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Abstract. This article describes the problematic nature of child molestation for the rule of law.

A rule of law usually connotes some consensual predictability--e.g., an alleged violation leads to expected legal consequences of investigation and adjudication within some explicit boundary of variability. The nature of child molestation--the concept and the consequences of legal action--may inevitably subvert the rule of law.

First, the concept. Child molestation usually comprises sexual contact wherein (1) at least one person who is actively or passively, knowingly or unknowingly involved is a child; (2) there is a power disparity--e.g., based on knowledge, experience, age, manipulative intent--among the people involved; (3) the child (or younger children) is (are) assumed to have less power and to be unwilling or incapable of expressing informed will as to sexual matters; and (4) there are noxious consequences for those with less power.

In some ways the components of the concept overlap tautologically. For example, many observers equate all sexual contact with children as inherently noxious. This equation seems impervious to empirical research that while supportive seems ridden with political, ideological, and other psychological-driven agendas that contaminate the collection and analysis of data. Moreover, even if the varying combinations of rationales for the equation--religious, ethical, moral, and legal--may be countered by a dissenter, their visceral foundations rarely are. Finally, studies--psychological, anthropological--designed to support a plethora of hypotheses from the most noxious to the most adaptive of consequences are rarely if ever carried out. Thus, component (4) above seems to add no unique meaning to the concept of child molestation.

Many observers differ as to the extent of physical and psychological contact that comprise sexual contact beyond a few explicit, crude words and actions. The border between affection, compassion, and sex is not always easily drawn. That this is more than a sophistic or semantic difficulty is underlined by investigations and court proceedings in which the hottest of interpretations can be given to the coolest of behaviors--to any touch, any glance. Thus, the very premise of sexual driving the concept's components is more ambiguous than one might at first surmise.

Some observers posit that some sort of power disparity characterizes all human interactions and may be the foundation of all sexual attraction. In other words, we may all be exploiters. Moreover, multiple differences between chronological age and mental ages corresponding to various skills suggest that the young can sometimes exploit the old--sexually and otherwise. As well, the hugely complex sexual nexus of conscious and unconscious cognition, emotion, motivation, and behavior in a particular historical moment render some case histories more convoluted and illustrative of phenomena that may be too uncomfortable to entertain about the sexuality of children and of adults. This is anything but an apologia for molestation. Instead, it's a prolegomena for careful analysis.

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Second, the consequences of legal action. (1) As described by psychological research on innuendo induction, the very allegation of child molestation cannot be withdrawn or shown to false without very significant residual damage to the individual accused. The innocent is not only guilty until adjudicated as innocent, but guilty ever after in the eyes of too many people. (2) As described by psychological research on the sexually abused, victims often are poor witnesses in a legal context. A part of this is because their trauma can immensely impede the effective communication of events--even the will to effectively communicate. A part of this is because many adjudicators of allegations finds the very notion of child molestation so psychologically threatening or otherwise beyond the pale to impede effective listening. And a part of this is because some victims are developmentally too young to effectively communicate. (3) As described by psychological research on child molesters, perpetrators may come from any walk of life--including officials and other participants within the criminal justice system who have not yet been identified as perpetrators but who are active in proscribed behaviors similar to that of a defendant. (4) The very term molestation is surpassed in general connotations of unsavoriness by few if any others. This may be partially related to conceptual difficulties described above. While visceral and emotional reactions by investigators, adjudicators, and the larger community may often be congruent, explicit cognitions about the specifics of the alleged perpetrator's proscribed behaviors may not be. This visceral/emotional-cognitive disparity may lead to unusually distorted information processing affecting investigators, adjudicators, and the larger community. (5) After a conviction and serving of prescribed penalty--when that penalty is short of death--the carrying on of a so-called "normal" life is quite difficult. Part of this relates to psychological research suggesting that repeat offenses--whether detected by criminal justice representatives or not--may be very likely. Part of this relates to formal and informal identification procedures that--rightly or not--create great pressure between the perpetrator and members of the community in which the perpetrator seeks to reside. (This pressure may lead the molester who has served time for an offense to go underground--an event that may possibly increase the probability of further offenses.) The criminal justice system seems to be confronted with a doomed marriage--itself with the perpetrator until death do them part.

The conceptual difficulties of child molestation seem to subvert the rule of law because they impede coherency about what is being proscribed and why. The legal consequences of investigation and adjudication expose inadequacies in the criminal justice system. The dirty little secret of child molestation may reside in the threatening notion of child sexuality and the potential for evil that lurks in us all. In child molestation, the rule of law is ruled by something beyond it. (See Hanson, R.K., Scott, H., & Steffy, R.A. (1995). A comparison of child molesters and nonsexual criminals: Risk predictors and long-term recidivism. *Journal of Research in Crime and Delinquency*, 32, 325-337; Horley, J., Quinsey, V.L., & Jones, S. (1997). Incarcerated child molesters' perceptions of themselves and others. *Sexual Abuse: Journal of Research and Treatment*, 9, 43-55; Levesque, R. (1995). Prosecuting sex crimes against children: Time for "outrageous" proposals? *Law and Psychology Review*, 19, 59-91; Lyall, S. (April 27, 1998). Britons fear sex offenders in their communities. *The New York Times*, <http://www.nytimes.com>; Parker, T., & Abramson, P.R. (1995). The law hath not been dead: Protecting adults with mental retardation from sexual abuse and violation of their sexual freedom. *Mental Retardation*, 33, 257-263; Simons, M. (1998). Bungling in sex criminal's escape riles Belgians. *The New York Times*, <http://www.nytimes.com>; Ward, T., Loudon, K., et al. (1995). A descriptive model of the offense chain for child molesters. *Journal of Interpersonal Violence*, 10, 452-472.)(Keywords: Child Molestation, Criminal Justice System, Law, Sex.)