Campaign for Homosexual Equality
Scottish Minorities Group
Union for Sexual Freedoms in Ireland

NO OFFENCE

THE CASE FOR HOMOSEXUAL EQUALITY AT LAW

by Bob Sturgess

DEDICATION

To

KEN and ADRIAN our erstwhile 'hard-core' hecklers at Speakers' Corner, who unfailingly appeared, rain or shine (usually rain), to voice a few 'home-truths' about homosexuality, but whom we now count among our firmest supporters. It is to them and their families that this booklet is dedicated.

"There's something much worse than ignorance, and that's knowing what ain't so" – old American saying

"There can be no rational defence of the legal and social discrimination between the sexes in this matter . . . . It seems logical to claim that in the case of each the criminal law should take cognizance only of acts involving assault or violence, the corruption of minors, and public indecency or nuisance. Justice and equity can demand no less and exact no more than parity of treatment between men and women in the matter of homosexual behaviour."

The Rev. Dr. Sherwin Bailey.

ACKNOWLEDGEMENTS

I should like to express my warm thanks to Ian Dunn and his fellow Campaign Committee members of the Scottish Minorities Group for their guidance on Scottish law reform and for their valuable comments on the text of this booklet; to Joseph Leckey of the Union for Sexual Freedoms in Ireland for similar help; to Tony Smythe, former Director of the National Council for Civil Liberties, for so kindly writing the foreword; to various local groups of the Campaign for Homosexual Equality, with whom several of the ideas in this booklet were bench-tested for seaworthiness; to many friends, both in and out of CHE, for their constructive criticism; and, above all, to Paul Temperton, of the CHE Executive Committee for whose patience and encouragement I am deeply grateful, and to whose good judgement and editing skill this booklet owes much.

B.S.

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FOREWORD

If sexual repression were not so tragic, it would be hard to obscure the element of comic unreality in pleading the case for sexual freedom. Certainly, in a reasonably sane society, adult sexual activity and preferences should be kept beyond the erratic reach of the law; in the sexual domain, legal sanctions are applied, misapplied or withheld at the whim of law enforcers who reflect widely divergent patterns of prejudice. This booklet is a powerful indictment of the present law and of the attitudes which underpin it.

Most of us regard our private sex lives as an expression of our personal autonomy and as a means of defining and developing our relationships with others. However, the freedom implied by this attitude comes as an affront to the nation's self-appointed 'moralists' who seem to derive great satisfaction from minding everyone's business but their own. Thus, confusion and ambivalence continue to pervade our lives and impose particular hardship on sexual minorities.

In my former capacity as Director of the National Council for Civil Liberties, I observed at first hand how otherwise rational people could be so blinded by prejudice as to be incapable of thinking dispassionately about homosexuality. They would clutch at any reason- however specious, however outdated, however false- to bolster their position. This brought home to me very forcibly that anyone putting the case for reform would need to show not only **how** the law should be changed but **why** it should be changed.

This the author has done. In Section II, he examines four of the principal justifications most commonly advanced by those who oppose reform. **The Corruption Theory of Homosexuality** comes in for particularly detailed and astringent criticism. In Section III, he discusses the main provisions of the new Bill and the spirit of equality that informs them.

Over and above the case for short-term reform, so impeccably argued in this booklet, I believe that real liberation for sexual minorities is a practical goal and one most likely to be attained within the context of a Bill of Rights for all citizens, including what a famous American judge called: "the right to be let alone". Once general principles were established, it would be comparatively easy to define the residual duties of the law to provide protection where appropriate and to control public nuisance.

For adult male homosexuals in England and Wales, the 1967 Sexual Offences Act was a first tentative step along this road. The

past decade has seen their situation become profoundly more hopeful, thanks largely to the individual and collective efforts of homosexuals to move out of the shadows and publicly claim their right to social acceptance and legal equality. Thus the greatest advance, to my mind, has been the shift from the closed discussion of homosexuality in the abstract to the more open debate in which homosexuals have themselves participated and which has led to a more realistic appraisal of their problems and needs. Like other minorities and under-privileged groups they profited from the changed climate of opinion, which increasingly came to deplore discrimination and to favour the inclusion of positive rights on the political agenda.

The more adult, responsible level of debate, resulting from the public's better understanding of the subject, underlines the urgent and compelling need for equalising legislation. It is intolerable that homosexuals should still have to face discrimination, uncertainty and inequality before the law. Laws, to remain viable, must be subjected to continuous re-evaluation. The 1967 Sexual Offences Act never even fully implemented the Wolfenden proposals, made a decade earlier. Whilst caution and compromise may have seemed appropriate to some in the mid-sixties, the fears expressed then by a vociferous minority of opponents have predictably proved groundless.

Elementary reason and common sense should persuade parliamentarians that the time has come to implement the proposals outlined in this valuable and timely booklet. If they could bring themselves to extend their role as guardians of liberty to this particular minority, perhaps we could all look forward more optimistically to further advances on the human rights front. A compassionate, mature and confident society should be prepared to face reality, put conformity into perspective and place a high value on the freedom to differ.

Tony Smythe

Eight years have passed since the 1967 Sexual Offences Act grudgingly accorded a degree of freedom to male homosexuals over 21. Fears that the passing of the Act would 'open the floodgates' to mass debauchery and wholesale corruption have proved illusory. The world has not fallen about society's ears; or, if it has, it is for reasons that not even Lord Montgomery could credibly attribute to the 1967 Act.

The question now is not whether the Act accorded male homosexuals too much freedom but whether, in the light of present experience and knowledge, it accorded them too little.

Present Discriminatory Laws

As the Act is regarded by some as a model of enlightened legislation, it is important that we should remind ourselves of its limited scope and purpose. Broadly it upheld, and indeed perpetuated, the traditional legislative bias against male homosexuals, whose behaviour would continue to be criminal except in certain narrowly-defined circumstances. True, in England and Wales, consenting male adults over 21 were no longer to be classed as 'criminals' for giving sexual expression to their feelings in private; but 'privacy' was – and still is – defined much more narrowly for (male) homosexuals than it is for heterosexuals. No attempt was made to accord homosexuals anything approaching the sexual freedom traditionally enjoyed by heterosexuals. Implicit throughout the Act is the premise that, despite the state's quite proper reluctance to interfere with people's private lives, it nonetheless had not only a right but a duty to differentiate between homosexual and heterosexual behaviour.

That this assumption, in many cases, stemmed from a less than dispassionate view of the facts is clear from the emotive language of the debates on the subject in both Houses of Parliament.

> "*They,*" (homosexuals) "*are, in my opinion,*" declared the then M.P. for Bassetlaw, F.J. Bellenger, in November 1958; "*a malignant canker in the community and, if this were allowed to grow, it would eventually kill off what is known as normal life.*"

That the two impertinent assumptions – that homosexuality is 'malignant' and can 'grow', if unchecked, to fratricidal proportions- underlying this forensic gem were firmly rebutted by the Wolfenden

Report, which had been published the previous year (1957), was clearly of no import to the M.P. for Bassetlaw or, indeed, to others of his colleagues. It is a sad commentary on our civilised ideals if legislators allow their feelings unduly to colour- much less dictate- their vote on a matter affecting the happiness and wellbeing of a substantial proportion of their fellow-citizens.

Under the present law, there is a five-year disparity between the heterosexual and homosexual ages of consent: 16 for the male (or female) heterosexual, 21 for the male homosexual. Thus, a youth of, say, 18 who is deemed by the state to be old enough to vote or die for the state (as some have done in Northern Ireland) has to wait a further three years before being allowed to give physical expression to any feelings of love or tenderness he may feel for a member of his own sex, with all the adverse implications this has for his emotional development.

All around him, he sees his heterosexual contemporaries enjoying the fullest socio-sexual freedom to develop through the usual teenage emotional and physical attachments. What is he to do? Is he to suffer the frustration of waiting another three or four or even five years (if he is 16) before allowing himself to enjoy a comparable (though more limited) 'freedom'? Or is he going to disregard the law and engage in 'criminal acts' which, to him, are an important prerequisite to a loving relationship? The first course imposes on him a completely unrealistic degree of sexual restraint just when he is at the peak of his sexual powers. The second course makes him liable to criminal prosecution, and thereby to blackmail. Worse, it instils into him a profound, and possibly lifelong, disrespect for the law at a time when respect for our legal system was never in shorter supply.

Even on attaining the age of 21, he is still liable to be branded a 'criminal' in what, to heterosexuals, would be a fairly standard social situation. Let us suppose that two (male) friends over 21 invite him to a party in their bedsitter. Suppose further that he drinks too much and, rather than risk driving home, asks his homosexual hosts if he can stay overnight on the settee. His two friends who, let us say, have been living together for some time, also retire to bed for the night and perhaps make love, causing annoyance to no-one. Despite the fact that all three men are over 21; despite the three men being 'in private' within the usual meaning of that phrase, **all three** would be prosecutable under the present law for 'criminal' behaviour since even the (sleeping)

presence of a third party would violate the narrow definition of "privacy" within the meaning of the 1967 Act.

It goes without saying that state interference on this scale with the private lives of **heterosexuals** would be regarded as intolerable.

Obstacle to Counselling

If the present law adds to the burdens of male homosexuals, it also puts great difficulties in the way of those members of the ministering professions whose job it is to advise the increasing number of younger homosexuals who are approaching them for help. Significantly, only a small minority of those seeking counsel need pyschiatric help. The overwhelming majority have found that their sense of loneliness and isolation is best alleviated through contact with other homosexuals. But this itself creates a problem since, under the present law, it is effectively an offence to arrange homosexual introductions, particularly where one of the parties is under 21. (Whether it would be a defence to say that the initial purpose of the introduction was social rather than sexual is questionable.) Certainly some homophile social groups **do** feel constrained, under the present law, to exclude young men under 21 from membership, so exacerbating their sense of alienation and leading, in many cases, to sexual adventurism (often, perforce, in public places) – or even suicide.

To many it seems tragic that the very provisions of the 1967 Act, ostensibly designed to 'protect' young men from emotional harm, have themselves become the instruments of such harm. Nobody with any experience of counselling homosexuals can doubt the reality of this continuing oppression. Faced with what many people regard as the inhumanity of the present law, it is hardly surprising that many clergy, doctors and youth counsellors disregard it in their efforts to meet the socio-emotional needs of young homosexuals, often with the co-operation ('connivance'?) of family and friends.

Scotland and Northern Ireland

If the situation is bad in England and Wales, it is infinitely worse in Northern Ireland which, like Scotland, is not covered by the 1967 Act. As MPs with seats in Northern Ireland will know, the subject of homosexuality has, until recently, been totally taboo; and, only last year, the mere suggestion that homosexuality be the subject of an Irish radio programme was met with shocked horror. It is as if an

iron curtain had been dropped to repel any mention of medical and related findings in England (as embodied, for example, in the Wolfenden Report) or of the experience of other countries – notably Holland, which has changed the legal age of consent for homosexuals to 16.

As things stand today in Northern Ireland, the male homosexual effectively has two choices. He can choose to live 'against the Law' as a 'criminal' in the knowledge that any relationship he contracts will be highly precarious and constantly open to blackmail, vilification and exposure. Even if all goes 'well' for him, however, he will almost certainly have to lead a double life with all the stunting of personality that this engenders. Alternatively, he can 'choose' to live within the law by imposing upon himself nothing less than a lifetime's celibacy – a tall order even for those who espouse it as part of a religious vocation, but a wellnigh impossible goal for the vast majority who do not.

> "*Those who urge that homosexuals should* **suppress** *their sexuality,*" wrote Dr. Norman Pittenger, the eminent theologian, in **Time For Consent** (p.113), "*are asking that they should become incipient or actual neurotics.*"

Is it any wonder that many homosexuals cannot accept either of these two stark options and attempt, instead, to 'solve' the problem through marriage? Experience has predictably shown that such marriages- contracted, as they are, for the wrong reasons- tend to be unsuccessful just as, *per contra*, a 'marriage' between two **hetero**sexuals of the **same** sex could hardly be expected to be very fulfilling. The implications for the psychological health of the children of such a deeply unnatural, though outwardly 'normal', heterosexual marriage can be readily imagined. Ironical, again, that a law ostensibly designed to protect people's psychological health should so often have precisely the opposite effect.

The current situation in Scotland – though in many respects still precarious – is somewhat better than that in Northern Ireland since a measure of public antipathy has been dissipated, largely through the tireless work over the past four years of the Scottish Minorities Group. Indeed, so great has been the progress north of the border, that the Crown Office implicitly acknowledged the inappositeness of the present laws when it publicly stated on 5th February 1973 that it was official policy not to enforce the laws affecting consenting homosexual conduct in private.

Accordingly, the Draft Law Reform Bill of Britain's largest homophile organisation, the Campaign for Homosexual Equality (CHE), in conjunction with SMG and the Union for Sexual Freedoms in Ireland (USFI), extends beyond England and Wales to include Scotland and Northern Ireland. This booklet broadly represents the views of these three bodies. The Bill's principal aim is to ensure that homosexuals be henceforth treated under the law in an identical manner to heterosexuals. The consequential changes in the present law (affecting, *inter alia* the armed services, the 'privacy' definition and the age of consent) will be examined in Section III. It is worth recalling that the narrow privacy definition and the armed services embargo were part of a compromise package to get the 1967 Act through and the former restriction, in particular, contravenes both the letter and spirit of the broader Wolfenden proposals, which themselves had to wait a full decade before being incorporated, in watered-down form, in the 1967 Act. Even the Wolfenden proposals were based on evidence garnered nearly **twenty** years ago, when homosexuality was as taboo a subject in England as it is today in Northern Ireland; when, apart from a brace of sensational court cases, the subject was shunned by the media; and when public opinion, being in consequence short on facts, was long on prejudice. It is time sexual legislation reflected more accurately the knowledge and opinions of **today** rather than those of the pre-Suez era.

Public Opinion

Some opponents of the 1967 Act sought, at the time, to justify their stance by claiming that "public opinion wouldn't stand for it". There is no reason to think that this view was not sincerely held at the time, and one can sympathise with the incumbents of marginal seats (both then and today) whose sensitivity to public opinion needs to be more than academic. The fact is, however, that public opinion in England and Wales DID stand, on balance, for the 1967 Act. In the intervening eight years, the subject of homosexuality has emerged from under the carpet. The media have increasingly made room for informed discussion of the subject; some eminent citizens have ceased to make a secret of their homosexuality which dares, at long last, to speak its name without undue resort to euphemism.

Furthermore, national conferences have been successfully held by CHE in spa towns of proven gentility, leaving a legacy of goodwill and solid cash, instead of the more newsworthy trail of

'corruption' and blighted youth to which hopeful reporters had doubtless looked forward. Conference delegates were delighted by the friendly reception accorded them by the local townspeople and found it ironical that what little hostility there was came from the town councillors who purported to represent them! The author is one of a small group of regular speakers at Speakers' Corner in London, addressing a representative cross-section of the British public. How do **they** react to such frank discussion of homosexuality? Do they 'pronounce' on the subject with anything even approaching the idiocy of the former MP for Bassetlaw? Do their questions evince even a quarter of his ignorance of the subject? No. The crowd listens on the whole sympathetically and, as far as one can judge, with open minds, so much so that the occasional flurry of antagonism tends to be shrugged off by the rest with amused tolerance. Since beginning this fortnightly Sunday probe of grassroots opinion in 1973, we have become slowly convinced of the public's broad acceptance of the need and the desirability of further law reform.

Homosexuals of voting age (approx. 3 million) are becoming increasingly sensitive to their local MPs' views on law reform. A prejudiced, or plain ignorant, stance by an MP – of which, alas, there is still too much evidence among certain Members, to judge from some recently returned CHE questionnaires to MPs – would provoke justified resentment, not only among his or her homosexual constituents, but increasingly among the latter's friends and relatives, to whom some have openly acknowledged their sexual proclivities and who, like them, feel the present law to be ruinously out of date. So much so that today, as in 1967, it seems to be more a case of the public shaping their local MPs' views, rather than MPs **leading** opinion on a matter of such far-reaching public concern.

Even as long ago as 1957, opinion polls indicated that about 40 per cent of the public agreed with the Wolfenden Report's main recommendation (which was never fully implemented). In October 1965, both Gallup and National Opinion Polls showed that it was accepted by no less than **63 per cent.**

A very substantial measure of support, one might think, at a time when – as we have seen – the subject was still virtually under the carpet, and when people had little to go on but their hunches. A 23% turn-round in public opinion in a mere eight of the 'silent years' (1957-65)! Is it not probable that, in the more 'open' decade that followed (1965-1975), there will not have been an even

more substantial swing of public opinion in favour of a fair deal for homosexuals? It would be ironic if MPs, like the Spa town councillors, were to adduce 'the state of public opinion' as a 'reason' for opposing law reform when, in fact, the majority of their constituents favour the principle of sexual parity.

In that intervening decade, the public has not only become much better informed on the real issues but, in numerous instances, also directly involved, at grass roots, with the problems of the young homosexual – problems which often arise directly out of the self-defeating rigidities of the present law. Many of these younger homosexuals fall into the newly-enfranchised 18-21 age group and feel directly discriminated against by the present high age of consent (21), since they know that it was not lowered (to 18) in 1969 in parallel with the legal age of majority, with which it had been explicitly linked.(1) In short, we must now have reached the point where an MP's vote against a fairer law would risk being a greater liability to him than a vote in favour.

Therefore 'the state of public opinion' cannot any longer be credibly adduced as a reason for refusing to examine afresh the case for reforming laws which are increasingly seen to be counter-productive and a source of widespread anguish and harm. In what follows, homosexuality will be discussed mainly in the context of a loving relationship of some duration, but this is in no way meant to imply that homosexuals, like heterosexuals, do not also enjoy, throughout all or part of their lives, other more transitory relationships. No particular allusion will be made to female homosexuality since the present laws already place them largely on a par with heterosexuals.

Since the onus will in future be on those opposing reform to show good reason why the law should treat homosexuals any differently from heterosexuals, the most fruitful approach may be to examine the main assumptions on which their opposition is predicated. These assumptions centre broadly round four broad concepts which, for brevity's sake, may be termed:

The Sickness Theory
The Corruption Theory
Against Nature?
The Paternalistic Assumption

Section II will be devoted to examining each of these concepts in turn.

1 *Report of the Committee on Homosexual Offences and Prostitution* (The Wolfenden Report) Cmnd. 247. HMSO, London, para. 69.

A. THE SICKNESS THEORY

As we saw in Section I, popular mythology still has it that homosexuality is a form of contagious disease which must somehow be 'contained' and from which young people, in particular, must be protected by strict immunising legislation. Seen thus, it is understandable that MPs who voted either against the 1967 Act, or for its severe emasculation, felt they were on the side of the angels. (Why, incidentally— if male homosexuality is held to be a disease – is not female homosexuality similarly proscribed?).

But **is** homosexuality a disease? As long ago as 1957, it was the considered opinion of the Wolfenden Committee that homosexuality did not in fact satisfy any of their three criteria of disease, **unless the terms in which they were defined were expanded beyond what could reasonably be regarded as legitimate.** These sentiments have also found an echo in America, where homosexuality was recently struck off the American Psychiatric Association's official list of mental illnesses.

Yet, four of the more popular grounds for affirming the **Sickness Theory** are first, that homosexuality is amenable to 'cure'; second, that it is a mental aberration; third, that it is a physical aberration; and, finally, that it is 'unnatural'. As the last assumption ('unnatural') will be examined later in this section, let us concentrate for a moment on the other three.

Amenable To 'Cure'?

Protagonists of the **Sickness Theory** tend to the view that homosexuality is probably a kind of neurosis, resulting from emotional blockage in infancy (often seen, in the case of male homosexuals, as part of a 'weak father'/'strong mother' syndrome). They are not dissuaded from this view by the presence of the many patently **un**-neurotic homosexuals since they would argue that the homosexual condition is **itself** the neurosis, the balancing factor, the attempt to compensate for the prior emotional blockage. Nor are they discomfited by the homosexual's claim that homosexual behaviour comes as naturally to him (or her) as does heterosexual activity to heterosexuals since they would immediately seek to distinguish between what is 'natural' (in the sense of 'coming naturally') and what is 'inborn' (in the sense of 'genetically acquired'). Many 'spontaneous' behaviour patterns like sexual orientation, they would point out can be environmentally-induced **after** birth.

Both the above arguments would seem to be open to the objection that they are circular and are, in any case, based on unproved (if not unprovable) hypotheses. Nor do they account for the vast numbers of emotionally-disturbed **heterosexuals** (many with 'weak' fathers and 'strong' mothers themselves). Should not the resultant emotional blockages also have turned **them** into homosexuals? Such theories also ignore the many emotionally-fulfilled homosexuals who have achieved happiness **despite** the inequities of the present law. Indeed, their very success in coping with the (still) pervasive ignorance and prejudice in society itself testifies to their resilience and emotional maturity.

Most tendentious of the arguments in support of the **Sickness Theory** is the one which states that, because homosexuality can be 'cured', it must by definition be a disease! Whilst the earlier arguments were based on unproved premises, this one appears to be founded on two **false** premises: one logical, the other factual. Left-handedness, after all, can also be 'cured', as a left-handed amputee might testify who has had to learn to write with his right hand. But that is very far from saying that his former left-handedness had been 'a disease'; it was merely an alternative, and equally valid, way of writing.

As to the second premise, it is by no means certain that homosexuality **can** in fact be 'cured' in any meaningful sense; certainly not by the violently-conditioned suppression of symptoms by **physical** means (e.g. aversion therapy, electro-convulsive therapy and the like) since such methods tend to create more problems than they solve. Such methods have, in any case, a bad track record with regard to homosexuality and are viewed with some scepticism by the majority of the medical profession.

By 'cure' in this context is meant the free, unforced and permanent reversal of sexual orientation. If homosexuality **is** seen as a 'neurosis' in the Freudian sense, one might reasonably expect it to respond to Freudian analysis. In fact, as Bryan Magee(2) has pointed out, the claims of psycho-analysts to have effected complete change-overs in patients usually disintegrate on careful inspection. Indeed, the team most commonly credited with such 'cures', Irving Bieber and his colleagues from the Society of Medical Psychoanalysts in New York, in a letter written by Bieber to the **British Journal of Psychiatry** (1965 III, 195-6), publicly dissociated themselves from the claims made on their behalf!

2 *One In Twenty*, by Bryan Magee, p. 31. Pub. Secker & Warburg. 1966.

One reason that homosexuality- unlike **genuine** pathologies- is not seriously amenable to 'cure' might be that it is not a disease. The legion theories of causation indicate little more than that some people like to think of it as a 'disease'.

Such an attitude was exquisitely parodied by the psychiatrist, Dr. Ernest Van Den Haag.

> *"All my homosexual patients are sick"*, a colleague smugly informed him. *"So are all my heterosexual patients"*, countered Dr. Haag.

There may come a time when the causes of homosexuality will be seen to be of as little consequence as the causes of heterosexuality.

Mental Aberration?

This proposition claims, in effect, that homosexuality forms part of a psychiatric syndrome. Is this so? **Are** there certain abnormal symptoms so closely associated with homosexuality as to qualify it as a 'disease'? If the Wolfenden Committee saw no evidence of it in the mid-fifties, the mid-seventies' social scene would surely serve to reinforce their original views.

> *"In relation to the presence of abnormal symptoms, it is nowadays (1957) recognised that many people behave in an unusual, extraordinary or socially unacceptable way, but it seems to us that* **it would be rash to assume that unorthodox or aberrant behaviour is necessarily symptomatic of disease if it is the only symptom that can be demonstrated.** *To make this assumption would be to underestimate the very wide range of 'normal' human behaviour, and abundant evidence is available that what is socially acceptable or ethically permissible has varied and still varies considerably in different cultures".*
> (Para. 27). (Author's emphasis).

As if to confirm these observations, Dr. Kenyon refers in his booklet **Homosexuality** (page 10) to the findings of a cross-cultural

> *"In one survey of seventy-six societies"*, he writes, *"homosexual activities were considered normal and socially acceptable for certain members of the community by sixty-four per cent".*

'Extraordinary' behaviour must, therefore, be clearly distinguished from 'disease' (e.g. neuroticism) although the two **could**, of course, be causally related. To the extent that a higher-than-average degree of, say, neuroticism might be found to be associated with homosexuality, it is arguably more likely that it will have been caused by the present neurosis-inducing laws than by the homosexuality itself – as is strongly suggested by the **low** incidence of neuroticism among homosexuals in more tolerant cultures.

The Wolfenden Committee states further:

> *"on the criterion of symptoms . . . homosexuality cannot legitimately be regarded as a disease, because in many cases it is the* **only** *symptom and is* **compatible with full mental health in other respects.** *In some cases, associated psychiatric abnormalities do occur, and it seems to us that if, as has been suggested, they occur with greater frequency in the homosexual, this may be* **because they are products of the strain and conflict brought about by the homosexual condition and not because they are causal factors"**. (Para. 27). (Author's emphasis).

This finding is amply confirmed by Michael Schofield, the well-known social psychologist, in his book: *The Sociological Aspects of Homosexuality*. He states that the idea of homosexuality being a pathological condition is incorrect, and derives from false generalizations from earlier studies of homosexuals in clinics and prisons. Schofield's exhaustive study (on behalf of the Home Office and London University's Birkbeck College) of those – the overwhelming majority – who had **not** been under treatment or arrest shows that homosexuality is not a pathological condition.

Holland's Speijer Committee also took strong exception to the view that homosexuals were axiomatically subjects for therapy. Indeed, it stated as its considered opinion that:

> *"If one accepts the definition of mental health laid down by the World Federation of Mental Health in 1948 . . . it is obvious that one can never consider homosexuals who entirely accept themselves . . . . as being subjects for therapy"*. (Para. 6.5. 2).

It concludes:

> *"It is the considered opinion of this Committee that . . . one should not stop short at an attitude of tolerance towards this 'deviation', but should recognise in this phenomenon* **a distinct form of human love.** (Para. 6.4. 6) (Author's emphasis).

Physical Aberration?

Nor has homosexuality been found to correlate with any **physical** abnormality. The famous **Hormone Theory,** which posited some imbalance between a man's male and female hormones, has been all but discredited since it now appears that these hormones do not seem to be directly concerned in influencing direction of sexual drive, only its strength. Moreover, as Dr. F.E. Kenyon has pointed out in his BMA booklet, even if glandular disturbances **were** demonstrated, it by no means follows that they would be the cause, since they could equally well be the result of being homosexual, or arise from another more fundamental origin producing both.

The Wolfenden Report reached substantially the same conclusion:

> *"Biochemical and endocrine studies so far carried out in this field have, it appears, proved negative, and investigations of body-build and the like have also so far proved inconclusive . . . . but even if . . . . a genetic potentiality were established . . . . a genetic predisposition would not necessarily amount to a pathological condition, since it may be no more than a natural biological variation comparable with variations in stature, hair pigmentation, (left) handedness and so on"* (Para 28).

Homosexuality, in short, is perfectly compatible with full physical, mental and emotional health, and cannot in any meaningful sense be classified as a disease.

B. THE CORRUPTION THEORY

Those who seek to defend having the age of consent five years higher for male homosexuals (at 21) than for heterosexuals (at 16) do so largely on the basis of what one might term the **Corruption Theory of Homosexuality.** This theory rests on the fear that an early homosexual encounter could be so traumatic for a young man of between, say, 16 and 21 as to be likely, at best, to cause him grave psychological harm or, at worst, to turn him into a homosexual for the rest of his life. It is this fear which doubtless accounts for the high punishment differential between identical homosexual and heterosexual acts. Under the Sexual Offences Act 1967, a man having intercourse with a youth aged from 16 to 21 can receive **five** years imprisonment, whereas, under the Sexual Offences Act 1956, intercourse with a girl from 13 to 16 is punishable by a term not exceeding **two** years.

It was in 1966 that, with the help of a little sub-tropical imagination, the Corruption Theory achieved its finest flowering. The MP for Louth, the late Sir Cyril Osborne, said to the House of Commons, in opposition to the first stage of the Homosexual Law Reform Bill:

> *"My fear is that if the Bill becomes law . . . . there will be a tendency for the number (of male homosexuals) to increase. One cannot speak with any more certainty, but if it is made easier, if it is legalised, if it is nearly respectable, that figure will go from 5 per cent higher and higher. Suppose that, over a period of years, the figure jumps from 5 per cent to 50 per cent . . . . ?"*

"From 5 per cent to 50 per cent . . . . ?" It sounds more like a debate on hyper-inflation than a serious discussion of homosexuality. Sir Cyril's contribution to the debate is significant, however, for showing how easily and happily such 'fears' can be nurtured by the corruption theory to the point where they soar away into sheer fantasy. Unless Sir Cyril actually relished his 'fears', it is difficult to see why he didn't evince any awareness of the Wolfenden Report's bedrock **factual** view – based on the widest range of expert medical evidence – that it had itself found **no convincing evidence** in support of the corruption theory. That conclusion was known and published NINE years before Sir Cyril chose to follow the sun of his own visions.

Such self-indulgence can, of course, be great fun and Sir Cyril was by no means the only MP to find it so. It is to be hoped – in view of the expert findings that both support, and go beyond, the Wolfenden conclusions – that MPs will seek to base their contributions to future debates on fact, not prejudice. Certainly, they have every reason – at least in the negative sense – to feel encouraged by the predictable – and predicted – non-fulfilment of even the smallest of Sir Cyril's 'fears'.

The crucial question to ask now is whether the corruption theory would be any **more** valid or applicable if the present heterosexual age of consent (16) were to be equally applied to male homosexuals? And, if not, would a young man of 16 or over be likely to experience any **more** adverse an effect from a homosexual encounter than he would from a comparable heterosexual one?

When the age of consent for homosexual acts was under review in Holland in 1969, the Dutch Government set up a committee composed of highly-qualified doctors of medicine, under the chairmanship of Professor Doctor Speijer. During the investigations, it sent a questionnaire to every Professor of psychiatry, social psychiatry, child psychiatry, forensic pyschiatry, psycho-pathology and social medicine in Holland. Summarising the information collected, the Speijer Committee declared, in its report to the Government:

> *"The following point of view accords with current scientific knowledge: homosexuality occurs regularly at all times and among all communities in a certain minority of the population.* **The factors, congenital and/or external, predisposing the individual towards a homosexual orientation, operate usually during a very early stage of life, as a rule, long before puberty"**. (Para. 6.6 1.2) (Author's emphasis).

The Committee also refers to some research published by F.J. Tolsma in 1963:

> *"Tolsma established, in an investigation of 133 subjects of homosexual 'seduction', that only a few of these became permanent homosexuals – the number agreeing with the average number of homosexuals in the total population".*

Tolsma's conclusion also agrees with that of the Speijer Committee:

> *"Permanent homosexuality only occurs in our culture in individuals predisposed to this: in other words, in individuals* **in whom the pattern of homosexuality already existed before the seduction occurred"**.(Para. 7.6. 2). (Author's emphasis).

Dr. D.J. West, in his book **Homosexuality,** which he is currently revising, finds that his own evidence indirectly supports the view that:

> *"Experience of seduction is not an important part of homosexual fixation"*.

Or, again, that:

> **"Seduction is in fact not more than an incidental event. The real causes of permanent homosexuality lie much deeper"**.

The above findings are wholly consistent with those of the Wolfenden Committee.

Wolfenden Criteria

The Wolfenden Committee, it is true, had fixed the homosexual age of consent for males at 21, but it was mainly on two grounds which the Committee would today have seen in a very different light. On the **first** ground (as to the meaning of the word "adult" in the sense of "responsible for his own actions"), the Committee felt that the (then) legal age of contractual responsibility afforded the best criterion for the definition of adulthood. In 1957, that age was 21. It is so no longer. But even **before** it was changed to 18, the Committee had come very near (3) to suggesting 18 as an acceptable age of consent for male homosexuals. And that was nearly twenty years ago!

On the **second** ground (the consequences which would follow from the fixing of any particular age), the Committee finally opted for 21 on the ground that a young man of that age would be better able to judge actions

> *"which might have the effect of setting him apart from the rest of society"*.

It should be recalled, however, that the mass of expert

3 *The Wolfenden Report*, para. 71.

evidence discounting the corruption theory only came out, in the main, some years after publication of the Wolfenden Report. It would seem that the reason the Committee did not at that time recommend that homosexuals be placed on a par before the law with heterosexuals was **not** (as we have seen) because they themselves had found any evidence to support the corruption theory but because they nonetheless recognised it at that time to be *"a widely held view"*. An interesting example of the cart moving the horse!

Indeed, had the issue been decided solely on the remaining two grounds, the Committee would almost certainly have opted to fix the age of consent at 16, on a par with that of heterosexuals. One of these grounds related to the *"need to protect young and immature persons"*. After pointing out that the concept of 'protection' can be taken too far, the Committee states:

> *"There comes a time when a young man can properly be expected to 'stand on his own feet' in this as in other matters, and we find it hard to believe that he needs to be protected from would-be seducers more carefully than a girl does. It could indeed be argued that in a simply physical sense he is better able to look after himself than she is. On this view, there would be some ground for making sixteen the age of 'adulthood' since sexual intercourse with a willing girl of this age is not unlawful"*. (Para. 67).

On the remaining ground, too, the Wolfenden Committee would have fixed the age of consent at 16. This, their final, criterion concerned *"the age at which the pattern of a man's sexual development can be said to be fixed"*. After expressing a desire not to do anything which might precipitate a permanent homosexual orientation, the Committee noted that their medical witnesses were **unanimously** of the view that

> *"The main sexual pattern is laid down in the early years of life"*.

So, on this ground too, it was felt that sixteen would have been an appropriate age. It is significant that the Dutch Speijer Committee, which sat twelve years after Wolfenden, should have found

sixteen to be the optimum age of consent on **all** counts – a finding, moreover, that was promptly endorsed and implemented by the Dutch Government.

'Seduction' In Practice

It is still widely – but erroneously – supposed that a typical homosexual 'seduction' invariably involves an innocent young boy being sexually 'seduced' and 'corrupted' against his will by an older man in a dirty raincoat.

The truth – as so often with such sensitive issues – is very different. It has been found that, in a surprisingly large number of cases, the younger man's initiation (to use a less loaded term) occurs with his active and willing participation. Giese states(4) that, of the 393 homosexuals examined by him, no fewer than FIFTY EIGHT PER CENT admitted that the homosexual activities had in fact originated **mutually** from **both** parties, and not on the initiative of the older man alone. Half of those seen had already had homosexual contact before their sixteenth or seventeenth year. The majority of those examined, moreover, had said that they had been waiting for their 'seduction'. Such mutually constructed 'seduction' situations often involve carefull attention on the younger man's part to clothes, general appearance and even choice of transport! Sexually provocative behaviour of this kind might appropriately be termed the **Decoy Syndrome.**

In the light of these and similar findings, Bemmelen gives as his considered opinion(5) that:

> *"There is no reason to protect boys between the ages of sixteen and twenty-one against assaults upon their chastity* **to a greater extent than girls of the same age".** (Author's emphasis).

The Speijer Committee categorically endorses this view and points out that what has been termed the **Decoy Syndrome** is equally applicable to comparable heterosexual situations between an older and a younger person. It concludes that:

> *"The importance of the 'seduction' should not be exaggerated to the extent that frequently occurs".*

Nor is it axiomatic that such initiations of a younger by an older partner are 'bad'. On the contrary. It should be recognised that the overwhelming proportion of sexual initiations, in whichever direction, are in fact 'good' – or, at worst, neutral – in terms of

4 *Speijer Committee Report*, Dutch Government, 1969, para. 7.3(6).
5 Ibid, para. 7.3(5).

self-realisation and growth. And, as we shall see later in a different context, the obverse of the above proposition holds equally true. Distressingly so, sometimes. Particularly with young homosexuals in their late teens, who find life doubly burdensome (in terms of adjustment and identification) if the way is barred to them from meeting – and, yes, perhaps relating sexually to – other homosexuals. Far from being 'bad', such encounters can be not only 'good' but **necessary.**

And, paradoxically, often more so for young homosexuals than for young heterosexuals, who at least feel – even if they don't, or can't, relate to anyone – that society is essentially 'with' them.

"*Homosexual contacts*",
states the Speijer Report (para. 7.8 2)

> "*could often be of positive help to the young person with homosexual tendencies, insofar as they might reduce, or even eliminate, sensations of stress and frustration . . . It must be recognised* **that a society which seeks to eliminate all seduction situations . . . . will not encourage public mental welfare** . . . . . *A normal development requires broad possibilities of introduction, experiment, contact and initiation*". (Author's emphasis).

Or, again, para. 8.4.4):

> "*For the most constructive way of adapting to his sexuality . . . .* **the homosexual minor must meet older people . . . . and other homosexuals, (who) are important from a mental health point of view** *for the choice of identification object, for the free open building up of friendships and . . . . the elimination of guilt, fear and loneliness*". (Author's emphasis).

In this respect too, the Speijer Report amply confirms the sentiments – and, more important, the findings – of the Wolfenden Committee.

It is precisely on the **older** man's feelings of guilt, fear, loneliness – directly caused, in large measure, by the state of our present laws – that a certain type of young homosexual (or heterosexual, come to that) will seek to prey for purposes of blackmail, theft or prostitution. Contrary, once again, to popular superstition, the 'older man' in such a situation – usually quite

clean, and **without** a dirty raincoat – may himself only be quite young, and often far less sexually experienced than the sexually profligate youngster he is allegedly 'corrupting'.

In many 'seduction' situations, therefore, the older man is just as likely to be at risk as the younger one; more so, very often. And he is at risk precisely because he **is** fearful and lonely and is doubly susceptible, therefore, to the blandishments of the younger man. The latter, for his part, may be quick to extract the maximum emotional, financial or social advantage from the encounter; and, knowing the law to be on his side, will not hesitate, if caught, to make things easier for himself by claiming that, far from inviting sexual attention, he hadn't even known what 'homosexuality' meant until he met the defendant and that – yes, Your Honour – he **had** indeed been 'corrupted' against his will. Since this may sound a trifle far-fetched it may be as well to instance a recent case which, in substance, exemplifies the above scenario. The 'older man' was only in his twenties and the younger man was sixteen (i.e. above the **heterosexual** age of consent) and also rather predatory in the way described earlier. If this case teaches nothing else, it is that the present laws place an unconscionably heavy onus on the police to ensure that, in this type of case, the information they give to the courts be substantially correct.

A Typical 'Seduction' Case

In this particular case- recently reviewed by the Home Office- it is highly questionable whether this onus was adequately discharged. The defendant was charged with 'corrupting' the youth; i.e. of increasing the likelihood of his becoming homosexual. After they had met, the youth said he had nowhere to live, and was subsequently invited to live with the defendant in the latter's flat.

In the meantime, the youth had come to the attention of the police over a case of alleged theft from his place of work, and it was in the course of those enquiries that they came to suspect an illicit homosexual-relationship. Despite the firm privately-expressed opinion of other sexual partners that the youth was **already** an experienced homosexual, he nonetheless misled the police by allowing the implication that it was the defendant who had 'seduced' him. He also hid from the police the fact that he had met the defendant in a homosexual club. By thus playing the innocent, and giving substance to the prosecution case, the youth was doubtless hoping to escape being charged for theft and illegal

homosexual acts. In this he succeeded (though he is now serving an eighteen-month sentence in Borstal, following a car theft conviction).

And the defendant? He told his solicitor that he had **not** corrupted the youth, but defending counsel was unable to substantiate this statement in court for fear of charges also being brought against the defence witnesses, whose evidence would, in such circumstances, have been highly damaging to themselves. Rather than subject them to this risk, the defendant refused to call defence evidence. Presented with a virtual *carte blanche*, prosecuting counsel made great play with the corruption theory, and the judge expressly invoked it to justify the severity of the sentence for a first offence. The defendant was sentenced to eighteen months in prison.

Had the police not felt themselves to be home and dry on the 'corruption' ticket, they might have been at greater pains to verify the youth's claim to sexual innocence, in which event the defendant – who had behaved with exemplary dignity and restraint – would undoubtedly have got a lighter and more appropriate sentence. Nor is this by any means an unrepresentative case:

"*We have found*"

reported the Wolfenden Committee

> "*that men charged*" (or, presumably, liable to be charged) "*with homosexual offences frequently plead that they were seduced in their youth, but we think that* **this plea is a rationalization or an excuse,** *and that the offender was predisposed to homosexual behaviour before the 'seduction' took place. We have little doubt that the fact that this account of the origin of their condition is so frequently given by homosexual offenders has led the police and the courts to form the impression we have mentioned*". (Author's emphasis).

The alleged 'victim' of seduction, however, is often motivated to co-operate with the police by more than a desire for lenient treatment. Sheer embarrassment will often drive youths in similar situations to cover up any prior sexual experience they may have had with other men. Social conditioning – still so strongly underpinned by the 1967 Act – renders many youths incapable of admitting their homosexuality to police or solicitors for fear of it

'getting out' to workmates or family. The law in such cases is thus self-defeating on both counts, as on so many others in the sexual sphere.

The older party is liable to be given (as in the above case) a disproportionately severe sentence. The younger party, on the other hand, is gratuitously subjected to a traumatic exposure to criminal proceedings that is **really** (not just hypothetically) damaging to all but the most hardened youngster. As was suggested to the Wolfenden Committee:

> *"The fact of being seduced often does less harm to the victim than the publicity which attends the criminal proceedings against the offender, and the distress which undue alarm sometimes leads parents to show".*

All this in the name of 'protecting' youths under 21 from sexual experience which, far from being 'damaging', has on the whole proved to be beneficient and, indeed, desirable.

Deterrence versus Protection

Having seen the weight of expert evidence against it, many would now grant that the corruption theory **is** misconceived, and that the highly discriminatory age of consent for male homosexuals to which it gives rise is indefensible, also, in practice.

But there are some who would not go all the way with the Corruption Theory, and would even be happy to see the present laws applied more sparingly – as a 'threat' or 'last resort' – but who would nonetheless be loth to see them replaced by laws which put male homosexuals on a par, under the law, with heterosexuals. Why?

They would hold quite sincerely that a law does not have to be widely applied for it to have a 'deterrent' value as an ultimate guarantor of 'protection' to young men under 21. This might be termed the **Deterrent Theory.**

Aside from the highly dubious premise (already discussed) that boys over 16 **need** more protection than girls, this argument from deterrence ignores the alternative means at our disposal for protecting late adolescents of both sexes from unwanted sexual attention. As is suggested in a recent report by the Sexual Law Reform Society's Working Party (p.7), such protection, if necessary at all, can be provided without resort to the criminal law –

under, for instance, the Children & Young Persons Acts of 1963 & 1969.

A second weakness of the Deterrent Theory is that it overlooks the implicit – and unjustifiable – threat to mental health. The mere possibility of blanket criminal sanctions being arbitrarily applied to private behaviour, not even remotely felt to be 'criminal', is a well-established cause of mental ill-health under the present law; even more so when the law's application or non-application may depend on nothing more than a police officer's personal whim or prejudice. It is the chronic **uncertainty** that is such an enemy to the male homosexual. Indeed, it was precisely because it **is** so conducive to neurosis that the Speijer Committee viewed the sort of half-applied blanket law of the 1967 Act variety with such grave suspicion. It states (8.2. 5) that:

> *"A condition or situation of permanent threat can be considered as extremely detrimental for the mental welfare of a man".*

and, conversely (8.2. 7) that:

> *"Legal certainty and the exclusion of arbitrariness are extremely important to the public moral welfare".*

Yet legal certainty is precisely what the 1967 Act lacks to an utterly deplorable degree. In England and Wales, male homosexuals live in a legal limbo. They don't know whether they can safely dance together in 'gay' clubs; they don't know whether the narrow privacy law would **really** be applied if it 'got out' that a chum had spent the night in the flat of two lovers: they don't know if the Law would **really** pounce (as it did in the case outlined earlier) if it got known that one of the two lovers were under 21; they don't know whether they can safely advertise – as heterosexuals quite freely do – for friends of their own ilk. And in Scotland – still subject to the 1956 Sexual Offences Act of pre-Wolfenden days – the depth of uncertainty must be even greater and even more productive of neurosis. It is not enough for the Crown Office to say, in effect, that it is the 1967 and not the 1956 Act which will in practice be applied north of the border. To dismiss these considerations as 'academic' or as 'special pleading' would be to betray an ignorance of elementary psychology and of the very real suffering so mindlessly inflicted on male homosexuals by the present laws.

But leaving public health considerations aside, the unholy misalliance of the 1956 and the 1967 Acts makes, also, for bad **law.** The Speijer Committee states as one of its conclusions:

> *"To deliberately continue the existence of a penal provision, without the intention to systematically prosecute infringements, but solely to start criminal proceedings in certain cases – not defined by law – cannot be reconciled with the necessity for precision, positiveness and protection against arbitrariness, which is required from the penal law and its application. It is incompatible, in other words, with the basic principles of criminal law".* (P.2).

If the **first** requirement of good laws is that they be precise and positive in their application, the **second** desideratum, surely, is that they be designed – or revised – in such a way as to command respect. Anything less deserving of respect in Scotland than the 1956 Sexual Offences Act is impossible to conceive. That it presumes to dictate a personal, and effectively unrealisable, sexual ethic is bad enough; but that the Crown Office should feel constrained to give offical recognition to this fact (recognised by the Church of Scotland five years previously) robs it of any residual respect it might have retained. Could anything be more calculated to bring it into disrepute? A **third** prerequisite of a good law is that it be seen broadly to reflect the general climate of opinion of the times. The reader will be the best judge of that. (If in doubt, he might like to refer back to the brief assessment of public attitudes in Section I).

Perhaps, of the many compelling reasons for urgent law reform, the most outstanding might be that, in the vitally important area of protection, the current laws are largely counter-productive. Whilst officially purporting to 'protect' youths over sixteen from emotional damage, they are in practice largely instrumental in creating the very climate of isolation and loneliness best calculated to inflict such damage with the maximum possible despatch. As if that weren't enough, they then put every obstacle in the way of those counsellors who seek – often at great personal risk – to mitigate such damage by at least helping to create the more open and friendly environment so necessary to healthy development, regardless of sexual orientation. It is an intolerable situation, and

one of which our supposedly enlightened society should be thoroughly ashamed. The Corruption Theory has much to answer for.

Other Countries

It is sad that Great Britain, with its long tradition of civilised values, should be so bizarrely illiberal in the matter of male homosexuality. In nearly all Western European countries, homosexual behaviour is not illegal if engaged in between consenting adults in private. Outside Britain, however, the 'in private' tends to be more broadly defined, as it is for heterosexuals. In some of these countries, homosexual behaviour has never been singled out for special punishment; in others, the laws have been reformed comparatively recently.

As Dr. Pittenger has indicated (6):

> *"In some of the Latin countries, for example, homosexuality is often taken for granted. This appears to be true in Italy, especially in the large cities . . . . The Scandinavian countries do not make any fuss about the matter . . . . the presence of homosexuals is taken for granted. The same is the case in Holland".*

Within the more normalised environment of these countries, the balance, referred to earlier, between freedom and protection is, in general, carefully maintained. The specificity of the (narrow) protection provisions of the criminal law ensures that they are on the whole effective. The sorts of penal code provisions, referred to in the Wolfenden Report as affording **proper** protection to young men, are in fact reflected in the laws of other European countries. Laws, for example, against the **abuse** of superior age or experience (Denmark and Sweden); against **abuse** of a relationship of dependence or for financial gain (Greece); or **abuse** of authority (Italy). All quite specific and realistic.

Seen against this European yardstick, the homosexual age of consent (for males) in England and Wales is, at 21, absurdly high. Even within our shores, it seems somewhat anachronistic when viewed against our own present legal age of majority of 18 (brought down from 21 in 1969, in line with the Latey Committee's recommendation). As for Scotland and Northern Ireland, the statute book's lifelong anathematization of (male) homosexual behaviour is

6 *Time for Consent* by Dr. Norman Pittenger. SCM Press, London, p.95.

a major legislative aberration of the first degree and cries out for reform.

Anatomy of a Bad Law

Thus far, we have sought to establish that youngsters over 16 are more likely to derive benefit than harm from heterosexual **or** homosexual encounters; that, for this and other reasons, the Wolfenden Committee was by no means unanimous in finally setting the age of consent for male homosexuals as high as 21; that, contrary to popular belief, homosexual 'seduction' cannot any longer be credibly regarded as a variation on the Rape of Innocence syndrome; that, in putting temptation in his path, the present law does indeed place in moral danger the more predatory type of young man – but in a way very different from the one originally envisaged; that there is a sense in which it is often the **older** man who is at risk in sexual encounters of this kind for reasons not unconnected with the present state of the law; that, even where there is genuine (homo)sexual initiation, it is as often as not at the behest of the younger party; that youngsters in real need of protective care are best catered for outside the ambit of the criminal law; that the present oppressive law threatens mental health, impedes personality growth and causes widespread – often deeply internalised – unhappiness and guilt.

The present law is consequently a **bad** law – **bad** because it is based on the discredited corruption theory; **bad** because it invites – and suffers – widespread violation by otherwise law-abiding citizens; **bad** because the ministering professions are also prone to disregard it in the name of common humanity; and **bad**, finally, because it is not in accord either with current knowledge or with this country's best traditions of toleration and enlightened reform.

C. AGAINST NATURE?

It has been suggested that two members of the same sex are not as sexually compatible as two members of opposite sexes. Even if this were true, it in no way prevents homosexuals from achieving the same degree of sexual and emotional fulfilment as heterosexuals.

"But they can't have children!" is another brickbat gleefully tossed at homosexuals. Perfectly true. (And probably no bad thing from society's point of view, in the light of the population explosion, which condemns millions that **are** born to premature death by disease and starvation). But is infertility really a ground for regarding homosexual relationships as 'unnatural'? Because, if so, it would surely tar with the same brush many childless **heterosexual** unions which, whether from choice or necessity, do not produce children. Are these unions, too, to be stigmatized on that ground? Surely not. In the case of heterosexual liaisons of this kind, society rightly considers the mutual love and trust – presumed to have been expressed, also, at the physical level – ample justification for their remaining together.

Sex in Perspective

This prompts the question: what is it in man's nature to be? Fundamentally, man is made to be a lover. As St. John of the Cross wrote:

> *"In the evening of our day, we shall be judged by our loving".*

Infinitely more important than the outward sexual idiom through which such love is expressed is man's deep inner desire to love and be loved. As was stressed in Section I, this is very far from saying that all men consciously seek out one-to-one relationships all the time. Some may try and not succeed. Others may outwardly 'succeed' and wish they hadn't, if the divorce statistics are anything to go by. Yet others find they can happily combine a degree of sexual promiscuity with a stable emotional (and sexual) relationship with one other person. It is this potential for fulfilment, surely, which defines our humanity. It is as deeply natural for man to love as it is for him to be human.

The homosexual is no exception to this rule. In this respect, he differs from the heterosexual only in the sense that he envisages the possibility of such fulfilment with someone of his – or her – own sex. As Dr. Norman Pittenger points out (7):

7 Ibid., p. 69.

> *"He is acting (in this) in accordance with his deepest instincts and most profound impulses; he is behaving according to the 'nature' which . . . . has been given him".*

Is it really so 'unnatural' – in this particular context of the one-to-one relationship – to share one's body with the person one loves and with whom one shares everything else? 'Unnatural', is it, to celebrate such feelings in a way which, if not culturally normative, is at least sufficiently widespread – as we shall see – to be counted 'With Nature' rather than 'Against Nature'? Let the heterosexual reader consider for a moment how 'natural' it would be for him to have to withhold **for his whole lifetime** any form of physical expression of the love and affection he felt for a particular person. Assuming no vocation to celibacy, he would find such enforced chastity deeply repugnant to his nature, and would in any case find it to be, in practice, all but impossible to achieve. Yet, this is precisely what the present laws demand of male homosexuals in Scotland and Northern Ireland.

In many cases, these laws have been all too successful in exacting their pound of flesh. All too many homosexuals have withdrawn altogether from the life-enhancing possibilities of a relationship. Such is the emotional havoc already wreaked on them by our inhumane legislation. In effect, the male homosexual in those two countries is being required to commit a kind of living suicide. As has been pertinently stated (8):

> *"Suppressed sexuality is still sexuality; but it is hateful and terrible in its consequences . . . . we all know the types who, by refusing to use their sexuality . . . . in externalizing activity, have become embittered, hostile, perhaps even neurotic personalities".*

Such can be the consequences of yet another form of that lethally-misapplied concept of 'protection'. For church and state gratuitously to expose male homosexuals even to the possibility of such psycho-sexual stunting is bad enough, but to seek to rationalize such a stance on the tenuous ground that homosexual behaviour is somehow 'Against Nature' is surely the height of bigoted casuistry. Before exploring the moral side of this concept, however, let us first see the word 'unnatural' in relation to the whole spectrum of human sexuality.

8 Ibid., p. 113.

Wide Sexual Spectrum

It is all too often forgotten, or never realised, just how wide is the spectrum of sexual orientation – both for humans **and** animals. Animals become suddenly relevant here since they enter into the Shorter Oxford English Dictionary's first (and, presumably, primary) definition of the word 'unnatural' – defined as being 'not in accordance with the physical nature of persons or animals'. No wonder Dr. Kenyon, in his booklet published by the British Medical Association, expresses irritation at the continued bandying about of emotive phrases like 'unnatural practices' and 'crimes against Nature' since, to the extent these epithets have any meaning, they are at odds with the observed facts.

> *"If"*, writes Dr. Kenyon, *"one takes them to mean 'against the natural order of things', how does one account for the fact that homosexual behaviour is universal and widespread among the animal kingdom, particularly in primates and mammals?"*

As with primates, so with humans. Rare must be the individual who is 100% heterosexual – or, for that matter, homosexual – throughout his or her life. Indeed, for purposes of scientific discussion, exclusively heterosexual potential should itself be counted as deviant, even though it is culturally normative. As early as 1911, Freud stated in **The Interpretation of Dreams** that many dreams can safely be termed bisexual inasmuch as they:

> *"Unquestionably admit of 'over-interpretation' in which the dreamer's homosexual impulses are realised – impulses, that is, which are contrary to his normal sexual activities"*. (S.E. Vol. 4-5 p. 359).

Or again (9):

> *"Bisexuality is universally to be found in the innate constitution of every human being"*.

Since all 'normal' beings are thus to a greater or lesser extent innately bisexual, it can be helpful to see human sexuality shading over in a series of subtle gradations from 'exclusive' (i.e. predominant) heterosexuality at one end of the spectrum to predominant homosexuality at the other. Which is not to say, by any means, that the predominantly heterosexual person will have been so for **all** his or her life; many will have gone through a period of strong homo-erotic orientation, and many other so-called 'exclusive heter-

9 *The Origins of Psycho-Analysis*. S.E. Vol. p. 179.

osexuals'- even with no evident leanings towards their own sex- will have had at least one voluntary homosexual experience in their lives, many **after** leaving school.

Even those who remain predominantly homosexual all their lives in fact form a much larger minority than is often supposed. At a conservative estimate, there are about four million men and women in Britain who are primarily – and consistently – attracted to members of their own sex. Include those for whom homosexuality plays more than an incidental part in life and you have upwards of six million people. As Maureen Duffy once drily remarked, homosexuality is abnormal only in the statistical sense that it is abnormal to be of any ethnic group other than Chinese.

Anatomy of a Phobia

There remains a sizable sub-category of outwardly heterosexual men and women – often with attendant wives, husbands and children – in whom a larger-than-average homosexual component has been totally repressed and so thoroughly hidden, even from themselves, that they remain unconscious of it. They may be either 'true' bisexuals (with only the heterosexual side 'showing') or they may be all but exclusively homosexual. At prodigious emotional cost they will have 'succeeded' in keeping their latent homosexuality both from themselves and from everybody else. As such, they would be deemed 'successes' by society's self-appointed moral guardians whereas, when judged by the more meaningful standards of emotional growth and self-awareness, they should be accounted failures. This kind of person is quite liable to contract an unhappy marriage and to attribute its subsequent break-up to anything but his – or her – latent homosexuality.

Such people tend to be emotionally rudderless – a prey to destructive emotions which they do not understand and over which they therefore have little control. Those who delight in vilifying homosexuals might be disconcerted by Jung's finding (which they would probably seek to discredit) that there is a universal tendency to berate in others behaviour which is latent in oneself. Having failed to come to terms with, and integrate, their own homosexuality, they simply externalize their self-hatred by projecting it on to other homosexuals.

Predictably, it is this type of person who often harbours a pathological phobia of homosexuals that frequently manifests in a totally irrational anger. As Dr. Rictor Norton has indicated, such a

phobia (unlike homosexuality) exists as a specially classifiable mental illness, ranging from mild anxiety to paranoia, with physiological symptoms such as an involuntary gag reflex, dilation of the pupils and a shrinking in penile volume upon seeing a naked male (10). On to this figure the sufferer projects his own fear of homosexual contact. Not surprisingly, the taboo against male nudity and the taboo against homosexuality are closely related.

It is hardly surprising that many such people number among the more vehement opponents of law reform. Their apocalyptic language is prompted, one suspects, by more than a concern for their fellow man. In a sense, they are fighting for their **own** survival. Below consciousness, they have been led by a sense of guilt to wall off their own homosexuality, and they are damned if they are going to let others get away with it. Their 'moral outrage' and 'natural revulsion' become masculinity tokens, like hirsuteness or a penchant for strong liquor; it is almost as if their masculinity were **defined** by the strength of their 'revulsion'. From a medical point of view, the inferences to be drawn from such behaviour are fairly clear. Far from being a cause for self-congratulation, such exaggerated displays of spleen should be a spur to self-analysis.

Until that happy day, the intensity of their hatred of homosexuals will continue to place them – and others like them with similarly destructive phobias – well outside the parameters of the normal. They will continue to see the continuance of restrictive laws as somehow making them 'right' and validating their own personal struggle. They will continue to be blind to reason. They will continue to back their own hunches, their own 'common sense', their own narrow concept of what constitutes 'natural behaviour' against the wide-ranging evidence of people far better informed on the subject than themselves. They will continue to see such evidence as highly threatening to their own ego-structure, and will adopt an appropriately dismissive attitude towards it. In short, they cannot **afford** to be reformists in this area because, at least on this subject, they dare not allow themselves to be dispassionate.

It is safer for them to draw their moral credentials from a blinkered understanding of Christian teaching; to be weak on fact, but strong on myth; to seek thereby to influence the more fair-minded majority by pandering to their gullibility and lack of factual information; to link homosexuality with mortal sin, with the fall of the Roman Empire, with St. Paul, with Divine Wrath and – inevitably – with Sodom and Gomorrah; in short, to remain

10 *History of Homosphobia.* Phase I. By Dr. Rictor Norton. Gay News No: 64 (February 13-26, 1975), pp. 11 and 14.

unalterably committed to the view that homosexual conduct is, in some ill-defined way, 'Against Nature'. It remains to examine briefly the moral and theological aspects of this proposition, if only because such assumptions have for so long been allowed to colour Western man's attitude to homosexuality. Let us begin with Sodom and Gomorrah. Everybody does.

Sodom and Gomorrah

As Canon Sherwin Bailey has pointed out(11) the traditional concept of the sin of Sodom is based on an inference from the demand of the Sodomites:

> *"Bring them (Lot's visitors) out unto us, that we may know them".*

and arises from the fact that the word here translated "know" (yadha) can mean "engage in coitus". In fact, it is exceptional to find "yadha" employed in a coital sense in the Old Testament, and this adds substance to Dr. G.A. Barton's view that "there is no actual necessity' to interpret "know" in Gen. xix. 5 as equivalent to "have coitus with" since it may mean no more than "get acquainted with" which is, in any case, its more common meaning(12). Thus, the demand to "know" the visitors whom Lot had entertained may well have implied some serious breach of the rules of hospitality which, in other contexts, was deemed quite sufficient to bring 'judgement' on the offending community. Although the coital interpretation of "yadha" (and, therefore, the homosexual interpretation of the Sodom story) is so firmly rooted in Christian tradition, the alternative non-sexual explanation is, as Canon Bailey shows, at least equally consistent with the text and spirit of the narrative.

Although we are told that Sodom and Gomorrah were wicked, the writer does not specify their iniquity more exactly. The story does not in the least demand the assumption that the sin of Sodom was sexual, let alone homosexual, and there is no evidence to show that vice of the latter kind was prevalent there. Only once(13) in Rabbinical literature is homosexuality expressly linked with Sodom, and even this does not attribute to the inhabitants of Sodom any homosexual behaviour among themselves. To quote Canon Bailey (14):

> *"The interpretation of the Sodom story generally received by Western Christendom turns out to be nothing*

11 *Homosexuality and the Western Christian Tradition.* By Derrick Sherwin Bailey. Longmans. 1955, p. 2.
12 Art. "Sodomy" in *Encycl. of Religion and Ethics,* vol. xi, p. 672a.
13 *The Midrash on Genesis.* Gen. Rabbah. 1. 5.
14 *Homosexuality and the Western Christian Tradition,* p. 155.

more than a post-Exilic Jewish re-interpretation, devised and exploited by patriotic rigorists for polemical purposes".

J. Penrose Harland attributes Sodom's destruction to an **unholy** combination of earthquake and fire; the fire being caused either by lightning or by the ignition of gases and seepages of asphalt(15). One can understand how the sudden devastation of these prosperous cities would prompt people, ignorant of the scientific explanation, to ascribe it to supernatural causes. It does not justify our doing so.

The Patrist Tradition

It does not of course follow, because Sodom and Gomorrah cannot any longer be plausibly associated with homosexual behaviour, that it was not seen by the Christian Church as sinful; sinful in the sense of being, like fornication and adultery, against the natural and divine order of things as exemplified by the monogamous ethic of Christian (heterosexual) marriage. In his book **Sex in History,** G. Rattray Taylor draws an interesting contrast between the **patrist** society – repressive, authoritarian, conservative, strongly subordinationist in its view of women, and horrified at homosexual practices; with the **matrist** society – liberal, enquiring, democratic, inclined to enhance the status of women, and tolerant of homosexual behaviour(16). He concludes that the tradition of the Christian West has always been fundamentally patrist. Judaism, needless to say, represented absolute monotheism and male supremacy. One true God. No goddesses!

In 538 AD., Justinian codified the Roman law. He prescribed torture, mutilation and castration for homosexuals.

Thenceforward, laws in all Judeo-Christian states were stamped in the mould set by Justinian. As John Lauritsen points out(17), homosexual offenders were punished, during the Dark Ages, by excommunication, denial of last rites, castration, torture, mutilation, death by burning and burial in unsanctified ground. Some Christian fathers even felt it necessary to perform mutilation on the **corpses** of offenders! Sodomy had become virtually synonymous with heresy and treason and was not treated rationally in Christendom until some thirteen centuries later, when penal reforms in France followed the Great Revolution. The patrist tradition, in causing so much gratuitous suffering to (male) homo-

15 J. Penrose Harland in "Sodom and Gomorrah", *The Biblical Archaeologist* (New Haven, Conn., U.S.A.), vol. vi, no. 3, p. 48.
16 See especially Ch. iv, pp. 72 ff.
17 *Religious Roots of the Taboo on Homosexuality.* By John Lauritsen, p. 11.

sexuals, had clearly drawn heavily on the Sodom and Gomorrah myth.

It was by no means the only myth on which it was to draw. Another was the superstitious reverence for semen that resulted from a mind-boggling ignorance of human physiology. With typical arrogance, it was assumed by the (male) medical philosophers that semen was virtually self-potentiating and that the woman was little more than a breeding machine in which it could coagulate into the foetus. "There is no difference" declared Galen, "between sowing the womb and sowing the earth"!(18). This idea of semen as a substance "almost human", and with a potentially sentient soul, overshadowed the Western world's sexual thinking until the sixteenth century, but its effects are still only too discernible today.

At least it helps us understand why indiscriminate seminal emission was considered such a "waste" of precious fluid and why it could, on such a view, be seen to be against Nature. It was considered a "waste" too on other, less abstract, grounds. It must be remembered that Israel was a very small nation surrounded, as today, by enemies. Her very survival depended on her ability to "multiply". In an age of high infant mortality, this was not easy. (To the Ancient Jews, a twentieth century-style population explosion would have come like Manna from heaven.) To them, the upbringing of children spelt more workers – and therefore greater personal wealth; larger numbers also offered greater security against attacks from hostile tribes in the vicinity. Is it any wonder, therefore, that homosexual behaviour was frowned upon as being unfruitful?

This earlier reverence for semen also helps to explain the grotesquely divergent attitudes towards male and female homosexuality which persist to this day. For nearly three millennia, the taboo has been on **male,** not female, homosexuality. It is the **male** homosexual who has suffered more from the law even than the fornicator and the adulterer. (Condemned male homosexuals were subjected to death by stoning, the most severe penalty. Adulterers were simply executed by the more humane method of strangulation!). Female homosexuals have, on the whole, carried on much as before. Yet male homosexual behaviour, objectively considered, is intrinsically neither more nor less reprehensible than lesbian behaviour. We are thus driven to the conclusion that **it is not homosexuality as such** to which people have objected, but a particular variant of it: namely, male homosexuality.

18 De fac. nat. i.6.

The sharp distinction drawn between the two has been rationalized on two grounds. The first (reverence for semen) has long ago been rendered obsolete by medical science. The second ground has to do with notions of sexual privilege which, though false and equally outdated, still powerfully colour the attitudes of those who rely on their 'honest gut reactions' to determine what is, and what is not, 'natural' behaviour.

"At various stages of our enquiry"
writes Canon Bailey(19)

> *"we have . . . . encountered the notion that in male homosexual acts, and especially in sodomy, there is something peculiarly degrading or disgusting . . . . (yet such disgust) is never attributed directly to the fact that sodomy, at any rate, involves copulation* **per anum** *a mode of sexual indulgence which is by no means uncommon in* **heterosexual** *relationships". Author's* emphasis.

And, again (p. 162):

> *"There has been a marked tendency to regard sodomy in particular as though it were, so to speak, "playing the woman" to another man, or using another man "like a woman", according to whether the part taken was passive or active —* **a "perversion" intolerable in its implications to any society organized in accordance with the theory that woman is essentially subordinate to man".** (Author's emphasis).

Such behaviour was thus seen to degrade not so much human nature as the human **male.** In affronting the collective male ego of a patrist society, it was 'unnatural' in a parochial, as distinct from a universal, sense. Although such values clearly have little application to our own more egalitarian society,

> *"something of this deep-seated but irrational view of women remains today to influence the attitude of men in general towards the homosexual male — whether or not he actually indulges in sodomy or other homosexual acts".* (p.162).

19 *Homosexuality and the Western Christian Tradition*, p. 161.

(The latter distinction is apposite since by no means all male homosexuals are 'somdomites' – (to borrow Lord Queensberry's mis-spelling on the visiting card he left at Oscar Wilde's club).
Yet even Lord Queensberry would probably have agreed that:

> *"The lesbian's practices, on the other hand, do not imply any lowering of her personal or sexual status and can (therefore) be ignored".*

It is time the naturalness or otherwise of homosexual behaviour ceased to be measured by the unscientific yardsticks of an irrelevant and outmoded tradition.

St. Paul

An important further strut – or, rather, girder – bolstering that tradition was built round certain pronouncements of St. Paul, some of whose choicer epithets are enshrined in the 1967 Sexual Offences Act.

That St. Paul referred in scathing (though somewhat ambiguous) terms to homosexual behaviour is not in doubt. In his letter to the Romans (1.18-19, 26-27), he writes:

> *"The anger of God is being revealed from heaven against all the impiety and depravity of men who keep truth imprisoned in their wickedness . . . . That is why God has abandoned them to degrading passions . . . . why their menfolk have given up natural intercourse to be consumed with passion for each other, men doing shameless things with men and getting an appropriate reward for their perversion."*

As has been pointed out in a recent and highly pertinent paper (20), Paul was here using the emotive language of the preacher. He would almost certainly have had in mind the lustful and rapacious practices, often public, of the Graeco-Roman world of his day, as well as the pagan cults that included male prostitution. Through lack of evidence, it probably never occurred to him that loving relationships were as possible between homosexuals as between heterosexuals.

Finally, St. Paul's praiseworthy condemnation of "men who keep truth imprisoned" would presumably extend to the truths deriving from modern medical knowledge.

20 REACH. Occasional Papers. No. 2. Is Homosexuality Against the Laws of God? By Bill George.

St. Paul refers to homosexuality in a further passage (1 Corinthians 6.9-10):

> *"You know perfectly well that people who do wrong will not inherit the kingdom of God; people of immoral lives . . . such as catamites and sodomites among others . . . will never inherit the kingdom of God"*

When taken literally, such injunctions have driven men to the most comically obsessive lengths to avoid the sort of 'contamination' referred to earlier. A passage from Basil's treatise: **De renuntiatione soeculi**(21) vividly presents a feature of contemporary social life which may seem strange, if not fantastic, to the modern reader:

> *"If thou are young in body or mind, shun the companionship of other young men and avoid them as thou wouldest a flame. For through them the enemy has kindled the desires of many and then handed them over to eternal fire, hurling them into the vile pit of the five cities . . . At meals take a seat far from other young men. In lying down to sleep let not their clothes be near thine, but rather have an old man between you"*.

Note the reference to "clothes" and the far-reaching effect, even on educated men, of the **Contamination Theory of Homosexuality** (a second cousin of the **Corruption Theory,** discussed earlier in Section II). Although Basil refers here to Sodom and Gomorrah (being two of "the five cities"), it is significant that none of the Biblical condemnations of homosexual practices makes any mention of the Sodom story – a remarkable and inexplicable omission if in fact it **was** commonly believed that the destruction of the city was a Divine Judgement upon the 'unnatural' proclivities of its inhabitants. Only in one place, as Bailey points out, is there the faintest possibility of a suggestion in this direction in terms of – yes! – St. Paul's teaching about 'the wrath of God' in the Rom. i. 18 ff. passage referred to above. Significantly, no other New Testament writer mentions homosexuals. It is a possibility, and no more than a possibility, that the reason Paul was so condemning of homosexuals was that his secret 'thorn in the flesh' was his own homosexual leanings. Certainly, his somewhat hysterical approach

21 Transl. W.K.L. Clarke, *The Ascetic Works of Saint Basil* (London, 1925), p. 66.

to the subject is consistent with the kind of anti-homosexual phobia analysed earlier. Just as he lacked the modern gynaecologist's knowledge of the female ovum, so he lacked Jung's insights into the mechanism of projection. Twentieth-century man cannot so easily excuse his own ignorance.

It is important to remember that St. Paul had been trained in Jewish rabbinic thought, some of which had stayed with him after his conversion. (For example, he treated women as inferior, whereas Jesus did not). St. Paul's statements about homosexuality, especially in the first chapter of Romans, are a direct reflection of his Jewish background, in which homosexuality was associated with the human tendency to idolatry (and hence to heresy). For reasons best known to himself, Paul chose to be celibate, and regretted that everyone could not follow his example. With no pretence to humility he states (1 Corinthians 7:7):

> *"For I would that all men were even as I myself"*

For those lesser mortals who were unable to forgo sex completely, Paul offered the sole alternative of life-long, monogamous heterosexual marriage:

> *"But if they cannot contain, let them marry: for it is better to marry than to burn"*. (1 Corinthians 7:9).

Note that such an injunction presupposes – wrongly – that homosexuals have a genuine choice in the matter and that, by implication, sexual behaviour with their own sex is little more than a wilful whimsy. As we saw in Section I, where homosexuals **have** taken St. Paul literally and married, they have frequently brought nothing but misery both to the marriage and to the children resulting from it.

Ironically, it is only in this sphere of sexual behaviour that Christians even pretend to take the Scriptures literally. Telescopes were raised to many a blind eye long before Nelson was born. Do we become distracted by such sins as eating rabbit (Lev. 17:10), lobster, clams, shrimps, oysters (Lev. 11:10-12), rare steak (Lev. 17:10) or wearing wool and linen at the same time (Deut. 22:11)? Similarly, the old law forbids the eating of pork (Lev. 11:7) or of the fat of ox or sheep. Do you eat bacon or Irish stew? "Ah", you say, "but these Old Testament laws are the laws of the Ancient Jews, not Christian laws!" Quite true. But have we not shown St. Paul's precepts to be also rooted in both the letter and spirit of those same rabbinic teachings of the Old Testament?

Or take the New Testament. It will serve our purpose equally well. What would happen to our educational system if the church began a crusade against women teachers based on 1 Tim. 2:11-12? It would be a sad day for Britain if the state suddenly decided to enact laws which forbade women to teach on the ground that such behaviour, being contrary to biblical teaching, was 'sinful' and 'unnatural'. Biblical fundamentalists apart, the church has allowed itself for too long to pick and choose quite arbitrarily the texts it wishes to follow. For too long it has consistently applied a double standard to those biblical texts relating to sexual behaviour. And the state has colluded with this Nelsonian stance because it has suited it to do so. Appeals to "what the Bible says" have until recently proved a crude, though effective, means of maintaining conformity, particularly in the sphere of homosexual behaviour. It is a weapon still used to devasting effect in Northern Ireland.

"Far too many theologians today",

writes Dr. Pittenger(22)

> *"are guilty of the peculiar contradiction of admitting (on the one hand) that . . . (a given piece of) biblical material . . . has no claim to be regarded as historical, yet (on the other hand) treating this material, for theological purposes, as if it* **were** *historical. This is theological double-talk for which there is no justification whatsoever"*.

Appeals to "what the Bible says" – unless seen in the context of the **whole** Bible – very often lead to the spirit being lost to the letter; the wood to the trees. As an example of sheer arbitrary silliness, St. Paul's condemnation of long hair for men as being "unatural" would be hard to beat:

> *"Doth not even nature itself teach you that, if a man have long hair, it is a shame unto him?"* (1 Corinthians 11:14).

Such patent idiocies are passed over by the Church in silence. Yet the texts on homosexual behaviour are raked for ammunition with the most minute care. Paul can only safely be quoted- if at all **within the full context of Christ's New Testament teachings.** His bizarre injunctions have for far too long been quoted out of context. Let us hope that the Church of England Working Party on Homosexuality will bear such considerations in mind as it goes about its work.

It almost passes belief that, in our supposedly enlightened Western culture, St. Paul's explosive verbal seedlings have for two

22 *Time for Consent*, p. 54.

thousand years been allowed to grow, from the hothouse soil of ignorance, superstition and prejudice, into huge man-eating plants that have – quite literally – strangled the life out of countless generations of male homosexuals. That such growths are still allowed to cast their long shadow on Parliament's statute book reflects little credit on society. At least St. Paul, recognizing man's fallibility, frequently had the grace to say that he was giving his own views rather than the commandments of God – as, indeed, he was.

"Law of God"?

It is only now that we are beginning to take him at his word. Christ came to **release** men from the complexities and hypocrisy of rabbinic legalism; he was never recorded as going out of his way to condemn homosexuals – or even to refer to them! It is sometimes maintained that it is a law of God that the two people involved in a sexual relationship must be of opposite sex and united in marriage. But this so-called "law of God" is not contained in the ten commandments of the first covenant, nor in the two commandments of the second. As Dr. Pittenger puts it(23):

> *"Any notion of a divine law . . . . (cutting) across all human insight and experience is a most tragic misunderstanding of the way God works in his world. And the later idea that there is some moral "law of nature" which in its* **specificity** *is known to men is equally an impossibility, however hallowed this idea may be in certain strains of historic Christian thought".*

And, finally, (p. 107):

> *"Nothing that I have seen, in the dozens of books that I have read asserting the sinfulness of homosexual acts, has convinced me that* **they contain much more than special pleading, inherited or personal prejudice, outworn patterns of thought, and inadequate or even erroneous factual data".** (Author's emphasis)

Certainly, the Wolfenden Committee was quite explicit (para. 35) about the need to avoid using the terms "natural" and "unnatural" in relation to homosexual behaviour since they felt that

23 Ibid., p. 105.

such terms depended for their force upon certain explicit theological or philosophical interpretations

> "... *without which* ... *their use imports an approving or condemnatory note into a discussion where* **dispassionate thought ... should not be hindered by adherence to particular preconceptions**". (Author's emphasis)

Even the continuing belief by certain "strains of historic Christian thought" in the existence of a moral 'law of nature' in no way justifies the underpinning of such a law by the kind of discriminatory sexual legislation represented by the 1956 and 1967 Sexual Offences Acts. (It was largely at the insistence of the **church** in Scotland and Northern Ireland that the savagely punitive provisions of the 1956 Act remained operative for those two countries.) As we shall see in a moment, benign paternalism has its value and its uses: the state **does** have a limited function as moral guardian. True guardianship, however, does not usually extend beyond the age of discretion.

To continue to make (male) homosexuals the scapegoat for society's unresolved prejudices – on the specious ground that homosexual behaviour is 'unnatural' – is to demand of them more than they should any longer be expected to tolerate. It is not only bad for homosexuals. It is bad, also, for society. A mature society should not need scapegoats through which to externalize its own psycho-sexual inadequacies. Such collective self-indulgence is thoroughly unhealthy since the presence of serviceable scapegoats merely postpones the day of reckoning and weakens society's will to look at **itself** more squarely.

The Fall of the Roman Empire

If homosexuals are to be associated with the **Fall** of the Roman Empire, should they not also be connected with its **Rise?**

Summary

In this part of Section II, an attempt has been made to demonstrate several related propositions: that homosexuals are as capable of relating sexually and emotionally to each other as heterosexuals; that man is born a lover and that heterosexuals have no monopoly in this domain; that it is both counter-productive and inhumane to seek, through discredited laws, to deprive male homosexuals of their human right to love and be loved; that homosexual behaviour is widespread among animals; that, among humans, it shades over a much wider sexual spectrum than is commonly supposed; that its unconscious repression can lead to a destructively phobic hatred of other homosexuals; that repressive sexual laws have been underpinned for centuries by a combination of prejudice (often of phobic proportions), ignorance, myth and a whole cluster of religious superstitions which owe nothing to Christ's teaching, historical truth or medical knowledge; that homosexual behaviour is not 'unnatural' or 'Against Nature' in any meaningful scientific sense; that the term was deliberately avoided by the Wolfenden Committee on the ground that it could prejudice a dispassionate view of the subject; that there is no one specific moral "law of nature"; and, finally that, even if there were such a law, it would not justify the state in perpetuating the present legal discrimination against the male homosexual. This last proposition will now be examined a little more fully.

D. THE PATERNALISTIC ASSUMPTION

Existing legislation about sexual behaviour appears to be based on the premise, as The Rt. Rev. John Robinson pointed out in his 1972 Beckly Lecture(24), that all sexual activity, except **per vaginam** between husband and wife, is a bad or negative thing, and the law should always discourage it and, at times, positively prevent it. If it isn't quite: "Find out what Johnnie's doing and tell him to stop it", it is something very near it. In the past, certain types of sexual behaviour have been held by authority to be so morally offensive to the public at large as to justify a **general** prohibition against them.

There is a sense, therefore, in which the state is deemed to act *in loco parentis*, vested with the moral guardianship even of its adult citizens: Big Brother sliding imperceptibly into Big Daddy. As Bishop Robinson puts it:

> *"The function of law in such a paternalistic understanding of society is . . . . to enforce the morality of those who know best . . . . in the name of what John Stuart Mill has called 'the tyranny of the majority'. Thus understood, the law's function is to keep us within the straight and narrow, to prohibit undesirable deviation or, as Mill put it, to act as a sort of 'moral police'.* **pre***scribing what is good and* **pro***scribing what is not. However, this is to equate the place of criminal law with that of moral condemnation. That way leads to the regimentation of morals and, ultimately, to the mentality of the police state".*

Nor should such language be dismissed as being far-fetched. The dangers inherent in such a paternalistic view of the law are very real, and no more so than today. In Spain, there are special corrective camps for homosexuals.

> *"Ah", you say, "but Spain is a dictatorship!"*

And Britain? It is not so very long ago that, even in this enlightened land, homosexuals were hanged at Tyburn – martyrs to the misplaced animus and abysmally self-righteous ignorance of extreme paternalism. Even today, there is a subtly disguised element of compulsion in the stark options, still so commonly held out by the courts to convicted homosexuals. Despite their appalling track record, even aversion therapy and shock treatment are usually preferred to a prison sentence. The 'tyranny of the majority' is no empty phrase to male homosexuals, particularly when they

24 *The Place of Law in the Field of Sex*, by the Rt. Rev. John A.T. Robinson, Ph.D., D.D. Sexual Law Reform Society, 1973.

see rampant prejudice masquerading – as in the eighteenth century – under the thin disguise of paternalism.

True Function of the Law

Subject to certain necessary provisos (discussed in Section III), the law's true function should not be negative, but positive: to enable people, as far as is practicable, to be (or become) free, mature human beings. The *raison d'etre* of the law (to judge from its application to almost everyone except homosexuals) is protection, **not** prohibition. But, as we have seen, protection can go too far; man can be so protected against himself as to be deprived of the freedom to make moral choices. Hence, where there is no demonstrable need for protection, the law has a clear moral duty **not** to intervene.

In this duty it has manifestly failed, and the present muddled and discriminatory laws against male homosexuals are little more than a tactical – and highly damaging – compromise, arising from a failure to distinguish the law's proper scope. In the (tacit) name of morality, it has behaved – at best – with startling amorality. And, in the name of 'protection', it has forced its misguided attentions on those who least need them and accorded inadequate help to those in real need. Let us, therefore, be quite clear on what is **not** the law's proper concern. The Wolfenden Committee had this to say on the matter:

> *"It is not, in our view, the function of the law to intervene in the private lives of citizens, or to seek to enforce any particular pattern of behaviour . . . . It follows that we do not believe it to be a function of the law to attempt to cover all the fields of sexual behaviour. Certain forms of sexual behaviour are regarded by many as sinful, morally wrong, or objectionable for reasons of conscience, or of religious or cultural tradition: and such actions may be reprobated on these grounds. But the criminal law does not cover all such actions at the present time; for instance, adultery and fornication are not offences for which a person can be punished by the criminal law. Nor indeed is prostitution as such".* (Para. 14).

The striking of a healthier, non-paternalistic balance between individual freedom and the state's duty of care is the central aim of CHE's Draft Bill, itself the product of deep and careful thought. The Bill's form and substance will be the subject of Section III.

Background

In 1974 the Campaign for Homosexual Equality, this country's largest homophile organisation, in conjunction with its sister organisations in Scotland and Northern Ireland formed an advisory sub-committee to draft a Law Reform Bill. Although CHE clearly has a direct interest in law reform, the Bill cannot be dismissed as an example of special pleading since it drew expert advice from outside its own ranks and arrived at its conclusions against a background of national and international research findings of disinterested experts in the fields of medicine, penology, sociology and the criminal law.

The Draft Bill incorporates some clauses of the Scottish Minorities Group's Sexual Offences (Scotland) Bill 1973 together with further carefully considered suggestions from members of the CHE Working Party, outside independent experts and representatives from Scotland and Northern Ireland. Attached to the Draft Bill is an Explanatory Memorandum which gives a clause-by-clause overview of the Bill.

My purpose here is to discuss, in the context of those clauses, the spirit of the Bill and the broad principles which govern it. However, those principles, and that spirit, will best be understood after first being seen against the negative legal framework within which the present discriminatory laws continue to operate against the male homosexual.

Negative Legal Framework

That the 1967 Act should have borne such crabbed fruit is because it was itself a hybrid growth that owed more to misplaced caution and political expediency than to any understanding of the real issues. As it was, Parliament had waited a full decade (1957-1967) before finally agreeing to a partial implementation of the Wolfenden Committee's proposals. It is hardly credible that the recommendations of a committee of such undisputed authority should even today, after eighteen years, still not fully have found their way on to the statute book. Yet such is the case. Not surprisingly, the effects of the present laws are anomalous, anachronistic and, in all too many cases, counter-productive.

The laws affecting male homosexuals in England and Wales still discriminate unjustly against the (male) homosexual because the 1967 Act perpetuated the idea that male homosexual activities

continue to be **unlawful** (with some exceptions) rather than **lawful** (with some exceptions). In providing that homosexual relations between two consenting males over 21 in private should no longer constitute a criminal offence, the 1967 Act merely removed a single limited category of homosexual behaviour from the criminal area, leaving intact the law's basic assumption that (male) homosexual behaviour should be treated as more criminal than equivalent heterosexual conduct. Yet, even within this begrudged category, the definition, for instance, of 'in private' is far more narrowly drawn than it is for heterosexuals, since the effect of the Act is to make **all** parties criminals where anyone other than the two parties concerned should be present (asleep? in another room of the same dwelling?) during homosexual relations. (See Section I).

Freedom versus Constraint

Per contra, there is no limit to the number of people (over 16) who may be present – whether as onlookers or participants – during heterosexual relations. As the tabloid press never tires of telling us, many of the country's heterosexual bedrooms are nightly the scene of what are alleged to be the most degrading and revolting sexual practices, which (so we are told) no 'decent' man or woman could contemplate without a feeling of nausea. The number of unwanted – and aborted – pregnancies climbs daily; marriages are broken up by third parties; responsibility for illegitimate children is disclaimed; children are deprived of parental care and affection in their most formative years; the NHS is stretched almost to breaking point under the remorseless pressure of calls on itsV.D. and abortion clinics. Yet, does society **really** object? Does it seek to raise the heterosexual age of consent to, say, 21? Does it clamour for Parliament to draw up a narrow definition of 'in private' for **heterosexuals?**

No, it does not. It does not do so because it regards the right to privacy of its (heterosexual) citizens as having an overriding social priority; a priority transcending in importance the price that society pays for its right to act in ways which are light years away from the traditional monogamous ethic. And it is right to do so. Where it is wrong is to seek to withhold the same right from homosexuals. Or, more accurately, it is wrong to do so unless it can convincingly demonstrate that sexual equality for all under the law would have **more** traumatic implications for the health of society than already result from the relatively 'open' laws currently operating for heterosexuals.

On any dispassionate assessment, the contrary would appear to be true. Unwanted pregnancies, leading either to unwanted children or to abortions, have not yet been known to result from sexual relations between two members of the same sex; 'shotgun' marriages – with all the added potential for incompatibility and unhappiness – are not commonly known to result from prior cohabitation between members of the same sex (although many homosexuals have been effectively gunned into disastrous marriages by the dismissive attitudes among certain segments of society); the vast majority of marriages are far more threatened by the adultery of one or both (heterosexual) partners with members of the **opposite** sex than by the more specialised appeal of a homosexual liaison. In short, the 'danger to society' argument is double-edged and, if anything, would argue for tighter laws for **heterosexuals,** not homosexuals.

The Age of Consent

As we saw in some detail in Section II, the five-year disparity between the heterosexual age of consent (16) and that for male homosexuals (21) rests principally on the **Corruption Theory of Homosexuality,** by which is usually meant that a homosexual encounter is likely to 'damage', or turn permanently homosexual, a youth aged say between 16 and 21, who but for such an encounter would have remained heterosexual.

In fact, as we saw in Section II, the Corruption Theory has long since been discredited in knowledgeable quarters, and only lives on in popular mythology. As long ago as the mid-fifties, the Wolfenden Committee acknowledged that:

> *"a person's sexual orientation is invariably fixed long before the age of 16 and cannot be changed by (homosexual) experimentation after that age".*

On **two** grounds, the Committee felt positively that sixteen would have been the more appropriate age. It is quite true, nonetheless, that the Committee did finally opt for 21 as the 'right' age, though they acknowledged (para. 71) that such a decision unavoidably involved an element of arbitrariness. Their doubts were widely shared at the time, as is evidenced by the results of the opinion poll, quoted in Section I.

Alluding to those doubts, the Rt. Hon. George Strauss, member for Lambeth Vauxhall, recently recalled that they were shared by

many who felt at the time of the passing of the 1967 Act that the age of 21 was too high.

Speaking on behalf of Home Secretary Roy Jenkins, Alex Lyon (a Home Office Minister) stated in reply that there were "no plans at present" to amend the law in respect of the age of consent. **The Wolfenden Report had recommended 21, and he couldn't see how anything had happened to change the situation!** As this statement triggered the predictable chorus of (mainly Tory) approval, it can fairly be taken to represent at least one section of parliamentary opinion. As such, it merits scrutiny. There is a danger, otherwise, of MPs opposing reform on grounds (such as the Corruption Theory) **which they mistakenly suppose would have been supported by the Wolfenden Committee.**

The main ground on which the Committee **did** eventually recommend 21 as the appropriate age of consent for (male) homosexuals had nothing to do with the corruption theory. It had to do with the age (para. 69)

> *"at which a person may be regarded as sufficiently adult to take decisions about his private conduct and to carry responsibility for the consequences".*

But, does not this criterion apply with equal, if not more, force to **heterosexuals** who, as we have seen, have some consequences of their own to take? Are we not then in the Alice In Wonderland situation of seeing young heterosexuals in their late teens enjoying, under the current law, sexual freedom for whose consequences they are by definition deemed "not sufficiently adult to carry the responsibility"? Clearly we are. A neat little example of unconscious discrimination. Not for the first time a yardstick (adult responsibility', 'damage to society'), deemed of little or no account in the fixing of the **heterosexual** age of consent, suddenly assumes burning relevance in the case of male homosexuals.

Ministerial Indifference

How, then, can the Minister, with any pretence to knowledge of the subject, claim that "nothing", in his view, has happened to change the situation? Is the dramatic change in the social climate – the immensely more enlightened attitude of parents, youth workers, clergy, teachers – "nothing"? Is the publication in 1969 of the Speijer Report "nothing"? Is the prompt change in the Dutch

law that followed "nothing"? Is the Latey Committee Report of 1967 "nothing"? Is the Family Law Reform Act of 1969 "nothing"? Is the lowered age of legal majority (on the higher of which the Wolfenden Committee had partly based its recommendation of 21) – is that "nothing"? Is the Scottish Crown Office's refusal fully to implement the 1885 Criminal Law Amendment Act "nothing"? And the widespread suffering inflicted, particularly on younger homosexuals, by the present laws in the name, ironically, of 'protecting' them – does that count for "nothing"? Is the increasing irrelevance of Wolfenden's 'social ostracism' argument "nothing"? Is the abolition of National Service, for which the Wolfenden Committee "felt obliged to have regard" – is that, too, "nothing"? Or could it just be that the Minister has noticed – "nothing"?

It is distasteful to see a Minister of State so pitifully failing to do his homework on such a vital matter of public concern. An even deeper cause for disquiet is the realisation of what that failure portends in terms of the failure of the Home Office as a whole to keep under proper review a subject directly affecting the lives, mental stability and happiness of countless young homosexuals, who continue to be shackled by a law that is based on certain postulates which Lord Wolfenden would himself now consider out of date. It is in the hope that the majority of MPs will, after due consideration, opt for speedy reform that CHE, SMG and USFI are presenting the Sexual Offences Bill to Parliament.

Its acceptance and passing would logically involve the repeal of the 1967 Act and of those provisions of the 1956 Act which provide for the different treatment of homosexual, as distinct from heterosexual, behaviour and their replacement by provisions relating impartially to **all** sexual conduct, regardless of the sex of the participants.

Geographical Extent of Bill

The 1967 Act applies only to England and Wales. **All** homosexual behaviour between males is still a criminal offence in Scotland and Northern Ireland, even that 'in private' between consenting adults over 21. It is therefore proposed that the CHE/SMG/USFI Bill should apply to Scotland and Northern Ireland, as well as to England and Wales. The First and Second Schedules contain the modifications necessary for the application of the Bill, respectively, to Scotland and Northern Ireland.

Purpose of the Bill

The purpose of this Bill is to amend and bring up to date the law relating to homosexual acts between males, to eradicate discrimination in the law relating to homosexual and heterosexual behaviour, especially that relating to different ages of consent for homosexual and heterosexual conduct, and to minimise the legal persecution and harassment of the homosexual minority. At the same time, care has been taken to ensure that the concern of the public for the protection of young people and the avoidance of public displays of sexual behaviour is recognised.

What follows is a brief outline of some of the principles underlying specific clauses of the Bill.

PRINCIPLES BEHIND THE BILL

Sexual Equality

A cardinal principle underlying the Bill is that homosexual behaviour should be treated, under the law, no differently from heterosexual behaviour. And this goes also for the inequality of penalties (e.g. for indecent assault on a man – 10 years; for indecent assault on a woman – 2 years).

As we saw in Section II, it can no longer be tenably argued that young men need a higher degree of legal protection from homosexual assault than young women do from heterosexual assault. If anything, the contrary is true, as was argued earlier in Section III. Consequently, the Bill provides (Clause 2) that certain kinds of behaviour shall be classed as criminal **only** if comparable conduct involving persons of **different** sexes would attract criminal sanctions. Homosexuals would thus be subject to precisely the same freedoms and constraints as heterosexuals.

Many consequential changes will flow from the implementation of this basic principle of sexual equality. Specifically, it will involve introducing parity of treatment under the law in, for instance, the areas of consent (clauses 6 & 7), the armed services (clause 10), brothels (clause 13), indecency (clause 14), soliciting (clause 15) and geographical extent.

Protection

Particular care has been taken to achieve a fair and just balance between the twin concepts of freedom and protection, since it is recognised that to over-compensate for the one at the expense of the other not only causes avoidable hardship, but makes for bad law. It is appreciated, also, that the individual's right to freedom of action cannot, in the present state of public opinion about sex, be allowed to pass beyond the point where it impinges on the public's wish to be protected from public displays of sexual behaviour, irrespective of whether such behaviour involves men only, women only or men and women together. (Clause 14).

Protection is likewise extended in both directions in cases of soliciting. The object, on the one hand, is to protect the public from the annoyance of being pestered for sexual purposes by persons of either sex. At the same time, such an allegation, so easily made, can be so damaging to the person accused that it is thought only fair that police evidence alone should not in future be deemed

sufficient to substantiate such a charge, but that the complainant should **also** be called upon to give evidence. (Clause 15). The present widespread practice of allowing police testimony in the absence of the person alleged to have been solicited should be discontinued.

Special provision is also made to extend protection to those who might be particularly vulnerable to sexual exploitation. The Bill seeks to protect young persons from sexual advances that do not involve full sexual intercourse, but which cannot fairly be described as any form of assault. What Clause 9 attempts to do is to extend the protection afforded under the **Indecency with Children Act 1961** to young people under the age of sixteen. At present, it only covers children under the age of fourteen.

Whilst real protection is thus provided where needed, it is recognised, as we have seen, that too much protection in the private sphere can do more harm than good. The more finely-drawn this balance of protection between the individual as an individual and the individual as a member of the public, the greater our chances of fostering a healthily united society.

Privacy

A vital element in this balance relates to the individual's right to feel that his or her claim to privacy is as sacrosanct as that for society as a whole. As was argued in greater detail in Section II, the case for implementing the Wolfenden Report's recommendation that homosexuals be accorded the same latitude in this area as heterosexuals is overwhelming. Male homosexuals feel very keenly the injustice of an absurdly discriminatory law which continues to deny them this basic right. The 1967 Act represented a major compromise between opposed, and indeed incompatible, attitudes to (male) homosexual conduct. Nowhere is the axiom that 'compromise rarely makes good law' truer than in this matter of privacy.

As we saw in Section II (in our discussion of the place of paternalism in modern society), it is those who have thought most about, say, obscenity or suicide or homosexuality who have tended to come out on the side of relaxing, rather than tightening, the law. In the proposed new Bill, the privacy concept for homosexuals has neither more nor less meaning than for heterosexuals; it is simply assumed to be anything that is not 'in public'.

Towards a Positive Legal Framework

In providing for equal treatment under the law for both homosexual and heterosexual behaviour, the Bill seeks to do away with the law's present assumption that (male) homosexuality should be treated as more anti-social and inherently criminal than heterosexuality.

This new equality is reflected in the phrasing of the Bill. Neutral language is substituted for the archaic and pejorative epithets of an earlier era such as "lewd homosexual practices" and the like. The word "buggery" is replaced with the more exact term "sodomy". The vagueness of the word "immorality" is avoided by the use of the expression: "conduct of a sexual nature" (Clause 15). Similarly, the offence of "gross indecency between male persons" finds no place in the Bill. It becomes simply: "an act of indecency" (Clause 14). The sex of the participants will in future be irrelevant, since conduct involving persons of the same sex shall only be considered "indecent" if identical conduct between persons of opposite sexes were so regarded.

The Armed Forces

If, as the Bill proposes, sexual legislation really **is** to be allowed to function within a positive framework of equality, it follows that the proposed changes will affect all areas where the law still operates within a negative framework of inequality. The armed services constitute one such area of discrimination.

Because the Armed Forces were excluded from the ambit of the 1967 Act, all homosexual behaviour within the services continues to be 'criminal', **regardless of the circumstances in which it takes place.** There is, however, no good reason for supposing that such conduct, where it takes place off duty and away from service premises, is necessarily prejudicial to discipline – especially when the other person involved may have no connection with the service. Heterosexual behaviour is not so regarded. Heterosexuals are free to behave as they wish when off duty. Homosexuals are not.

In short, it is felt to be needlessly discriminatory for the services to apply the present **absolute** criterion of culpability to homosexual behaviour whilst only applying a **relative** one to heterosexual behaviour. Clause 10(2) of the Bill therefore provides that:

> *"No act or conduct of a homosexual nature shall be considered to be prejudicial to good order and discipline*

so as to be an offence under this section unless heterosexual acts or conduct of like nature and in like circumstances would be so regarded''

The effect of this clause will also be to do away with the absurd anomaly in the merchant navy, whereby the law prohibits a crew member from having homosexual relations with a fellow crew member, but allows him free access to every male **passenger's** bunk.

Rape and Assault

Under the 1956 Act, ''rape'' effectively means intercourse *per vaginam* by means of force or fraud. (An example of fraud, instanced in Clause 1(2) of the Act, is where a man induces a married woman to have sexual intercourse with him by impersonating her husband!) Concepts excluded from the above rather specialist definition are intercourse with a woman *per anum*, and intercourse between two men.

As it is felt that both deserve a co-equal place within the definition of rape (if we are to retain the offence at all as a separate charge) the Bill introduces the concept of homosexual rape, and also includes within this wider definition the case where a woman is forced to submit to sexual intercourse otherwise than *per vaginam*. (Clause 3).

There seems no logical reason why the use of force or fraud to obtain sexual intercourse in one way *(per vaginam)* should be treated any differently from a similar, equally gross, interference with personal dignity carried out in any way *(per anum)*. Nor is it readily apparent why such a crime should be limited to cases where the victim is female. The opportunity has therefore been taken to fill this gap in the law by replacing the offence of ''assault with intent to commit buggery'' by that of ''assault with intent to commit rape''.

Obscenity

It is invalid to cite personal revulsion as a 'reason' for continuing to prohibit the distribution of obscene homosexual material since, by that criterion, much heterosexual material of a like nature would be similarly proscribed. Much – though by no means all – pornographic material is enjoyed by those who, by reason either of age or social incapacity, have difficulty in enjoying the real thing. Those who genuinely seek to contain what they

would term the 'problem' should vote for law reform and so offer at least the possibility of alternative outlets in the form of healthy open relationships that heterosexuals take for granted, but which are still a prized luxury for many homosexuals.

In any case, as has been wisely remarked,(25), the effects of prohibition, as in all forms of censorship, can be notoriously counter-productive. Like all other forms of authorized violence (such as internment or the resort to criminal sanctions in industrial conflict), it can merely feed the problem rather than resolve it. Many thoughtful people who are opposed to pornography see a relaxation of the obscenity laws as the most effective way of mitigating it. The Danish Parliament clearly understood this paradox when it relaxed its obscenity laws. Predictably, Copenhagen's porn dealers were anything but pleased when their trade was legalized since they realised that much of the excitement afforded to their customers by the illicit nature of their purchases would be lost overnight, together with the pickings of a flourishing black market.

With these considerations in mind, the Bill seeks (Clause 20.2) to place the homosexual obscenity laws on a par with those for heterosexuals in the hope that the latter laws, also, may not be immutable. (The SLRS Working Party, for instance, supports the Arts Council Working Party's recommendation that the existing laws relating to obscene publications should be modified or repealed. Certainly, the Obscene Publications Acts 1959 and 1964 and the Theatres Act 1968 should be modified so as not to restrict the right of citizens to read, see or hear what they wish in like-minded company, while protecting the public at large from displays causing annoyance to identifiable persons, who testify that they did not wish to see or receive the material in question.)

Procuration and Conspiracy

By omitting to specify the person's sex and simply making it an offence for "any person" persistently to solicit "any other person" to engage in conduct of a sexual nature, the Bill seeks to clear up yet another indefensible anomaly: that revealed by **Crook v. Edmondson 2 Q.B. 81.** (Clause 15). Whereas it is an offence for a woman to solicit a man, or a man another man, for "an immoral purpose", it is not an offence for a man to solicit a woman for the same "immoral" purpose! By the same token, Clause 4 of the Bill extends the protection of sections 2, 3 and 4 of the Sexual Offences Act 1956, relating to the procurement of women for sexual

25 Ibid., pp. pp. 4-5.

purposes by the use of threats, false pretences or drugs, to **men.**

Let us turn now to the judgment in **R. v. Knullar (Publishing etc.) Limited,** in which the conviction of the proprietors of the **International Times** for "conspiring to corrupt public morals" by publishing advertisements, inserted by homosexuals seeking compatible partners, was upheld by the Law Lords(26). Lord Reid asserted here that it would be **illegal** for them to be allowed to advertise for something that was in itself perfectly **legal**– a liberty not, as far as is known, denied to any other of Her Majesty's subjects. Although this has in practice become a 'grey', only partially operative, area of the law, a male person **could** nonetheless be prosecuted, as co-defendant along with the publishers, for the kind of personal contact ad. so commonly used by heterosexuals.

For several compelling reasons (see Section II), it is vital to the public interest that the criminal law be not only self-consistent in form, but **certain,** also, in application. In the sexual field, at least, it is manifestly neither. To render it more so, Clause 20 of the CHE/SMG/USFI Bill provides for the repeal of obsolete and superseded enactments, and for the interpretation of existing law so as to prevent discrimination against homosexual advertisements and publications **solely on the ground that they deal with homosexuality.**

The International Times judgment grossly discriminates against (male) homosexuals, and subsection (2) of this clause therefore expressly declares that it shall be as lawful for homosexuals to advertise for compatible partners as it is for heterosexuals. For many homosexuals **and** heterosexuals, such advertisements can alleviate social isolation and lead to fulfilling relationships. To deny this right to homosexuals, who lack the variety of other social outlets enjoyed by heterosexuals, is as cruel as it is shortsighted.

Effect on Counsellors

Another of the law's many 'grey' areas, as we have seen, threatens the freedom of those in the churches or elsewhere who seek to back up the counselling and befriending of homosexuals by promoting social facilities and support groups for them in the way they already do for heterosexuals. The present law penalises such efforts to help the lonely break out of their isolation and establish regular relationships. There are some in the ministering professions who fear, rightly or wrongly, that such action could render them vulnerable to charges of "procuring", even where the act

26 Knullar (Publishing, Printing & Promotions) Ltd. v. Director of Public Prosecutions (The *International Times* case). See *Times* Law Report, 15 June 1972.

"procured" was not an offence, as where (in England and Wales, at least) both parties were over 21 and were contemplating a perfectly legal homosexual relationship, on a par with those daily entered upon by heterosexuals.

In the hope of ending this perverse anomaly, a recent Law Commission working paper(27) has recommended that the application of the conspiracy laws should no longer apply to behaviour that is **legal**, but should be confined exclusively to behaviour that is **illegal**. It is in the same spirit that Clause 11(2) of the Bill makes it an offence for a person to procure a man to engage in conduct of a sexual nature which would, if committed, be an offence within the meaning of the Bill. The clear corollary is that, if such conduct does **not** constitute an offence under the Bill, its procurement cannot be either. This clause thus mitigates the difficulties caused to counselling agencies by the existing law, at least as regards **non-criminal** homosexual behaviour.

But, what if the behaviour that such counsellors and befrienders had a hand in fostering were criminal? What if either or both parties, whose introduction they had facilitated, were under 21 (in England and Wales), or any age (in Scotland and Northern Ireland)? The counsellor's situation becomes even more parlous here, since he or she could be seen by the law as abetting the commission of criminal acts. Their dilemma is made all the more poignant since they know better than anyone that, in nine cases out of ten, it is not psychiatric help those youngsters need, but the right to love; the treasured freedom to develop **open** relationships with others of their own kind.

This freedom would be greatly extended by the introduction, throughout the United Kingdom, of a uniform age of consent of sixteen for male homosexuals, in line with that for heterosexuals.

27 No. 50, *Inchoate Offences*. 5 June 1973. HMSO. £1.00.

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