoured by the state. Moreover, as long as these moralities stay within the limits of the public morality, the state is not allowed to oppose them, neither by discouraging (nor preventing) its citizens from living up to these principles or cultivating and practising these virtues, nor by criticizing or attacking the doctrines in which these principles and virtues are explained and justified. Given this distinction between the public and the private, our central question can be answered in the affirmative only if there is such a thing as a public sexual morality. If we consider all forms of sexual morality to be private, we necessarily assume that the state does not have the right to promote or favour such a kind of morality, neither by introducing coercive measures or holding out the prospects of rewards, nor by taking steps to ensure that the relevant moral concerns are inculcated or cultivated. In other words, the answer to our central question is dependent on our answer to a more basic question: Is it possible to point out any principles or virtues regarding the sexual sphere that should be taken as elements of the public morality?

The principle of mutual consent

During the last four decades or so, moral views about sexuality have changed drastically in many Western European countries, including the Netherlands. As late

as the 1960s, marriage and procreation were generally taken as the principal criteria of permissible sexual behaviour. Nowadays the prevailing practice appears to be to appraise sexual conduct on the basis of typical liberal values, more specifically on the basis of the liberal principle of mutual consent. The dominant view seems to be that any kind of sexual practice is morally permissible, including sex before marriage and sex without any possibility of reproduction, as long as the persons involved have given their consent and no significant harm is done to third parties.

Although the principle of mutual consent is widely endorsed nowadays, albeit often implicitly, its interpretation and application are far from unproblematic (cf. Soble, 1996; Archard, 1998; Primoratz, 1999). One major problem is how exactly the notion of consent should be interpreted. It will be clear that not every instance of consent will be valid. For example, the fact that someone has consented to have sex under serious threat or severe pressure can hardly be taken as a good reason for considering the sex morally legitimate. But what exactly are the conditions which validate the consent of a person? The view that is generally defended by liberal philosophers, and which also seems to be widely but much less reflectively held in most Western European countries, is that valid consent is freely given, on the basis of relevant and appropriate information, by someone with mature powers of judgement. Correspondingly, the conditions which are regarded as invalidating an act of consent are coercion and fraud, as well as underdeveloped capacities of deliberation.

However, on the question of how these validating and invalidating conditions *themselves* should be interpreted, opinions are beginning to diverge, not only in philosophical circles but also in liberal societies at large. Take, for example, the notion of coercion and the corresponding notion of voluntariness. Some adherents of the principle of mutual consent, in particular those who call themselves libertarians, are inclined to define the notion of coercion rather restrictively, in such a manner that only serious threats, such as threats of death or the infliction of bodily injury or grave economic harm, are coercive to a degree which makes consent involuntary and therefore invalid (cf. Belliotti, 1993, pp. 89, 195–196). Others, in particular radical feminists, tend to define the notion of coercion so broadly that whenever a woman has sex with a man for some extrinsic reason, and not out of her own genuine affection and desire, she is coerced and therefore raped (cf. Soble, 1998, pp. 75–76). Moreover, even if on a rather abstract or general level some fairly broad consensus exists about how the conditions of valid consent should be interpreted, the application of the principle of mutual consent to concrete cases may still give rise to heated discussions. For example, the deliberative capacities required for valid consent are commonly regarded as precisely those powers of judgement that are constitutive of moral agency, and, consequently, as conditions in the absence of which someone cannot be held fully morally responsible. Notwithstanding this broad consensus, however, opinions greatly differ about whether or not people with mild or moderate mental retardation are to be conceived as (full-blown) moral agents and therefore capable of giving valid consent to forms of sexual interaction (Leicester & Cooke, 2002; Spiecker & Steutel, 2002; Steutel & Spiecker, 2002). And contrary to the moral and psychological views which form the basis of the standard legal regulations of sex with children, defenders of paedophilia argue

that the deliberative capacities of pre-pubescent children are generally underestimated, as a consequence of which many of them are mistakenly denied the status of moral agency, at least with regard to sexual behaviour.

Disagreement about interpretation and application of the principle of mutual consent obviously does not exclude agreement about the principle itself. Every moral principle will be explained and applied in different and often incompatible ways, but it would be wrong to conclude from this that actually different or even incompatible principles are endorsed. On the contrary, one cannot discuss or disagree about the interpretation or application of a principle without presupposing that the very same principle is involved. So claiming that the principle of mutual consent is currently supported by a large majority in many Western European countries is quite compatible with acknowledging the fact that within that majority its interpretation and application is far from uncontroversial.

To illustrate the sociological fact that at least in the Netherlands the principle of mutual consent is nowadays the cornerstone of the prevalent sexual morality, reference could be made to the often strongly aversive reactions of leading politicians, well-organized pressure groups and quality newspapers to recent public statements of several leaders of orthodox religious groups about the moral status of homosexuality. According to the liberal principle of mutual consent, sex between individuals of the same sex is morally permissible as long as the persons concerned have given their valid consent and no serious harm is done to third parties. However, several representatives of both orthodox Christian groups (like minister E. Herbig from the Pentecostal church at Hengeloo) and certain Muslim communities (like imam Khalil el-Moumni from Rotterdam) recently declared that homosexual activities are in themselves morally unacceptable. To express their religiously based disapproval, they use terms like 'impudent', 'scandalous', 'disgraceful', 'immoral', 'utterly forbidden', 'very bad', 'intolerable', 'a profanity' and 'a filthy sin'. In a recent radio interview a self-declared spokesman of Muslims in the Netherlands (imam Abdullah Haselhoeft) even proclaimed that capital punishment of practising homosexuals should be a legal possibility. These morally depreciative statements regarding homosexuality have caused a storm of indignation in Dutch society. Immediately after the public statements of minister Herbig and imam El-Moumni, the Public Prosecutor started to examine the possibility of prosecuting them for deliberate insult, incitation to hatred or discrimination. A few days later, the former Dutch Minister of Integration Policy (Roger van Boxtel) sent an invitation to a representative delegation of the 300 imams who are working in the Netherlands in order to discuss their moral views about homosexuality, to make it clear to them that in Dutch society different norms obtain, as well as to encourage them to honour the values of respect and tolerance.

The fact that the Prosecution Counsel and a member of the Cabinet felt called to oppose orthodox religious views on homosexuality may be taken as an indication that the liberal sexual morality of mutual consent is more or less implicitly accepted as a *public* morality. The very same view, but now quite explicitly, is defended by David Archard in his recently published essay *Sex Education* (2000). Archard tries to answer the question of which policy the state should pursue with regard to sex

education. One of his conclusions is that the state has both the authority and responsibility to make sure that all young people will receive a kind of sex education that has the principle of mutual consent as its moral content (Archard, 2000, pp. 41–42).

Is this view tenable? Should the liberal principle of mutual consent indeed be regarded as part of the public morality, that is, as a sexual morality that may be defended and promoted by the state whenever and wherever deemed to be necessary? And why would the state act wrongly if it would take the indicated orthodox religious views on homosexuality as a basis of its policy and legislation? To concentrate on sex education: Why should the state have the right to make arrangements to ensure that the younger generation will grow into citizens who are intrinsically committed to the principle of mutual consent? And given that the state's authority in these matters is the supreme authority, how, then, could it be justified to orthodox religious parents that they ought to obey the state's prescription that their children should attend schools in which the principle of mutual consent is transmitted?

Two interpretations of 'morally permissible'

In our view, these and related questions cannot be answered properly without making a distinction between two quite different interpretations of the principle of mutual consent. In the recent public debate on homosexuality that was generated by orthodox religious authorities, the distinction we have in mind is nowhere introduced in any explicit or systematic way. On the contrary, the distinction seems to be completely ignored or overlooked, and does not even seem to be part of the conceptual scheme of the participants in the debate. Nonetheless, we think that introducing and explaining the distinction is crucial for developing a well-justified view on legitimate state influence on sex education and therefore also for preventing serious moral derailments of state policy.

As we have seen, the principle of mutual consent lays down the conditions under which sexual activities are morally permissible: anything sexual is morally permissible as long as it is done with the valid consent of the participants (and does not harm anyone else—but we will not repeat this addition anymore). However, the term 'morally permissible' (and also the terms that are often taken as its synonyms, like 'morally acceptable', 'morally legitimate' and 'morally allowed') is ambiguous. Sometimes, when we say that a certain kind of action is morally permissible, we mean that individuals have a moral *right* to perform that kind of action. But we can also use the same term in an importantly different way, namely, to express the view that a certain kind of action is *not morally wrong* or *not morally undesirable*. Often, when we believe that persons have the right to do particular things, we also believe that doing these things is neither morally wrong nor morally undesirable—but definitely not always. Sometimes we sincerely believe that people have a moral right to do certain things, while also holding the view that doing such things can be open to serious moral objections. To put it differently, our conviction that persons should be assigned certain rights may go hand in hand with the conviction that the way in which some individuals exercise those rights is morally reprehensible, vicious, base

or degrading. For example, as true democrats we strongly believe that every citizen should have the right to vote. But this firm conviction does not exclude our moral disapproval of giving one's vote to a political party with a morally repugnant manifesto. And we may acknowledge that some of our fellow citizens publicly express and defend views that are morally reprehensible or even pernicious, and at the same time firmly believe that they should have the right to do so. In other words, dependent on the meaning of 'morally permissible', the principle of mutual consent can be interpreted in two different ways, namely, as laying down (a) that human beings have the moral right to have the kind of sex they prefer or value if, and only if, all the parties have given their valid consent, and (b) that having a particular kind of sex is neither morally wrong nor morally undesirable if, and only if, the persons involved are validly consenting. For the sake of convenience we shall call these two interpretations of the principle of mutual consent PMC(a) and PMC(b).

It will be clear that the moral right laid down by PMC(a) is not a welfare right but a freedom right or a right of *self-determination*. A welfare right is one which entails a positive duty, that is, a duty of others to *do* certain things, in this case the duty to provide or maintain certain benefits, or, more generally, to assist the right-holder in doing or getting the things the right refers to. But a freedom right merely entails a negative duty, that is, a duty of others *not* to do certain things, in this case the duty not to interfere with, impede or render impossible the action or practice to which the person is said to have a right. Moreover, a precondition for having welfare rights is having interests which can be preserved, protected or promoted, whereas a precondition for having freedom rights is having the mental equipment for exercising those rights, in particular the deliberative powers that are constitutive of moral agency. Though the sexual right we are discussing is a right of freedom, it is also possible to defend sexual welfare rights, for example the right of handicapped persons to get financial support for buying sexual services.

Given the plausibility of the distinction made, we want to defend the claim that PMC(a) should be taken as a *public* sexual morality, whereas PMC(b) should function as a *private* morality only. On the basis of this claim it can be argued that the state has the authority to see to it that its future citizens will get a form of sex education in which they learn to respect the right of their fellow citizens to be involved in sexual activities which have the valid consent of all the participants. But the state does not have the authority to teach its future citizens the view that any form of sex which is validly consented to by all the parties concerned is morally unobjectionable, let alone that all such sexual practices are perfectly sound. In other words, the state has the right to make sure that its future citizens will get some form of sex education that is based on PMC(a), but the state would act wrongly if it would base its policy regarding sex education on PMC(b). These two forms of liberal sex education we shall call LSE(a) and LSE(b) henceforth.

If we apply the distinctions made to the recent public debate on homosexuality, the following observations could be made. First, part of the public morality is the moral right of any citizen to take part in consensual sexual interaction between persons of the same sex. Consequently, the state should promote this view, especially by making sure that nobody prevents or interferes with the exercise of this

right. Moreover, the state has the right to oppose any kind of morality which is contrary to the indicated public morality regarding homosexuality. If, for example, orthodox religious believers maintain that homosexual practices are intolerable, or should be forbidden by legal regulations, or ought to be punished by the legal authorities, they are propagating a moral view which may be criticized and attacked by the state. Second, the view that consensual homosexual practices are neither morally wrong nor morally undesirable should be seen as a private morality. Consequently, the state is not allowed to promote this view, let alone to encourage homosexuals with a different moral view to act in accordance with their sexual orientation. Nor has the state the right to oppose a moral view simply because it condemns any form of sexual interaction between persons of the same sex. For example, if orthodox Christians or Muslims argue that homosexual behaviour is disgraceful, immoral or vicious, without denying that persons have the moral right to be engaged in consensual homosexual interaction, they are defending a moral view which should be respected by the state.

A justification

So our answer to the question we raised at the beginning of our paper is that the state is allowed to prescribe LSE(a) but not LSE(b). To put it differently, the state has the right to make sure that all its future citizens will receive a form of sex education that has PMC(a) but not PMC(b) as its moral content. But how could this claim be justified?

One promising way to do that is by showing that PMC(a) is implied by the basic rights that are part and parcel of a liberal democracy. Characteristic of liberal-democratic political communities, including the Western European countries, is that citizens are assigned certain basic rights and that the state has both the authority and responsibility to ensure that those rights are not violated but respected. The basic individual rights we have in mind here are roughly those that are covered by John Rawls's first principle of justice. This principle, which is also called the principle of greatest equal liberty, is summarized by Rawls in the following way: 'Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all' (1993, p. 5). The main tenor of this principle is to give every adult member of society an optimal package or the most extensive total system of the same basic rights and liberties. The central components of this package are the well-known civic liberties (like liberty of conscience and the freedom of speech), the political-democratic rights (like the right to vote and the right to run for public office), and also the fundamental rights that are covered by the so-called rule of law (like the right of legal due process or the right to impartial treatment in court).

Of particular importance in the context of our argument are the basic civic liberties, especially the fundamental liberty of all citizens to arrange their lives according to their own conception of the good, including their own moral and metaphysical views. In the written constitutions of the different Western European countries this right of self-determination is formulated in various ways. In the Dutch

constitution it is called ‘freedom of religion and philosophy of life’ (Art. 6: *Vrijheid van godsdienst en levensovertuiging*), but it is often also called ‘freedom of thought’ or ‘freedom of conscience’. But however differently it may be formulated, its central function is the same: it is designed to protect the freedom of all citizens to lead their lives *from the inside*, that is, in accordance with their *own* beliefs about what gives value to life or about which things are important or worth striving for (Kymlicka, 1989, pp. 10–13). Obviously this basic right of self-determination is not an unrestricted right. In a liberal democracy citizens are regarded not only as free but also as equal. That’s why the civic liberties are assigned to all citizens, whatever their conception of the good or their world view. Consequently, any citizen’s right of self-determination is restricted by the overriding principle of respecting the equal basic freedom of all fellow citizens. Everyone is allowed to arrange one’s life according to one’s own views, but only insofar as one’s way of living does not violate the right of others to live according to their views.

It is this basic liberal right of self-determination which implies PMC(a) or, perhaps more properly stated, PMC(a) should be regarded as a *specification* of this central civic liberty. The right of self-determination, as laid down in the constitutions of liberal democracies, should be taken as a general right in the sense that it covers our entire life, including its sexual aspects. Thus, if citizens have the general civic liberty to arrange their lives according to their own values and preferences, they also have the more specific liberty to arrange their *sexual* lives according to their own values and preferences. And just like the general right of self-determination, the sexual right of self-determination is not unrestricted. It is limited to sexual practices which do not cross the borders of other people’s rights to determine how to arrange their sexual lives. Precisely these limiting conditions are specified in PMC(a): the requirement of valid consent is tantamount to the requirement to respect the right of sexual self-determination of all the parties concerned.

To sum up, then, our justification presents the claim that the state has the right to prescribe LSE(a) as a conclusion that can be deduced from the premise that the state has the authority to make sure that each citizen’s basic right of self-determination is not violated but respected, and the premise that this general right implies the more specific right of sexual self-determination. If we are not mistaken, there are only three possible ways to rebut our justification. The first one is to attack the second premise by denying that the right of sexual self-determination is implied by the basic civic liberty that is constitutive of a liberal democracy. It is doubtful, however, whether such an attack could be backed up by plausible reasons. On pain of being arbitrary, reasons should be given not only for denying or restricting the sexual freedom of citizens, but also for approaching the sexual sphere, compared with the non-sexual aspects of human life, in such a fundamentally different way. But what on earth could make human sexuality so special that it should be excluded from the freedom granted to all other spheres of human life? A second way of contesting our justification consists of attacking the first premise. What is dismissed now is not the claim that sexual freedom is implied by the general right of self-determination, but the claim that the state has the authority to make sure that the latter right is not violated but respected. However, given the fact that the basic

right of self-determination is a cornerstone of any liberal democracy, this rebuttal has the rather unattractive implication that the liberal state may be replaced by an oppressive regime. A final way of criticising our justification consists in denying that the conclusion can be deduced from the premises, in particular by maintaining that the authority of the state to prevent any infringement of the right of sexual self-determination (PMC(a)) does not give the state the authority to prescribe a form of sex education with a moral content that is composed of the indicated sexual right and the corresponding duty (LSE(a)). We do not think, however, that this form of criticism is warranted. Giving the state the right to ensure that citizens will observe PMC(a) implies giving the state the right to take steps that are required to achieve that aim. Obviously one of those steps is to promote and sustain citizens' extrinsic motivations for complying with PMC(a), especially by controlling them and threatening them with sanctions. But taking such measures is definitely not enough to make sure that citizens will observe PMC(a). What is also needed is to stimulate citizens' intrinsic motivations for keeping PMC(a), especially by teaching them the relevant moral concerns and commitments.

A typology

Thus far we have offered a justification of the claim that the state should have the right to prescribe LSE(a). But we have still not shown why the state does not have the authority to prescribe LSE(b). Why would the state act wrongly if it took measures to ensure that PMC(b) will be inculcated in the younger generation? Our intention is to answer this question by describing three basic positions that might be taken with regard to PMC(a) and PMC(b). This typology will show more fully the importance of making a distinction between the two interpretations of the principle of mutual consent, and therefore also the importance of distinguishing LSE(a) and LSE(b).

First, one may take the position that PMC(a) should be accepted as part of the public morality, while PMC(b) should be rejected as a private morality. Someone holding this position will respect the right of all citizens to arrange their sexual lives according to their own values and preferences, but will dismiss the view that there can be nothing morally wrong with consensual sex. To be sure, embracing PMC(a) as part of the public morality implies rejecting any private morality that does not consider valid consent as a necessary condition for any form of sex to be morally unobjectionable. Defending the view that non-consensual sex may be morally right is inconsistent with supporting the view that no one is allowed to violate the individual right of sexual self-determination. But endorsing PMC(a) as a component of public morality is quite compatible with supporting a private morality that does not take valid consent as a sufficient condition for morally irreproachable sex. This is exactly the position we are talking about: PMC(b) is rejected as a private morality because valid consent is considered not enough for making the sex morally all right. Other conditions should also be fulfilled in order to make the sex morally unobjectionable—for example that the sexual partners are married, or have a loving relationship, or are not deliberately making procreation impossible.

David Carr (1998) is an example of someone who takes this position. On the basis of an ideal of human sexual flourishing and sexual virtuousness, he regards homosexuality, auto-eroticism and heterosexual promiscuity as morally reprehensible self-abusive vices. Nonetheless he opposes the view that the state should have the authority to enforce his virtue-ethical theory: 'liberals are entirely correct in discerning that constraint and criminalization is appropriate only in cases of sexual conduct which clearly violate the safety and well-being of others' (p. 182). In other words, he rejects PMC(b) in favour of some ideal of personal perfection, regards this view as a private morality, and accepts PMC(a) as part of the public morality. As we suggested above, orthodox religious believers, including orthodox Muslims, may also be examples of the position at issue. Although being an orthodox believer involves accepting the truth of some revelation and its authorized interpretations, such an attitude may go hand in hand with accepting the right of citizens to arrange their lives, and therefore also their sexual conduct, according to quite different views, including PMC(b).

It is important to note, however, that the position we are talking about should be taken as a *moral* position, which implies that PMC(a) should be regarded as part of the public morality for *moral* reasons. Sometimes orthodox Islamic spokesmen seem to appeal only to instrumental or pragmatic reasons when proclaiming that all Muslims who are living in the Netherlands should accept liberal-democratic public morality, for example when they argue that opposing liberal-democratic principles will put their community in a bad light or may generate negative or even repressive reactions. But the fact that orthodox believers offer non-moral reasons for accepting PMC(a) as part of public morality does not, of course, exclude the possibility that they could have given a moral justification as well. That this possibility is far from purely hypothetical may be recognized if it is understood that such moral reasons need not be akin to the moral justifications offered by liberal philosophers, like an appeal to the principle of respect for persons, to the value of personal autonomy, or to the criterion of reciprocity as a basis of political legitimacy. As Rawls (1987) has pointed out in his explanation of the idea of an overlapping consensus, different and incompatible moral and religious doctrines may have *in themselves* the moral resources to support the public morality of a liberal democracy. For example, some orthodox Muslims argue that the just and good society prescribed by the Koran actually supports equality of men and women, as well as freedom of choice in matters of faith and religion (cf. Rawls, 1999, p. 151). In a similar way orthodox religious believers may sustain PMC(a) as part of the public morality on the basis of reasons derived from their private moral views. David Carr, for example, justifies mutual tolerance, including tolerance with regard to forms of consensual sex which he considers morally wrong, by appealing to Paul's first letter to the Corinthians: 'for, as the Apostle has taught, even if a firm faith that ours is the true way has given us sure hope of salvation, we are nothing if we have not love' (1998, p. 182).

A second position consists in supporting PMC(a) as a component of the public morality and accepting PMC(b) as a private sexual morality. This is the position of the full-blooded liberal, who not only holds the view that all citizen should have the right to arrange their sexual lives according to their own values and preferences, but

also believes that there is nothing morally wrong with any form of sex which is validly consented to. It is quite conceivable that orthodox religious believers will reject PMC(a) as a public sexual morality on the basis of their moral-religious views, although such views, as we noted above, may also provide the moral grounds for accepting PMC(a) as a public principle. But it is hard to conceive that someone who endorses PMC(b) as a private sexual morality could reject PMC(a) as part of the public morality. Indeed, PMC(b), taken as a private morality, can only offer reasons for accepting and never for opposing PMC(a) as a public principle. In this respect, the person who endorses PMC(b) as a private principle, compared with those who are committed to other private sexual moralities, is the most reliable supporter of the right of the state to make sure that nobody's sexual freedom is violated. Moreover, an interesting asymmetry can be pointed out in the mutual moral attitude of the full-blooded liberal and the person who accepts the first position. The latter will not only disagree with the view of the full-blooded liberal, but also morally condemn certain sexual practices which are in keeping with that liberal view, particularly those forms of consensual sex that do not meet his or her additional criteria of morally irreproachable sex. The full-blooded liberal for his or her part will reject the private sexual morality of the person who takes the first position. But he or she will not morally condemn any sexual practice which conforms to that view.

A third position that could be discerned consists in rejecting both PMC(b) as a private morality and PMC(a) as a part of the public morality. Typical of this position is that some moral view on sexuality, which should be seen as private from a liberal-democratic perspective, is defended and presented as something that should be part of the public morality. It is regrettable that leading figures of Muslim groups and representatives of orthodox Christian communities are not always clear about whether they embrace the first or rather this third position. For precisely on the basis of this distinction the line can be drawn between orthodox religious believers who are liberal on the political level and those who are fundamentalists. As we have emphasized in our discussion of the first position, orthodox believers may see their non-liberal views on human sexuality as a private morality and sustain a liberal sexual public morality on the basis of both typical liberal-philosophical reasons and reasons that are derived from their own moral-religious views. But if they want to elevate their private non-liberal views into a public sexual morality, that is, as a view that may be promoted by state policy and legislation, they become fundamentalists. It is also regrettable that representatives of the Dutch government are obfuscating or overlooking this distinction when calling Muslim leaders to account for their moral condemnation of homosexual practices. Such a state intervention may be fully legitimate if those leaders reject PMC(a) as a public morality and therefore take the third position. But if they are endorsing the first position, such an intervention would be inconsistent with the principles the state itself is supposed to defend, especially with PMC(a). What the members of the Dutch government should have done is to ask the Muslim leaders whether they are sympathetic to the first position or rather opt for the third.

Appearances to the contrary notwithstanding, not only orthodox religious believers but also devotees of liberal sexual values may take the third position. Unlike the

full-blooded liberal, who accepts PMC(b) but only as a private morality, persons who subscribe to PMC(b) might want to give this principle a *public* status. Although this position looks quite liberal, it actually is a kind of fundamentalism, or is at least a view with a fundamentalist touch. For if PMC(b) is elevated to a public principle, the public status of PMC(a) is in fact undermined if not denied. Surely because both PMC(b) and PMC(a) only forbid forms of sex that are non-consensual, taking these principles as part of the public morality would result in constraining a citizen's sexual behaviour in precisely the same way. In this respect, state policy that is founded on PMC(b) would be as liberal as state policy that takes PMC(a) as its basis. But it would be different in other important respects. Claiming that PMC(b) should be part of the public morality implies giving the state the right to defend and promote this principle, and this means that the state does have the authority not only to ensure that all its citizens will attune their sexual behaviour to PMC(b), but also to propagate PMC(b) and to oppose all moral views on sexuality that contradict it, including the views of orthodox religious believers who take the first position. In this particular respect, giving PMC(b) a public status is incompatible with accepting PMC(a) as part of the public morality. For if PMC(a) is taken as a public principle, the state is *not* allowed to oppose non-liberal sexual views that are merely held as private moralities. On the contrary, the state would have the duty to respect these views. Consequently, state officials who publicly admonish Muslim leaders who are quite willing to accept PMC(a) as a public principle are guilty of doing something that has a touch of fundamentalism, to say the least of it.

It will be clear now why the state does not have the right to prescribe LSE(b), that is, a form of sex education that has PMC(b) as its moral content. Acceptance of PMC(a) as a foundation of state policy and legislation involves giving the state the right to prescribe a form of sex education that is *only* inconsistent with the educational views and practices of parents and communities that are supporting the *third* position, more particularly with educational views and practices which are inspired by some form of fundamentalism. But if the state would take PMC(b) as a basis of its policy and regulations, it would claim the right to prescribe a form of sex education that *also* contravenes the educational views and practices of parents and communities that are defending the *first* position. From a liberal-democratic point of view, such a policy would be illegitimate.

Conclusions

In the introductory section we explained the distinction between a public and private morality in terms of the right of the state to defend or promote particular principles and virtues. Up to now we have only discussed which *principles* may be part of the moral content of the form of sex education the state is allowed to prescribe. But where are the *virtues*?

In some ethical theories, especially in theories that go by the name of 'virtue ethics', virtues are regarded as traits of character that we, *as human beings*, have to acquire in order to flourish or to live up to some ideal of human perfection (cf. Carr, 1997). From the perspective of the view we defended, such moral doctrines,

however important they are, should be counted as private moralities. Consequently, the state does not have the right to prescribe any form of sex education that is informed or inspired by some virtue–ethical account of the sexual sphere of life. Other ethical theories, in particular philosophical views that could be joined under the name of ‘liberalism’, tend to regard those traits as virtues that we, *as citizens*, are supposed to acquire for the purpose of a well-functioning and flourishing liberal democracy (cf. White, 1996). As we said above, typical of a liberal democracy is that its main political and social institutions are arranged according to Rawls’s first principle of justice. And the traits that Rawls identifies as virtues are precisely the traits of the citizen who is able and willing to sustain and uphold these basic institutions (Rawls, 1993, pp. 194–195). We argued that PMC(a) is covered by Rawls’s first principle of justice and therefore should be seen as part of the public morality of a liberal democracy. This principle, too, corresponds with traits that are to be regarded as civic virtues, especially the virtue of respect for the right of sexual self-determination of one’s fellow citizens and the virtue of tolerance towards legitimate sexual practices which one considers in some sense morally defective. Precisely these civic virtues are the central aims of the kind of sex education the state has the right to prescribe.

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References

- Archard, D. (1998) *Sexual consent* (Boulder, CO, Westview Press).
- Archard, D. (2000) *Sex education* (Impact No. 7, Philosophy of Education Society of Great Britain).
- Belliotti, R. A. (1993) *Good sex: perspectives on sexual ethics* (Lawrence, KS, University of Kansas Press).
- Carr, D. (1997) Can there be a moral psychology of democratic and civic education? *Journal of Philosophy of Education*, 31(2), 345–354.
- Carr, D. (1998) Between the rock and the hard place: the contemporary dilemma of sex education, in: M. J. Reiss & S. Abdul Mabud (Eds) *Sex education and religion* (Cambridge, The Islamic Academy), 168–185.
- Kymlicka, W. (1989) *Liberalism, community and culture* (Oxford, Clarendon Press).
- Leicester, M. & Cooke, P. (2002) Rights not restrictions for learning disabled adults: a response to Spiecker and Steutel, *Journal of Moral Education*, 31(2), 181–187.
- Primoratz, I. (1999) *Ethics and sex* (London, Routledge).
- Rawls, J. (1987) The idea of an overlapping consensus, *Oxford Journal of Legal Studies*, 7(1), 1–25.
- Rawls, J. (1993) *Political liberalism* (New York, Columbia University Press).
- Rawls, J. (1999) The idea of public reason revisited, in: J. Rawls (Ed.) *The law of peoples* (Cambridge, MA, Harvard University Press).
- Soble, A. (1996) *Sexual investigations* (New York, New York University Press).

- Soble, A. (1998) *The philosophy of sex and love: an introduction* (St. Paul, MN, Paragon House).
- Spiecker, B. & Steutel, J. (2002) Sex between people with 'mental retardation': an ethical evaluation, *Journal of Moral Education*, 31(2), 155–167.
- Steutel, J. & Spiecker, B. (2002) Reasonable paternalism and the limits of sexual freedom: a response to Greenspan and Leicester and Cooke, *Journal of Moral Education*, 31(2), 189–194.
- White, P. (1996) *Civic virtues and public schooling: educating citizens for a democratic society* (New York, Teachers College Press).