

# GAY AND LESBIAN RIGHTS: PROPERTY IS BETTER THAN POLITICS



BRIAN MICKLETHWAIT

The libertarian view of gay and lesbian rights can be easily summarised. Gays and lesbians should have exactly the same rights as everybody else. No less, and no more.

## LIBERTY

For libertarians, the key to this is *consent*. A sexual relationship to which both parties agree should not be coercively interfered with.

Those who oppose gay and lesbian rights often ask me what I think about being gay or lesbian. As it happens the thought both of gay or lesbian sex causes me a mild frisson of distaste. Not long ago I addressed a gay and lesbian group about libertarianism, and they also wanted to know about my sexual preferences. Well, I'm a heterosexual, although not a hugely active one so far. I can imagine no circumstances in which I would consent to an act of gay sex. Lesbianism is an impossibility for me, as for any man.

All of which is irrelevant to what I think ought to be the rights of those who *do* consent to such things. I am not volunteering to become gay, still less to be a lesbian. All I'm saying is that those who *are* gay or lesbian should have their preferences respected and their persons and legitimate rights protected. The persecution of gays and lesbians is *extremely* distasteful to me, and this pamphlet is my contribution to the effort that must constantly be made to prevent this.

## THE NEED FOR SPECIAL POLICE ACTION

Anti-gay persecution comes and goes. In my country just now it happens to be rather virulent. The upper classes of Britain are, by their own exceedingly variable standards, behaving quite well towards gays and lesbians just now. But the lower classes are having one of their fits of anti-gay self-righteousness.<sup>1</sup> Perhaps this is because, with their usual sources of self-esteem, such as work and money, proving unreliable, they wish to proclaim to the world that they are at least one rung above the queers in the ladder of creation. The AIDS panic has undoubtedly made matters worse.<sup>2</sup> But whatever the reason, one of the most elementary gay and lesbian rights that ought now to be insisted upon is the right not

to be murdered or assaulted by vicious bigots. In practice what this means is that if a gay or lesbian person *is* murdered or assaulted, the police should pursue the perpetrators just as keenly as they would any other murderer or violent criminal.

Insofar as anti-gay and anti-lesbian feelings cause people to attack gays and lesbians, then the police should study such crimes on a specialist basis. It has been said that this would mean the police discriminating in favour of gays and lesbians, making a special case out of them. There are already laws against killing or assaulting people, it is said. We need no special laws to deal with the particular circumstance of gays or lesbians being beaten up.

We do indeed need no change in the *law*. Murder is murder. Assault is assault. But it would be outrageous for the police to remain wilfully ignorant of that particular class of murders and assaults that are motivated by hostility to gays and lesbians by failing to treat these crimes as the distinct type of human action that they are. If there was a sudden outburst of Roman Catholic church burning, the police would try to learn what if any was the pattern of these crimes, by setting up some sort of special team to look at all of them, to try to work out what it was about Roman Catholicism or its churches that was so upsetting to the arsonists in question, so that in due course they could be arrested. Were the police not to do this on the grounds that it would be to "discriminate in favour of Catholics", that would be an absurd dereliction of their duty. That there already exists a law against setting fire to buildings of any kind is beside the point. Those gay and lesbian activists who have urged the police to treat anti-gay and anti-lesbian crimes as the distinct thing *they* are have justice entirely on their side. Casual TV watching suggests to me that some at least of the police understand this.<sup>3</sup>

## THE RIGHT TO DISCRIMINATE

But I repeat, the law should not require of anyone that they actually *like* gays or lesbians, generally or in particular. The - on the face of it - bad news about libertarianism, from the gay and lesbian point of view, is that we libertarians uphold the right of any property owner to be as impolite as he desires to gays and lesbians, with his own resources and within the confines of his own property. Employers should be allowed to discriminate against gays or lesbians, if that's what they want to do, on the grounds that they are paying for the work of their workers, and it's their money. Just the same rule which says that gays and lesbians may do as they please with and within *their* property should apply also to those who disapprove of gays and lesbians.

To put the general point in the most provocative manner possible, people should have the right to fire their employees if they have taken a dislike to the colour of their eyes. The only *caveat* being that they may not behave like this if they have promised not to, as employers often now do.

As I say, this sounds like very bad news for gays and lesbians. But suppose some gays want to set up in business, and hire only other gays, that is, to discriminate *in favour* of gays. Should that be allowed? Libertarians answer with a resounding and unqualified *yes*. The libertarian view of such gays is, once again: it's their money. If they insist on parting with it only to other gays, or for that matter only to one-eyed Albino country-and-western fans, then fair enough. If they're being foolish or tasteless or tactless, that's their problem.

The more usual method that thoughtful and kind-hearted people recommend for the protection of the rights of widely disliked minorities such as gays and lesbians is that the law should compel us all to be respectful and fair. If we liberta-



## Political Notes No. 69

ISSN 0267-7059 ISBN 1 85637 098 4

An occasional publication of the Libertarian Alliance,  
25 Chapter Chambers, Esterbrooke Street, London SW1P 4NN  
www.libertarian.co.uk email: admin@libertarian.co.uk

© 1992: Libertarian Alliance; Brian Micklethwait.

The views expressed in this publication are those of its author, and not necessarily those of the Libertarian Alliance, its Committee, Advisory Council or subscribers.

Director: Dr Chris R. Tame Editorial Director: Brian Micklethwait  
Webmaster: Dr Sean Gabb

**FOR LIFE, LIBERTY AND PROPERTY**

rians argue for a more modest role for the law, this is not because we are thoughtless or hard-hearted, but because we understand the law and its limitations better than others seem to. If the law seeks to compel “toleration” by demanding an ever more elaborate list of items of behaviour regarded by the lawmakers as signs of tolerance, as a condition for doing other things, such as renting rooms, serving alcohol or meals, or hiring people, then bigots (or people who merely disagree with the lawmakers about the definition of bigotry) will provide fewer of these various services, hire fewer people, and lapse into inactivity. Worse, non-bigots will also be dissuaded from entrepreneurial endeavour by the resulting paraphernalia of state regulation and interference, and some, like me, will object to the notion that they have no *right* to be the bigots that they *choose* not to be.

In Britain now, talk of laws which compel the non-gay, non-lesbian majority to behave nicely towards gays and lesbians is mostly still talk. But there has been a small flurry of political activity to provide special facilities for gays and lesbians at public expense, and a small flurry of publicly funded propaganda in favour of the gay or lesbian way of life. Also, some public sector organisations have imposed pro-gay and pro-lesbian correctness policies within their own territory. The result? Other political entrepreneurs with different notions about decency have retaliated with other measures which discriminate *against* gays and lesbians. Politics is politics. Democracy is democracy. Gays and lesbians, being in a minority, will tend to get the worst of such exchanges. If you tune the political engine in your favour, don't be surprised if someone else comes along and retunes it to favour someone or something else, and to harm you. If you are a small and rather unpopular minority, you should expect this.

The libertarian attitude of allowing everything that is not aggressive, and of favouring a completely free market, unimpeded by laws against being impolite or discriminatory, may *seem* cruel, for gays and lesbians, and for people generally. But it is not. The *consequence* of the libertarian attitude is a society in which bigots can be bigots, but *are faced with the costs of their bigotry*. A free society creates an abundance of opportunities for all, including gays and lesbians. Many employers will be intolerant of gays or lesbians (assuming they know who they are) but others will not mind, or will be eager to compensate for (and profit from) such bigotry by making a point of being generous to these and other minority folk. Many employers will *be* gays or lesbians.

Economic freedom disperses power and wealth throughout society. It “empowers” people of all sorts and of every taste or preference. It rewards people not according to what they merely *are*, but according to what they contribute to the lives of others. It spreads money around, and to all but the most intolerant tradesman the money of any customer is welcome. When did you last hear of a shopkeeper refusing to serve a customer because that customer was gay?

### THE RIGHT TO PUBLIC CELEBRATION OF GAY AND LESBIAN PREFERENCES

Many gays and lesbians are quite ready to concede that if they are willing to be discreet about their sexual preferences, - to remain in the closet - then indeed their lives work, after a fashion. But many gays and lesbians are not content merely to *be* gay or lesbian; they want to *proclaim* and to celebrate in public their sexual preferences, just as heterosexuals do, with demonstrations of affection, and with posters and artistic displays which glorify their sexual preferences. The right to do as one wishes merely *in private* is not enough.

We libertarians, far from being embarrassed by this entirely reasonable demand, are in fact the only political group who are *not* embarrassed by it.

In asserting the right of gays and lesbians to do as they please in private, I believe I am stating the opinion of a substantial if not overwhelming majority of my countrymen, including that of many whose distaste for gay and lesbian sexual preferences is far greater than my own. Many might phrase their acceptance of this principle a lot more rudely than I have. They may say that “poofs and pansies and queers and lezzies can do whatever disgusting and perverted things they want to, with each other, so long as they keep themselves to themselves, and leave me right out of it thank-you-very-much”, but the legal essence of such tactless proclamations is identical to what I have proclaimed. Even to note the existence of such language without completely condemning it will cause some offence.

But that's my exact point. The very nastiness of the people who nevertheless uphold the rights of “consenting adults in private” is proof of the robustness and political utility of this concept. Contrast this with the amazing hostility sparked off *among the same people* by the opening of one triflingly cheap but still publicly funded “gay and lesbian centre” by one left wing local authority. So how can a similar miracle be worked on behalf of gays and lesbians who wish to come *out* of the closet, and to live a life that is all of one piece, with no deceptions or evasions?

### POLITICS VERSUS PROPERTY

The reason why people are so tolerant about what happens in “private” is that “private” spaces are typically also *owned* spaces. Therefore, the legal principle that one may do as one wishes *in private* imposes absolutely no unwanted arrangements upon third parties, who wish their own property to be used or administered differently. That you can be gay in your house in no way whatever changes life in my house, unless I want to change it. I don't have to be gay in my house. I don't even have to watch anybody else being gay in my house, unless I consent also to that arrangement. I can continue to *discriminate* against gayness, in my property.

Contrast this with arguments about “public” spaces. If Parliament changes the rules about what may happen in “public”, then all of us are affected. If gays and lesbians are allowed or forbidden to hold hands in the street, or if heterosexuals are allowed or forbidden to kiss, or if prostitutes are allowed to become a little more public about their product or compelled to be less public, if female breasts may, or may not, be exposed, then we are all involved, if only as potentially uncomfortable or outraged spectators. Arguments about “public” spaces are now *political* arguments, in a way that the argument about what happens in my house or your house is not. Hence the extraordinary and extreme contrast in the manner in which these two debates proceed, despite the fact that it is the same people who are taking part in them.

The conclusion that we libertarians draw from this contrast is that “public” places should be “privately” owned. If you think about it, there are already many such places. There are shops, clubs, bars, stadiums and pubs. Thanks to the institution of “private” property, gays are able to attend “public” places where public displays of gay affection are almost *de rigueur*, and I can go to other places where such things are most definitely off the menu, if that's what I want. I feel no more threatened by gay bars than I am by the fact that gays have homes and do gay things in them as well. (My inverted commas around “private” and “public” are because both

these words have such double-edged meanings, concerning on the one hand who owns the place, and on the other, who regularly goes there.)

Libertarians say that there should be many *more* such places, where the rules are negotiated between property owners and their guests or customers, rather than imposed from afar by politicians. Instead of the frenziedly controversial uniformity of politics, there would be more of the decorous and tolerant variety of the free society. To repeat a favorite libertarian slogan: sell the streets!

If gays and lesbians demand the right to be publicly affectionate in *all* streets, then I say they are demanding too much. Mary Whitehouse and her youthfully vicious followers should have certain streets that would make *them* entirely happy, where they could complain about each other and beat each other up to their heart's content. And the same rule should apply to gays, lesbians, prostitutes, the customers of prostitutes, buskers, the virulent loathers of buskers, and so on and so on and so on. If streets were privately owned, almost all of us would get some of what we very much want, just as already happens with (privately supplied) fizzy drinks. Most streets would merely be rather better for me than they are now. Some would be intolerable (which I would avoid) and a few would be seventh heaven (which I would visit constantly). And just the same would apply to gays and to lesbians, to you and to your great aunt. Almost all of us would get streets we would like more than we do now, except murderers, rapists and plunderers (which is another compelling argument in favour of such changes).

I personally, and the bulk of the public generally, will support any minority in its demand for *some* public expression of its point of view or preferences, but will side with majoritarian bigots if the minority demands the right to offend others indiscriminately. The aim of all gay and lesbian activists should be to isolate their activist bigot enemies, and to avoid uniting the bigots with the majority. The intellectual tool to achieve this is the institution of private property.

The tendency among the politically active is, alas, mostly in the opposite direction. Eager to impose their opinions even more intrusively upon others, both the Mary Whitehouse clan *and* the Politically Correct clan want their contrasting views of virtue to over-ride property rights, in such places as privately owned restaurants, clubs, pubs, and even people's living rooms, even more than happens already. All of these places are frequented by the "public" (even living rooms), and this is said to justify making every aspect of behaviour in such places a "public", that is, a *political* issue.

Such an extension of political interference in privately owned spaces is far more likely to be used to discourage gay and lesbian sexual preferences, than to compel a respectful attitude towards these things.

### THE RIGHT TO FREE EXPRESSION

Libertarians uphold the right to free speech. Some gay and lesbian groups argue that they should have the right to spread enthusiasm for their sexual tastes and ideas, and I agree with them. Some gays and lesbians also argue that those who oppose gay and lesbian rights should be forbidden by law to spread *their* ideas. I think such gays and lesbians are wrong. It really would be an extraordinarily unwise thing for gays and lesbians to demand legal restraint of something merely because they think it revolting. That is to arm the weapon their enemies will use - already do use - against them.

### "OUTING"

A particularly controversial gay tactic in recent years, especially in America, has been the practice of revealing the gayness of those gays whose public statements are considered by gay activists to be inappropriate. Personally, I think it reasonable, if somewhat cruel, to "out" the kind of venomously anti-gay person who is himself gay on the quiet. On the other hand, exposing someone who merely refuses to take any sort of stand, despite being gay, strikes me as thoroughly nasty.

My impression is that libertarians have no very predictable opinions, as a result of being libertarians, about "outing". For myself, I'd want to insist on the general point that you do not own your reputation. Others create your reputation by their combined responses to your life, opinions, expressions and actions, so your reputation is their combined property, not your particular property for you to be allowed to preserve or change at will. My inclination would be to allow "outing", on the simple grounds that this too is a free speech issue. If people want to say things about you that will make you unpopular and cause you grief and embarrassment, then they should be allowed to. (And you should be allowed to retaliate in kind.)

Other libertarians might feel about "outing" rather as I feel about abortion. It's hideous, but trying to forbid it is silly. And still others might feel about "outing" the way that anti-abortion libertarians feel about abortion, which is not only that it is nasty, but that it ought also to be illegal.

In Britain, thank goodness, this argument seems to have gone away, because those gay groups who have even *discussed* this tactic have been severely criticised. (They have had to consider the effect of such nastiness on *their* reputations.) I am a fairly regular consumer of the news, and I know of no prominent British gay who has been "outed", although perhaps that reflects my ignorance of the gay political scene rather than the real state of affairs.

### CHILDREN AND THE RIGHTS OF CHILDREN

Some libertarians, including me, have views about the rights of children which have a major bearing upon the argument about whether gays or lesbians should be allowed to have, or to adopt, children. I say: it's up to the children. While children are infants, they are, for most practical purposes, property. They have no rights of their own, because they are incapable of claiming such rights. All they can do is yell with apparent rage or gurgle with apparent pleasure and the rest of us make what we can of these noises and do the best we can for them. The administration of infancy is incurably controversial.

Children are an entirely different matter. They are well able to express preferences between this adult and that one, these adults and those ones. And just as I believe that the sexual behaviour of adults should be governed by consent, so too do I believe that consent should settle arguments about family cohabitation. Suppose some lesbians want to keep a particular child in their home, away from its original parents. And suppose the child thinks that's a good idea too because, according to the child, his original parents were slobes and used to beat him up. Fine. That should settle the matter. If the child and the lesbians want to cohabit, who else need worry? If the child hates living with his original parents, why should the child be imprisoned with them?

And given that the same rule would allow children to leave homes run by gays or lesbians if they ever decided that they

wanted to, I personally would have no problem about gays or lesbians acquiring or adopting *infants* and looking after them. I certainly don't think that the infants *born* to gays or lesbians should be snatched away from them, merely because they may be brought up with unorthodox opinions or tastes, and, mercifully, nor do most other people.

### PEOPLE WILL SURVIVE

In general, I don't fear that the world will suddenly consist of nothing but gays and lesbians, just as soon as the more enthusiastic of the gay and lesbian missionaries are allowed to attempt this bizarre project. Those anti-gay and anti-lesbian missionaries who fear that allowing gays and lesbians to spread their ideas and tastes unchecked, and worse, to actually raise children with these same ideas and tastes, would "open the floodgates" are, I believe, simply mistaken.

The mistake these anti-gays and anti-lesbians make is very simple. *It starts with the fact that they are strongly inclined towards being gay or lesbian themselves.* Nothing wrong with that. However, they then deduce that *so is everyone else.* Therefore, they say to themselves, there must be hideous laws against spreading gayness and lesbianism, or else the whole world will go gay and lesbian and cease entirely to procreate. The error these unhappy persons make is in assuming that all other apparently straight people are seeking to control the same "beast within" that they face within themselves. It has become a cliché of the American moral majority scene that the most fervent anti-gays will inevitably, sooner or later, get arrested for propositioning boys in public toilets.

As for me, I look at the soft porn mags in the newsagents. I see the posters in the underground. I observe the displays of bra-bursters in W. H. Smith, about rampantly heterosexual characters, all bonking each others' brains out and founding innumerable squabbling dynasties which fan out across the planet, and I do not fear for the biological future of my species. The floodgates of heterosexuality are well and truly open, and a little thought along Darwinian lines concerning the tendency of heterosexuals to outbreed homosexuals ought to reassure us still further.

### THE AGE OF CONSENT

In Britain now, there is talk of lowering the age of gay and lesbian consent. Both on children's rights grounds, and because I do not fear for the future of the race, I support this. If it happens, and if as a result there is a sudden surge of enthusiasm for gay and lesbian sex, then those straights who regret this will have to redouble their already frenzied propaganda efforts in favour of their sexual preferences, although how they could do more than they do now, I don't know.

Liberalisations of the law are often said to "send the wrong signal". But law is about crime and its punishment, not "signals". If the government decided to *allow* gay or lesbian sex between sixteen year olds, that wouldn't mean it was in favour of it. It would merely be refraining from the legal persecution of those who do favour it. (The same point applies to that other regular libertarian topic, recreational drugs.)

### GAYS AND LESBIANS DID NOT CAUSE THE COLLAPSE OF THE ROMAN EMPIRE

One sometimes encounters the idea, especially among older people with the remnants of a classical education, that gay and lesbian sexual preferences are in some vague way connected to the decline of civilisations generally, and of the Roman Empire in particular. I do not think that gay or les-

bian sex caused the decline of the grandeur that was Rome, and I am confident that gayness and lesbianism pose no similar threat to our own civilisation. In my opinion, the great weakness of the Roman Empire was that its strength depended upon its *complete* control of the Mediterranean. To surrender part of the Mediterranean coast was like a besieged town surrendering part of its wall, unthinkable until it was unavoidable. Rome thus got sucked into unbearably heavy military commitments to hold this ring, commitments which eventually proved both fiscally and politically disastrous. Shaped by military rather than commercial considerations, Roman notions about economics were even more self-destructively Galbraithian and Keynesian than those that flourish now. Partly for this reason, the Roman Empire also lacked a tradition of radically progressive technology, such as our civilisation, for all its faults, so conspicuously does possess. Thus Rome fell. Gayness and lesbianism had nothing to do with it.

### GAY AND LESBIAN RIGHTS ARE ABOUT HOW I MUST BEHAVE, THEREFORE THEY ARE MY BUSINESS

One final point. Going back to those gays who wanted to know whether I also was gay, I got the impression that some of them thought that, not being a member of the minority in question, it wasn't for me to be holding forth about the rights of those who are. I absolutely deny this. The rights of gays and lesbians most definitely concern me, because they involve the behaviour that I must display, and more especially must desist from, in *my* dealings with gays and lesbians. Gay and lesbian rights are about *my* behaviour, not just about the behaviour of gays and lesbians. Only if the non-gay and non-lesbian majority is able to discuss gay and lesbian rights freely, and split hairs about exactly where such rights should end and why, will it persuade itself to uphold and respect such rights, as I trust and hope that it will.

### NOTES

1. Those in the habit of always siding with the lower classes against the upper classes will object to this claim. I base it upon the contents of, on the one hand, the "quality" press, and on the other hand the tabloid press. There can be no doubt where the anti-gay sneerings and bellowings are to be found. The quality press is wholly polite. The tabloids are polite only sometimes, and frequently disgusting. This surely reflects the sentiments of the relevant readers.
2. Most heterosexuals, myself included, do not now regard AIDS as a significant threat, although it seemed like one at first. AIDS is and will remain, most now think, confined to those "risk groups". Many gay activists call this opinion "homophobic". But if AIDS, having originally been a problem only for gays and drug users, had subsequently wrought havoc among the non-gay, non-drug-using majority, then the resulting "homophobia" would have been horrendous and uncontrollable. Why else did the "Moral Majority" welcome AIDS with such malicious glee? It was the early fear that the gays had unleashed another Black Death that fanned the flames of anti-gay nastiness, not the subsequent realisation (in defiance of an extraordinary propaganda barrage from the government and from "health educators") that gays remained vastly more at risk from AIDS than non-gays. "AIDS activists" are still trying *but fortunately failing* to spread "homophobia", by exaggerating the threat of AIDS to non-gays in order to get political support and funding for AIDS research. See Sean Gabb, *What To Do About AIDS*, Pamphlet No. 12, Libertarian Alliance, London, 1989; and Michael Fumento, *The Myth of Heterosexual AIDS*, New Republic Books, New York, 1990.
3. This point was clarified with great force for me by Peter Tatchell, who was one of the speakers at the Libertarian Alliance meeting on Gay Rights, on April 11th 1992.