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Sex, Drugs, and Consenting Adults **by Scott McPherson**

The Georgia Supreme Court has struck down a 170-year-old law forbidding sexual acts between unmarried people. The ruling, which came on Monday, January 13, was the result of a case of a 16-year-old boy caught having sex with his girlfriend in her home.

“Our opinion,” wrote Chief Justice Norman Fletcher, “simply affirms that ... the government may not reach into ... a private residence and criminalize the private, noncommercial, consensual sexual acts of ... persons legally capable of consenting to those acts.” Georgia’s legal age of consent is 16.

Libertarians should most assuredly applaud the decision of the court to overturn a bad law. Still, the opinion expressed by Justice Fletcher, though fairly sound, deserves considerable criticism.

It is certainly a tenet of any free society that the consensual sexual conduct of its adult citizens be left outside the purview of the state. That is what makes a society free: the ability to engage in any activity so long as it is consensual and, thus, violates no one’s rights.

And the chief justice’s opinion would be a very sound bit of libertarian thinking indeed, if only it didn’t provide a convenient exception for activities not both “sexual” and “noncommercial” in nature. But why not apply the same philosophical standard used to strike down those laws?

The reason for Fletcher’s wording is obvious: he wanted to clarify that the court’s protection of privacy rights didn’t extend to prostitution, which is a private consensual act involving the exchange of money.

The court undoubtedly also didn’t want to extend privacy protection to such nonsexual acts as drug possession or use inside a person’s own home. But if a person has the right to engage in consensual sexual acts, why doesn’t he have an equal right to engage in what might be considered peaceful self-destructive behavior?

Drug laws also criminalize the sale or distribution of drugs, which is a *commercial* act. If the state were to completely disavow the authority to “reach into ... a private residence and criminalize ... private ... consensual ... acts,” it might start a flood of constitutional challenges to Georgia’s laws on the sale and distribution of drugs. Imagine the fate of Georgia’s drug war. More important, imagine the conflict it would spark between the state and the federal government — if drug dealers could refer to such a ruling as a defense of their trade, a private and consensual act taking place in the protected domain of their own residences?

Such a strong pronouncement on the sanctity of private property could also mean an end to many of the laws regulating intrastate commerce. If the court left the door open wide enough, rest assured Georgia businesses would use the ruling to eschew costly and intrusive state regulations.

We daren’t have any of that.

The Georgia Supreme Court missed an excellent opportunity to fully carry out its most important, though long-forgotten, role: to stand as a bulwark against all encroachments by the state of Georgia on the individual right of free men and women to pursue their own happiness in their own way so long as their conduct is peaceful. In the interests of justice, the people of Georgia deserve the unrestricted right to engage in *all* consensual activities in their respective private domains, including sex, drug use, and the ability to run their economic affairs as they please — provided they equally respect the rights of others.

By simply omitting a few critical words from its ruling, the Georgia Supreme Court could have taken a giant step toward the restoration of a truly free society. Instead, Georgians were handed a morsel of freedom, while the lion's share of their liberties remain on the plate of a very hungry government.

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