

Spanner: SM, consent and the law in the UK

Eric Chaline in conversation with John Pental

The Spanner Case

THE UK, LIKE THE US, has been subject to periodic 'moral panics' (Weeks, 2000; Rubin, 2002). The moral panic that occurred in the late 1980s, during the last Conservative Thatcher government, featured a range of issues related to sexuality, including 'Satanic abuse', 'the gay plague', the 'paedophile threat' and 'snuff videos', and was the background to the Spanner Case (R. v. Brown and Others (1992) 94 Cr. App. R 302 CA; (1994) 1 AC 212 HL; see also, Law Commission Consultation Papers Nos. 122, etc.).

The discovery by the police of an amateur SM video in the home of a gay man led to a four-year investigation rumoured to have cost £4 million. It was initially a murder investigation but within 48 hours was scaled down into an investigation into sexual offences. Although the investigation revealed that no murders had been committed and that all the persons present were adults and had consented to the SM practices they had taken part in and videotaped, the police went ahead with a prosecution. The men were charged with offences under sections 20 and 47 of the Offences Against the Person Act 1861, the provisions of which deal with assault and other forms of non-consensual crimes of violence against the person (Thompson, 1994).

The defendants and their legal team based their defence on their consent to the SM activities they had taken part in. The whole of the police case was based on the defendants' own freely-given statements and

a large number of videotapes of SM practices, from which the police spliced the most hardcore scenes together into one videotape, which was then presented to the court. The defendants admitted having made the videotapes because they were so confident of acquittal. Having been advised to plead guilty to a number of offences, 16 of the defendants were shocked to receive custodial sentences, suspended custodial sentences or fines for assault or aiding and abetting in their own assault.

The defendants appealed against their convictions, taking their case to the Court of Appeal and to the UK's highest court, the House of Lords. In each case, the judges involved decided that it was not possible to consent to an assault that led to injuries that were more than 'trifling or transient' if sexual pleasure was the aim. However, there were exceptions, such as injuries resulting from medical practice, as well as consenting to being injured in sports such as boxing and rugby, 'entertainments' such as knife throwing, and cosmetic procedures, such as tattooing and piercing¹. Comments by several of the judges made it clear that questions of sexual morality had played a significant part in the decisions, and decisions in later cases involving married heterosexual couples² have since showed that homophobia was almost certainly also a factor.

The defendants attempted one final appeal, to the European Court of Human Rights, on the grounds that the convictions infringed Article 8 of the European Convention on Human Rights – the right to respect

¹ See Barker, this issue, for discussion of an awareness-raising exercise based around this point.

² In two later cases a man had placed serious marks on his female partner's body in the course of a consensual SM scene, (one couple was married, the other was not). In each case when they came to trial the judge ruled that what took place within the confines of a consensual private relationship was of no concern to the court.

of private life. However, this appeal also failed.³

John Pandal became a well-known figure on the gay SM scene in Europe and the US after he won the 'International Mr Leather' (IML) contest in 2003.⁴ He became a Spanner Trustee in 2004. In addition to his work for the trust, John is involved in SM education in the UK. I began the interview by asking him to give me some background on the Spanner Trust and its work in the UK.

The Spanner Trust

EC: Could you tell me about the original aims of the Spanner Trust?

JP: The trust was originally set up to look after money donated to the Spanner Defence Fund. I believe that some American benefactors requested the formation of a trust before they would hand over funds raised in the US. Since then the Spanner Defence Fund has ceased to exist, and the trustees have taken on the task of campaigning to change the law, as well as looking after the money.

EC: Can you give me an outline of the work of the trust since the Spanner Case?

JP: Our work has included lobbying members of both Houses of Parliament, networking with other civil-rights groups, ongoing work with a senior Queen's Counsel and making a submission to the Home Affairs Select Committee that was lodged in the House of Commons library. We have helped individuals who contacted the trust for legal advice or who were experiencing a range of problems due to their SM activities. For example, custody cases, possible blackmail or having videos impounded by HM Customs and Excise. Another aspect of the trust's work is holding educational workshops on the topic of 'BDSM and the law' at SM gatherings and events, and presentations to official bodies, such as the recent one

given to the examiners at the British Board of Film Classification (BBFC) on the difference between consensual SM and abuse. The latter resulted in a change in the BBFC guidelines about the rating certificate given to consensual SM videos.

EC: How is the trust funded?

JP: We are funded by private donations and fundraising events put on by the community.

EC: What are the current aims of the trust?

JP: To effect a change in the UK law as it affects consensual SM activity during which injury takes place; to provide education about the current state of the law to the UK SM community; to help anyone in difficulty because of their SM activities in the UK; and to provide education to the wider world on the differences between SM and abuse, and between injury and harm.⁵

EC: How did you get involved in SM activism and the Spanner Trust?

JP: I had been attending a leather bar in South London called 'The Hoist' on a regular basis for several years. In February 2003 I won the annual 'Mr Hoist' contest. The winner qualified for a place at the 'International Mr Leather' (IML) contest held every year in Chicago in May. The IML judges look for contestants who have a history of community involvement and a thorough knowledge of current issues and lobbying groups. The Spanner Trust was one of the organisations that helped in my preparation. After winning IML 2003 I gave up my job and travelled full time to leather events, networking with community groups and learning about SM and activism around the world. It has been a steep learning curve ever since. After stepping down as the current IML in 2004 I became a Spanner trustee, as I desperately want the law to be changed in the UK so that we can play legally at the level that they do in other countries.

³ The judgment and dissenting opinion are reproduced in full on <http://www.spannertrust.org>.

⁴ The IML contest is held in Chicago every year in May. The winner spends his year as titleholder traveling to SM events worldwide, and plays the role of 'ambassador' for the leather community.

⁵ See www.spannertrust.org/documents for a discussion of these issues.

Gay men and SM in the UK

EC: How did you get involved in SM?

JP: I have had SM fantasies since the age of four-and-a-quarter. I started to act on them only in my mid-20s after coming out as gay, meeting my partner and dragging him onto the leather scene. I knew that it was something I wanted to explore. After winning IML I was introduced to a deeper level of SM play that is not readily available in the UK and loved it.

EC: What is the state of the gay SM scene in the UK?

JP: I cannot speak for the whole of the UK, only for myself. I find it very frustrating that we cannot have any gay SM clubs, groups, societies or mailing lists here. It prevents SM players from networking or building a community. It makes educating newcomers about the difference between SM and abuse, or ways of reducing risk in SM play, very difficult. There is very little SM play in gay clubs. Most SM play takes place in people's homes and some of the activities I have seen are unnecessarily dangerous, due to lack of education or exposure to safer ways of playing. The good SM players I have met in the UK are those who have travelled abroad, but they tend to keep a low profile so it is difficult to seek them out.

EC: How does the scene in the UK compare to those in the US?

JP: In America it is possible to attend a different SM event with workshops and playspaces almost every weekend of the year, if you are prepared to travel. Different fetish clubs and organisations put on weekend activities in many cities, inviting highly skilled presenters to come and teach.

On top of that most major cities have at least one SM or leather club where skills are passed on. Some of the clubs own a playspace that can be used privately by members or for

group events. In my experience the clubs are highly regulated with many safety rules, for example 'no electric play above the waist', 'no object made of breakable material may be inserted into any body cavity' and 'sex toys cannot be used on more than one person without sterilisation'. The playspaces are fully stocked with safety equipment such as sharps bins⁶, spray bleach, latex gloves, etc. Monitors patrol the space throughout the event with the power to stop any scene that is deemed to be dangerous – or even shut down the whole event if necessary. Compare that to the UK where people meet in private homes without tuition, safety equipment or a monitor to stop proceedings if things are going wrong. In America it is illegal to have your genitals uncovered in any licensed area, whether or not alcohol is being served. That means that there is no sex in gay bars, but often you will see BDSM demonstrations in their place. In the UK the reverse is the case. Most BDSM is illegal, but gay bars are often very sexual places with many men cruising each other for vanilla sex.

EC: What is the status of SM education in the UK and how could it be improved?

JP: In my opinion there is very little SM education in the UK. One group of volunteers put on SM demos once a month⁷, but there is almost no instruction given alongside the demos. Another group runs weekend courses, but you are not allowed to take any notes during the course in case you are a journalist!⁸ I have yet to see any safer sex campaign in the UK explain how to minimise the risks of transmitting blood-borne viruses or other sexually transmitted infections during SM play. Where do people here learn how to clean floggers and whips to remove the risk of hepatitis and HIV transmission, or how to dispose of needles safely?

⁶ To dispose of equipment used in SM play, such as needles that have been contaminated with blood.

⁷ SM Gays hold Discovery Nights on the third Thursday of each month in Vauxhall, South London. Full details can be found at www.smgays.org.

⁸ GMFA runs 'Bondage for Beginners' and 'SM for Beginners' weekend courses. Details can be found at www.metromate.org.uk.

The education I have seen is restricted in range and depth. Some subjects are almost never covered (such as breath control)⁹, despite the fact that a quick search of the internet will show those activities are popular in private. The subjects that are covered are usually demos with little of what I would consider to be essential safety information imparted. It is a real shame that so many people here are self-taught and making inaccurate risk assessments about the play that they do. I know highly-skilled SM presenters abroad who are willing and able to teach in the UK, but there is no way we could publicise the event while those activities are illegal.

SM, psychology and the law

EC: In earlier conversations, you mentioned the role of SM as a healing process, could you elaborate on this?

JP: Please do not misunderstand what I am about to say. I think if you need therapy you should seek out a therapist to help you. But I have seen how SM play has helped many people. It has given them more confidence, helped them become more self-aware, given them increased negotiation and people skills, and helped them to overcome their fears. On a personal level SM scenes have taught me to face up to several phobias which years of cognitive, behavioural and hypnotherapy have been unable to cure. It is amazing how much of a motivation having a big, horrible sadist standing next to you can be!

EC: Do you think psychology and psychotherapy have a positive role to play in SM in the UK?

JP: Oh yes. There is still a huge reservoir of opinion within the general population that SM is bad for you, a side effect of childhood abuse or a sign of a flawed personality. I think we need psychologists to recognise that SM play can be a normal facet of sexuality for some people, and help to overcome the stigma against folks who like to explore this area of their sexuality.

EC: Is there value in academic research into SM from a psychological or sociological perspective?

JP: Definitely. The legal and psychiatric professions work hand-in-hand, in my opinion. While SM is still listed as a mental illness in the *Diagnostic and Statistical Manual of Mental Disorders* (1994) and the *International Classification of Diseases* (1990) it will be much harder for SM players to win custody cases, refute allegations of assault following a consensual scene or for the UK law to be changed to legalise SM where injury occurs.

EC: Does academic research have a role in changing the legal position of SM in the UK?

JP: If the Spanner Trust is successful in bringing an application to the High Court under the Human Rights Act (1998), then we will need statements from academics to support our claim that SM play where injury occurs does not necessarily cause harm and should not be criminalised. We also need to ensure that academics gather their data from the whole of the SM community, and not just the self-selecting group who are seeking psychiatric help. One of the problems at the moment is that the majority of data is drawn from people who have sought help, so it is no surprise that the conclusion drawn is that SM play is bad for you!

More information about the Spanner Trust can be found at

<http://www.spannertrust.org>.

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⁹ The use of asphyxia in erotic play.

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