



Lawful incest may be on the way

(Published in *The Boston Globe*, May 2, 2007)

Jeff Jacoby

Colaboraciones n° 1703

May 17, 2007

When the BBC invited me onto one of its talk shows recently to discuss the day's hot topic -- legalizing adult incest -- I thought of Rick Santorum.

Back in 2003, as the Supreme Court was preparing to rule in [Lawrence v. Texas](#), a case challenging the constitutionality of laws criminalizing homosexual sodomy, then-Senator Santorum caught holy hell for warning that if the law were struck down, there would be no avoiding the slippery slope.

"If the Supreme Court says you have the right to consensual sex within your home," [he told a reporter](#), "then you have the right to bigamy, you have the right to polygamy, you have the right to incest, you have the right to adultery. You have the right to anything."

It was a commonsensical observation, though you wouldn't have known it from the nail-spitting it triggered in some quarters. When the justices, voting 6-3, did in fact declare it unconstitutional for any state to punish consensual gay sex, [the dissenters echoed Santorum's point](#). "State laws against bigamy, same-sex marriage, adult incest, prostitution, masturbation, adultery, fornication, bestiality, and obscenity are . . . called into question by today's decision," Justice Antonin Scalia wrote for the minority. That opinion too was scorned by the politically correct. But now Time magazine acknowledges: "It turns out the critics were right."

Time's attention, like the BBC's, has been caught by the legal battles underway to decriminalize incest between consenting adults. [An article](#)

[last month](#) by Time reporter Michael Lindenberger titled "Should Incest Be Legal?" highlights the case of Paul Lowe, an Ohio man convicted of incest for having sex with his 22-year-old stepdaughter. Lowe has appealed his conviction to the Supreme Court, making *Lawrence* the basis of his argument. In *Lawrence*, the court had ruled that people "are entitled to respect for their private lives" and that under the 14th Amendment, "the state cannot demean their existence or control their destiny by making their private sexual conduct a crime." If that was true for the adult homosexual behavior in *Lawrence*, why not for the adult incestuous behavior in the Ohio case?

The [BBC program](#) focused on the case of [Patrick and Susan Stubing](#), a German brother and sister who live as a couple and have had four children together. Incest is a criminal offense in Germany, and Patrick has already spent more than two years in prison for having sex with his sister. The two of them are asking Germany's highest court to abolish the law that makes incest illegal.

"Many people see it as a crime, but we've done nothing wrong," Patrick told the BBC. "We are like normal lovers. We want to have a family." They dismiss the conventional argument that incest should be banned because the children of close relatives have a higher risk of genetic defects. After all, they point out, other couples with known genetic risks aren't punished for having sex. In any event, [Patrick has](#)

[had himself sterilized](#) so that he cannot father any more children.

Some years back, [I'd written about a similar case in Wisconsin](#) -- that of Allen and Patricia Muth, a brother and sister who fell in love as adults, had several children together, and were prosecuted, convicted, and imprisoned as a result. Following the Supreme Court's decision in *Lawrence*, they appealed their conviction to the Seventh Circuit Court of Appeals, where they lost. Lowe will probably lose too.

But the next Lowe or Muth to come along, or the one after that, may not lose. In *Lawrence*, it is worth remembering, the Supreme Court didn't just invalidate all state laws making homosexual sodomy a crime. It also overruled its own decision just 17 years earlier (*Bowers v. Hardwick*, 1986) *upholding* such laws. If the court meant what it said in *Lawrence* -- that states are barred from "making . . . private sexual conduct a crime" -- it will not take that long for laws criminalizing incest to go by the board as well. Impossible? Outlandish? That's what they used to say about normalizing homosexuality and legalizing same-sex marriage.

Parts of Europe are already heading down this road. In Germany, the [Green Party is openly supporting the Stubings](#) in their bid to decriminalize incest. "We must abolish a law that originated last century and today is useless," party spokesman Jerzy Montag says. Incest is no longer a criminal offense in Belgium, Holland, and France.

[According to the BBC](#), Sweden even permits half-siblings to marry.

Your reaction to the prospect of lawful incest may be "Ugh, gross." But personal repugnance is no replacement for moral standards. For more than 3,000 years, a code of conduct stretching back to Sinai has kept

incest unconditionally beyond the pale. If sexual morality is jettisoned as a legitimate basis for legislation, personal opinion and cultural fashion are all that will remain. "Should Incest Be Legal?" Time asks. Over time, expect more and more people to answer yes.