THEY STAND APART

A Critical Survey of the Problems of Homosexuality

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INTRODUCTION

"CAN nothing be done to cut out this cancer from the souls of men?" This was the question posed by a distinguished High Court Judge after he had dealt with a number of cases involving homosexuality, and in one form or another it is a question which is being asked constantly by those who are brought into direct contact with the problem. At the Buckinghamshire Assizes in January, 1955, Mr. Justice Stable summed up this grave concern in the following terms:

> "Wherever I go I find the same ugly story. I don't know what is happening to this nation. The percentage of cases of this class which we have to try today is absolutely terrifying. If this evil is allowed to spread, it will corrupt the men of the nation."

The experience of these two learned Judges is, there can be no doubt, shared by most, if not all, other occupants of the Judicial Bench, and there is no escaping the fact that here is a serious social problem the potential evil consequences of which cannot safely be ignored. Yet, it bristles with difficulties, not the least of which is that the general public is so ill-informed on the subject. There are those, for instance, who, out of hand, would condemn all offenders against the accepted moral code, while others, equally irresponsible, would condone conduct which obviously demands social or penal sanctions.

The purpose of this book is to set out quite objectively all relevant factors affecting the problem, bearing in mind that there are two parties to be considered—society and the individual, each having inherent rights which have to be safeguarded. In any society, in the last resort, the interests of the community as a whole are superior to those of the individual, but where a democratic way of life has been firmly established, the rights of the individual to live his life as he pleases are greater than under other forms of government. Nevertheless, if the stability and well-being of society is endangered, there comes a point when society is justified in saying to the individual—so far and no

further. In the British system of jurisprudence, society and the individual generally know reasonably well where they stand in relation to each other, but this is by no means the case when it comes to matters affecting the problems of sex, and particularly of homosexuality. At what point, if any, has society the right to interfere with the sex life of an individual?

We begin our survey with a summary of the law as it stands in Great Britain today; one of its most disturbing features is not only the wide variation of punishment for what appears to be virtually the same type of offence, but the almost total lack of measures designed to help cure the culprit from committing further offences. To send a person to prison may serve to salve the uncertain conscience of society, but this does not begin to get to the heart of the problem. In certain quarters it has been proposed that consent after a certain age should make legal an act which would otherwise be unlawful. Is this really any sort of a solution? If homosexual practices are wrong, at say twenty, are they not equally so at twenty-one? Such a change in the law begs the whole moral issues, one which must be thought out carefully or there would be the danger that it may have the effect of giving a legal *carte blanche* to *all* types of offenders. It *may* be that with a full knowledge of the facts, society will decide that the present law calls for modification in regard, at any rate, to the practices of adult males in private, but even this has its dangers. The plea of an 'irresistible impulse' is often given as a defence in the law courts, and the issues which this raises are discussed in sections of the book.

Few persons have had a wider experience of public life than the Rt. Hon. the Viscount Hailsham, not only as a member of both Houses of Parliament, but also as a distinguished advocate at the Bar. Whereas he recognises a natural repugnance in a civilised society to interfere with the sexual habits of its adult members, he is impelled to the conclusion that there are potential anti-social consequences arising from homosexuality which justify social and penal sanctions. By the very nature of its proseltysing tendencies, especially among the young, he is satisfied that this, at least, is a danger against which society is entitled to defend itself, even at the expense of the freedom of the individual. He argues that it is virtually impossible to confine the activities of adult homosexuals to the privacy of their own environment for,

except in rare instances, there is no permanency about the association of male with male—all the time there is an urge to seek for youth. He deals, too, with other by-products of the problem, such as blackmail, the break-up of family life, the 'closed shop' and so on.

In presenting the problem of homosexuality in relation to Christian morals, Dr. Bailey is insistent that this is but part of the wider issue of sexual immorality as a whole. He suggests that by treating the homosexual in isolation, society has tried to relieve its sense of general guilt by using him as a convenient scapegoat. Hence, he contends, attempts to suppress such practices by law may be little more than efforts to cure symptoms while neglecting the disease itself—a disease which should be viewed in the light of a growing laxity in moral standards as a whole. His scholarly survey of the history of society's reaction to homosexuality from earliest times forms a most valuable background to a study of the problem. We should know how and why a certain attitude has developed before we can assess with any degree of certainty the validity of our present reactions, whether as a society or as individuals.

In Part Two of our survey, Dr. Neustatter presents a detailed analysis of the medical aspects of both male and female homosexuality, and of particular value, especially to the layman, is his clear explanation of both the causes and types of homosexual practices. Without such knowledge it is dangerous to generalise, or, indeed, to attempt to apply a single standard of moral or penal sanctions. He is not directly concerned, any more than the lawyer, with the decision of society to impose penal sanctions, but as a medical man with a wide experience of the problem he is vitally concerned with the effects of such decisions. He is satisfied that prisons as at present administered, tend to aggravate the disease and its ill effects, but he does not shirk the fact that for certain offences there is no alternative to some form of punishment. The important question, however, is the form which such punishment should take in the interests of both society and the individual, and his authoritative section on treatment and prevention places the matter in its proper perspective.

The problem of homosexuality, however, is not confined to any one country. In varying degrees it occurs everywhere, and attitudes towards it diverge widely; the type of sanctions applied

also differ considerably. On examination, however, we found that there was little available material on which to draw for comparisons, and the contribution by Mr. Hammelmann, the result of considerable original research, is, we believe, the first comparative survey to be published. For reasons which he explains, this does not purport to be complete, but it is sufficiently wide in its scope to present a picture of conditions and attitudes in a number of countries in Europe, with a brief note on the situation in the United States of America. As Mr. Hammelmann says, since the liberty of a large number of human beings is at stake, it is our duty to examine, again and again, not only our own system, but those of other countries. A number of interesting experiments are being undertaken, among the most important of which are to be found in Scandinavia, in particular, in Sweden, and these are dealt with at some length in this survey.

During 1953 and 1954, considerable publicity was given to the problem of homosexuality in Great Britain by the appearance in the Courts of a number of persons of social prominence. This, together with rising statistics of sexual offences, led to debates in both the House of Lords and the House of Commons. The views expressed in these two debates represent not only a cross-section of opinion in all walks of life, but they help to demonstrate the complex nature of the problem. We have, therefore, included, as an Appendix, abstracts from the speeches made on these two occasions, and in this we have had the co-operation of all members concerned.

We are also glad, with the permission of the British Medical Association, to include as a further Appendix some extracts from the Report of the Joint Committee on Psychiatry and the Law appointed by the British Medical Association and the Magistrates' Association. This Report serves to emphasise the importance which, in his contribution, Dr. Neustatter places on the need to know the exact nature of the offence—it is, in fact, another plea to avoid generalisations based on inadequate knowledge.

Statistical data on this, as so many other social problems, have been found inadequate to justify the drawing of definite conclusions. Global figures can be very misleading unless they can be broken down to provide further details. In the statistical section an attempt has been made to do something like this and, although we would not pretend that it is exhaustive, a considerable amount of original research has revealed valuable information which was not apparent in the official figures as published and quoted in both Houses of Parliament. It is obvious, however, that a great deal more needs to be done before the true significance of the available statistics can be assessed. We want to know more about the social environment of offenders—their class, occupation and home conditions. We want to know whether a sudden increase in the number of offenders appearing in court is due to an actual increase in homosexuality or the result of special police action. We want to know how many are first offenders, and, if sent to prison, what proportion return again to the Courts. And so we could go on listing the type of question which really scientific statistics should answer.

This, then, is the structure of a work which we believe is the most comprehensive attempt yet made to present this very difficult problem in all its aspects.

Although each contributor has been left entirely free to express his own views, editorially we are entitled to ask whether this thing is a 'cancer of the soul', a 'twist in the mind', a 'bodily affliction', or a commixture of them all, perhaps acting and reacting on one another. Whatever it may be, there can be no question about the potential evil, in varying degrees, resulting from the practices associated with homosexuality. This applies not only to the perverted, but, and this is by no means the smallest part of the mischief, to those who become the victims—the guilty planting corruption in the innocent. It has to be borne in mind that the number of prosecutions bears no indication at all to the volume of the cases that go undetected, or to the extent to which unnatural practices are carried on in private.

Sixty years ago, tuberculosis—'consumption' as it was then called—was a thing unmentionable. It was looked upon as a scourge—it was even impiously described as 'a visitation of God'—about which nothing could be done. Happily, medical science did not accept that view; it tore off the mask, and people talked about it freely. Intensive research and experiments were conducted, with what good results are now plainly manifest. It is no longer regarded as incurable—far, very far, from it. So, too, with cancer of the body. Until quite recently that dread disease was spoken of with bated breath. Although this by no

means unnatural attitude has not yet disappeared, in many lands vast sums of money are being spent, and brilliant brains are at work upon the cause and cure of the accursed affliction.

Homosexuality is no new phenomenon, but it is still not openly discussed. Is it not time that it was brought into the light of day for investigation with a view to its eradication? Or, in the words of Mr. Justice Stable, is the evil to spread with ever-widening corruption?

Are those who indulge in these corroding practices to be pitied as the victims of a disease or punished as criminals who have broken both the legal and moral codes of law? Most people who have considered the problem will, perhaps, find some difficulty in answering the question. An indication of the varying attitudes adopted in such cases can be illustrated in this way:

At one Assize a man had pleaded guilty to a charge involving homosexuality. The Judge told him that he was "a pestilential person", and sent him to prison for ten years. A little later, at another Assize, the Judge said: "This seems to be a pathological case," and put the man on probation for three years, one requirement of the order being that the offender should reside at a stated hospital for twelve months. In essence, the two crimes were similar, but with these differences—in the former case the man had had a previous conviction for the same sort of thing, and there were eleven boys involved, while in the other case the man had what is called 'a clean record', and only two boys were involved.

The aim of this book, then, is to examine the problem and to focus public attention upon its gravity. It is exploratory and does not presume to lay down any definite line of action. The reader will doubtless find that some of the views expressed by the contributors appear to be in conflict, and this is inevitable when the problem is viewed from so many different angles. Upon one thing, however, all are agreed, and this agreement must be shared by all who have given attention to the matter: in one way or another, perhaps in several ways, this problem must be faced openly and realistically.

J.T.R.
H.V.U.

PART ONE

I

HOMOSEXUALITY AND THE LAW

FORMERLY, the term 'homosexuality' was used to denote one gross, unnatural offence—that of sodomy. It was described in an ancient statute as the "abominable crime not to be mentioned among Christians".

A comment, perhaps somewhat trite, upon that phrase would be that if it was not to be so mentioned, how could a man charged with the offence be brought to trial and be tried at all, especially when it is remembered that when the phrase—which amounted to an edict—was fashioned, the administration of justice was in the hands not only of Christians, but of ecclesiastics? Trial by dumb-show has never formed part of our judicial system!

Prior to an Act passed in the reign of Henry VIII in 1553, this homosexual practice, though regarded by law writers as a crime, was, in fact, treated as vice or sin, and as such, punishable by ecclesiastical sanctions.

By that Act, the offence was made punishable by death, and it so remained until the coming into force of the Offences Against The Person Act, 1861, which made the maximum punishment imprisonment for life, with a minimum punishment of ten years' penal servitude. The latter was abolished by the Penal Servitude Act, 1891. The maximum remains to this day.

In spite of considerable research, I have been unable to come across a recorded instance of the extreme penalty of death or of life imprisonment having been inflicted—but, of course, it well might have happened.

In course of time, that limited connotation of the term became enlarged until today it commonly embraces other practices of indecency of less gravity than that of sodomy. It is now used in a more comprehensive sense.

For example, gross indecency between male persons is generally regarded as the conduct of homosexuals.

In view of the considerable controversy that has taken place

over the section of the Criminal Law Amendment Act, 1885, that deals with this matter, it may be useful to set out its provisions:

> "Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years." (Section ii.)

There is another form of sexual offence now regarded as coming within the ambit of homosexuality—that is, an indecent assault upon a male person. The Offences Against The Person Act, 1861, provides that a person convicted of this offence shall be liable to a term of imprisonment not exceeding ten years. And the Criminal Law Amendment Act, 1922, makes consent in the case of a male person under the age of sixteen years no defence in such a case.

The full offence of sodomy is comparatively rarely alleged. It is with the other forms of indecency that the Courts are mostly occupied. And, whatever be the cause—and with that aspect of the grave problem I am not here concerned—there has in recent years been a very disturbing increase in the number of charges in these groups brought before the Courts.

Unnatural offences of the gravest kind—sodomy and bestiality—increased from 134 in 1938 to 670 in 1952. The number of attempts to commit unnatural offences, including indecent assaults, increased from 822 to 3,087. The offences of gross indecency increased from 320 to 1,686.

After a long experience on the Bench, in the course of which I have had to deal with a great number of such cases, I think I am voicing the opinion of all occupants of the Bench who are confronted with the problem when I say that, more than in any other criminal cases, the problem of what punishment to inflict, or what course to adopt other than a sentence of imprisonment, is a source of acute anxiety.

Perhaps I can illustrate this anxiety by citing one case with which I had to deal not very long ago. A clergyman pleaded guilty to several charges in which three young boys were involved. He was an abject picture of misery as he stood in the dock. His counsel made an eloquent plea on his behalf. The Bishop of the

defendant's diocese and other distinguished persons from his parish, were called to testify to his exemplary character. He had worked hard in the district, always engaging himself in all sorts of social and other good works. Medical evidence was given by two eminent psychiatrists whom he had consulted—being aware of his sexual tendencies and being anxious to correct them. In his extreme anguish he was not content to leave it to his counsel and the witnesses he called. With tears streaming down his face, and his whole being convulsed with fear and shame, he said: "With prayer, fasting and penance I have, by God's help, sought to kill this monster, but it overcame me." And much else. I am sure the man spoke the truth.

What was to be done in such a case? On his own admission, he was liable to this type of sexual misbehaviour, with the possible corruption of many more boys; and the psychiatrists could only speak hopefully, but, of course, with no degree of certainty. Was he to be put on probation or given a conditional discharge? Or was a prison sentence the right thing to visit upon this penitent offender? If a lenient course were taken, would other homosexuals, reading of the case, be encouraged in their evil pursuits, or would they be discouraged if a stern prison sentence were inflicted? Should the other forms of punishment that would ensue—social degradation, a wrecked career, and other automatic consequences of a kindred kind—be taken into account in assessing the penalty to be imposed? Should the vindication of an outraged society outweigh the consideration of the reclamation of the defendant, or could justice and reform be welded together in some shape or form? What effect would a prison sentence—with the defendant spending, perhaps, sixteen or eighteen hours in the solitary confinement of his cell—have upon the man? These were, and always are, some of the elements that have to be considered in these baffling cases. A consideration of all these matters left no suitable alternative to a prison sentence.

I once discussed the question of punishment with a very distinguished and admirable Judge, Lord Chief Justice Hewart. He said this:

> "In civil actions the question of liability is often free from difficulty; it is the assessment of damages that I often find hard. Similarly, in criminal cases, to determine whether or not an accused

person is guilty is comparatively easy; it is the fixing of the appropriate sentence that frequently gives me anxiety—often acute anxiety. There is only one crime that is free of this feature—that is murder. For that the law prescribes but one sentence, and the Judge has no discretion in the matter."

The question often asked—I have myself taken part in private discussions among those who are charged with the duty of trying homosexual cases—is this: Except in unusual circumstances, where there are mitigating circumstances, is a sentence of imprisonment the appropriate penalty to impose? There are, I know, many who are so revolted by such cases that, looking upon the offenders as filthy pariahs, would adopt no other course. There is another body of opinion that regards such a punishment as quite unsuitable—and for a variety of reasons.

On April 28th, 1954, an interesting and instructive debate on homosexuality took place in the House of Commons. In the course of it Sir Robert Boothby said this:

> "... But to send confirmed adult homosexuals to prison for long sentences is, in my opinion, not only dangerous, but madness. As Dr. Stanley Jones wrote, three or four years ago in the British Medical Journal:
>
> 'It is as futile from the point of view of treatment as to hope to rehabilitate a chronic alcoholic by giving him occupational therapy in a brewery.'
>
> Our prisons are today, in their overcrowded condition, factories for the manufacture of homosexuality. Anybody who knows anything about them will confirm this. It is absolute madness to send these people to our ordinary overcrowded prisons, and put them quite frequently in a cell with others, and even in a dormitory together. Everybody who knows what happens in our prisons will realise the effect on ordinary criminals, and that the thing spreads. I cannot believe that this is the right way to handle the problem."

Another Honourable Member, Mr. Desmond Donnelly, expressed his view on this aspect of the problem in this way:

> "The next point is the obviously serious matter that if we are to treat people for this sort of offence, prison is the very worst way in which to treat them. I believe it only makes the situation much worse. Sensitive people are taken there and placed with criminals guilty of a completely different crime against society—if one is to call this a crime against society. And this action by itself creates an additional social problem, because people who would not otherwise come into contact with homosexuality are thus indoctrinated.
>
> "Homosexuals who go there are brought into contact with normal criminals against society and are indoctrinated with their kind of criminal life. We are not facing the problem created by the fact that we are pushing people into gaols, and up to now crowded gaols, and in circumstances which go a long way towards making the whole thing worse."

Those unequivocal views—coming as they do from such distinguished sources—will, I am sure, have received, and will continue to receive the earnest consideration of those concerned to find adequate ways and means for dealing with the perplexing problem. They represent a very large and representative volume of public opinion—in so far as I have been able to assess it. I have read many speeches and read a great many articles upon similar lines. But most of them, if not all of them, have one thing in common—and it is the core and kernel of the matter—they fail to indicate, or even to suggest, an alternative.

Mr. Justice Finnemore, at Devon Assizes—in sentencing a man aged 30 to three years' imprisonment for offences involving homosexuality, made a suggestion for dealing with this type of offender apart from sending convicted homosexuals to 'ordinary prisons'. He said:

> "It is obvious that no boy is safe with him. What one wants is some place other than prison where men of the kind who cannot control themselves can be looked after under reasonable conditions with useful work to do. I was thinking of somewhere—it does not exist so far as I know—where a man of this kind could be put under very different conditions from prison, but safe conditions. What we want is one prison especially set aside to deal with these cases." (*The Times*, November 3rd, 1954.)

This serves as another illustration of the anxiety felt by occupants of the Bench as to the proper punishment for this type of offender. It would seem that a natural inference to be drawn from the learned Judge's remarks is that an ordinary prison

sentence in such cases is inappropriate. But he was left with no alternative. I am not going to be so presumptuous as to express any personal opinion on the course he suggested. I can, however, record the views I have gathered from conversations upon the proposal I have had (at separate times) with three senior probation officers and a high-ranking police officer, who for many years has been concerned with the investigation of vice of various kinds in different parts of London.

The immediate response of all of them was the same in one, and an important, respect. It was that the last place to which homosexuals ought to be sent is one in which they would be in constant association with fellow-homosexuals. It is out of consonance with modern conceptions of punishment for offences that the offender should be kept in solitary confinement; and if homosexuals were segregated and brought together, they would live in an 'atmosphere' congenial to their temperaments in which the element of punishment or of reform would be entirely absent.

One probation officer put it in this way: "Why should such men pray 'lead us not into temptation' if the State pushes them head first into it?" Another of them said: "By such means the thing they most desire would be brought to them on a plate. Prisoners—whatever be the type of prison, and the tendency these days is greater freedom and less confinement as indicated by the provision of more prisons-without-bars—would necessarily associate, and it is not difficult to imagine how these men would conduct themselves when in the presence of like-minded people, and with ample opportunity to indulge their nasty practices. Even if officers could be found to man such a prison, they certainly could not have all the men under their supervision every minute day and night."

The police officer held similar views, and added this: "I have known men so dominated with these homosexual impulses that they would, I am quite sure, commit an offence for the express purpose of being sent to such a place. A life sentence to be served there would to them be a paradise."

Of course, these men of wide experience in such matters might be wrong and the learned Judge right—but it is clearly a proposal that should receive consideration.

That same police officer, in discussing with me the affinity among these men and their fondness for one another's company

raised what he described as a 'mystery' which he cannot understand, and which, so far as I know, no psychiatrist has even attempted to explain. It is how 'like attracts like'. It seems that a certain London station is a hunting ground for the 'homos' as this officer called them. He said that on many occasions he has kept a known offender under observation there. And, mingling with the crowd, he spots with unerring effect a person having similar tendencies to his own. Never once, the officer told me, has he known such a man meet with a rebuff. These men appear to have an uncanny sense or instinct in their quest.

On one occasion I had a significant case of this sort. Two men had both pleaded guilty to acts of gross indecency. One of them was totally blind, and neither had met the other before. They entered a certain public place reserved for men. They stood next to each other, and within a very short time they were observed, by a police officer who happened to be there, engaging in disgusting practices. And the most remarkable thing about it was that it was the blind man who made the first advances to the other who made an immediate response. It was not, therefore, the appearance of the other that attracted the attentions of the blind man. I state the fact—and can offer no explanation, but indicate that this deep-rooted tendency in certain men is a many-sided problem that touches the very roots of human construction and habits.

The prosecution in that case was under Section II of the Criminal Law Amendment Act, 1885, previously quoted on page 4, and it is under this section that many cases that have attracted widespread notice and interest have arisen. A great deal has been said about the circumstances under which that section was introduced and passed into law—the objection to it being the inclusion of the words 'OR PRIVATE'.

Until that Act came into force—on January 1st, 1886—the law had made no provision against indecencies committed in private between adult male persons. Previous Acts took cognisance of conduct offending against public decency and likely to lead to the corruption of young persons.

When the Bill was introduced it was entitled:

> "*A Bill to make further provision for the protection of women and girls, the suppression of brothels, and other purposes.*"

It was introduced and passed all its stages in the House of Lords. It was given an unopposed second reading in the Commons and committed to a Committee of the whole House —which, of course, meant that it stayed 'on the floor' instead of being referred to a committee for detailed examination.

In that stage, in the early hours of the morning, the famous Henry Labouchere introduced a clause which became the much-criticised Section II. A Member raised the point as to whether it was in order for a Member to move an amendment which dealt with a totally different class of offence from those contemplated by the Bill to which the House had given a second reading. The Speaker having ruled that anything could be introduced by leave of the House, the amendment was adopted without any opposition.

So great an authority as Sir Travers Humphreys (formerly a distinguished High Court Judge) in an introduction to *The Trials of Oscar Wilde* said that:

> "It is doubtful whether the House fully appreciated that the words 'in public or private' in the new clause had completely altered the law."

Many other writers have expressed a similar view and have suggested that the clause was rushed through the House at 2.30 a.m. with but a handful of Members being present, and that the operation was completed, so to speak, 'while nobody was looking'.

Is this the case? With respect to those who have expressed that view, have they overlooked the fact that the clause was accepted by the Minister in charge on behalf of the Government? If upon subsequent reflection (and surely the Law Officers would have been consulted) the Government thought that it had been 'trapped' by Labouchere, the Bill could have been re-committed for further consideration by the House in committee (this was not done); instead, there was a third reading, and a consideration of the amendment by the Lords.

But whether there is anything in this suggestion that the clause went through by a side-wind or not, the fact remains that it has been in operation for about 69 years and, although numerous law reform Acts—notably the Criminal Justice Act, 1948—have been passed in that time, no proposal has ever been made to incorporate in any one of them a clause to amend Section II of the Act of 1885.

That fact, however, is no reason in itself why the section should be retained, and there is, without doubt, a considerable volume of informed public opinion in favour of the repeal of that part of that Act which deals with the commission of certain offences 'in private' subject, of course, to suitable safeguards.

That issue was crystallised by Earl Jowitt (a former Lord Chancellor) in a debate in the House of Lords on May 19th, 1954. He said:

> "Never let us make the mistake of thinking that we should attempt to make the area covered by our criminal law coextensive with the area covered by the moral law. For instance, take the case of adultery, which I think is a great evil in this country today. No one would suggest that we should once again make adultery a criminal offence. (Adultery was formerly punishable by death.) It is not that we desire to condone or support adultery or anything of that sort: it is just that we realise that the criminal law and the moral law are two wholly different concepts, and we must not confuse one with the other . . . a Committee . . . who will consider afresh whether or not it is desirable that homosexual acts committed in private between adult people should or should not continue to be within the purview of the criminal law. I express no opinion about it. I merely say that it is a matter which merits most careful inquiry."

In the same debate, the Lord Bishop of Southwell, speaking, of course, from the social and religious point of view, dealt with that aspect of the same problem. He said:

> "There are many sins of which, clearly, the law cannot take cognisance: it is impossible to send a man to prison for unclean thoughts, for, envy, for hatred, for malice or for uncharitableness. On the other hand, there may be things for which a man may be sent to prison which are not in any real sense sins at all. I venture to think that, without any suggestion of condoning these offences, we have to ask ourselves seriously whether making this particular kind of wrong-doing a crime may not be only aggravating the total problem. And, in the present state of public opinion, we are on very dangerous ground there, because one of the results of the immense volume of social legislation in recent years is that the popular mind tends to equate right and wrong with legal and illegal.

'The law does not forbid it, so it is all right.' It would be most disastrous if it could ever be said: 'You see, after all, there never was any harm in it, for the Government have now said that it is not illegal any longer, and even the Church seems to think it is all right

"On the other hand, I think it is a very big question whether the moral welfare of society is rightly served by making this particular kind of sexual offence a matter of criminal procedure. . . . From such knowledge as I have of actual cases, I should say that there is little to suggest that a prison sentence succeeds in reforming an offender."

Those weighty and pertinent considerations prompt one to ask —without, I suppose, ever getting an answer that would command general assent—how, if at all, can a dividing line be drawn between a moral sin and a criminal offence? And who shall decide when a course of conduct comes into one category without falling into the other? For example, I assume that the Ten Commandments are, in any event, a body of edicts the failure to observe any one of which would involve moral obliquity. Yet it is the case that some of them have been reinforced by the criminal law while others of them are not punishable as offences.

'Honour thy father and thy mother . . .' is a high moral precept. But failure to do this is not cognisable by the criminal courts.

'Thou shalt not kill' falls into both categories.

'Thou shalt not commit adultery' is a command the failure to observe which carries no penal consequences—although formerly, as we have seen, it was punishable by death. It was a moral sin and a grave penal offence. Now it is regarded as a moral sin only —which, with other events of a like character, seems to indicate that moral values change with the passage of time.

'Thou shalt not steal.' It is morally wrong to do so. But whether it is a criminal offence or not depends upon whether or not the act complained of satisfies the definition of stealing set out in Section I of the Larceny Act, 1916. (A Lord Justice of Appeal lately observed that it seemed odd that if a man stole another man's penknife, he may be sent to prison, but if he steals that man's wife, he commits no criminal offence.)

'Thou shalt not bear false witness against thy neighbour.' For such 'witness' to become a punishable offence, it must have been given on oath, and the several other requirements of the Perjury Act, 1911, must be satisfied.

The Oxford Dictionary defines *moral* as "concerned with character or disposition, or with the distinction between right and wrong". Yet in modern times *morality* has been applied to matters involving sex only. Which would appear to be an unwarrantable limitation.

Rudolph Stammler in *The Theory of Justice* says: "Law presents itself as an external regulation of human conduct. . . . Ethical theory is concerned with the question of the content of a man's own will in whose heart there must be no opposition of being and seeming."

One of the greatest lawyers of his time, Lord Atkin, referred to this aspect of law and morals in his Presidential Address, 1930, at the Holdsworth Club, Birmingham University:

> "The law maintains and publicly maintains and enforces a very high standard of integrity. Law and morality are, of course, not synonymous, and the demands of morality and the moral code no doubt extend into spheres where the law does not set its foot."

In his *English Social History*, G. M. Trevelyan says that:

> "The clear distinction between offences punishable by the State on the one hand, and sins not cognisable by a court of law on the other, was not so rigid" (in the seventeenth century) "in men's minds as it afterwards became. . . . The attempt to punish sin judicially lapsed after the Restoration and was never seriously renewed south of the Border."

Was the passage into law of Section II of the Criminal Law (Amendment) Act, 1885, an invasion of that centuries-old practice? If so, was it wrong, and should it be repealed? Are the filthy practices contemplated and made punishable by that section, merely moral sin and no offence against society or the State? That is a problem which is engaging the attention of anxious minds and which Parliament must, sooner or later, have to determine.

In a somewhat long experience in dealing with these cases I have discovered a circumstance that might be of some significance. It is that in the large majority of them the offenders are men of good education and refinement. Why such men should be more prone to these practices than men of lower intellectual capacity may be a matter for investigation by psychiatrists. My

purpose in mentioning it here is to indicate one probable result that would follow the repeal of the section. These men would, by reason of their intelligence, be among the first to know of the changed law—among the others the alteration of the law would be slow to be disseminated and, in many cases, would never be discovered. What would be the probable effect upon the type of man generally involved in this gross form of conduct? Would it not be something like this: 'The law says that it is lawful—therefore proper—provided the other person is an adult and consents?' Would not that very emotion be calculated to loosen, and, perhaps altogether to break, such restraint that he has previously found himself able to exercise? Moreover, if, with the sanction, and, if the section is repealed, the express and special approval of the State, the man indulges his impulses without that restraint, would not the lawful practices not encourage the development of the 'urge' and so induce him to involve himself with young persons? If it be true—as undoubtedly it is—that, as the old hymn says: "Each victory will help you one other to win," is not the contrary true that the more a passion is indulged the stronger it becomes? These are but one or two possible consequences of repeal that I think ought to be taken into serious account before any step to amend the law is taken.

In what, having regard to its origin, must be regarded, I think, as a remarkable document—*An Interim Report by a group of Anglican Clergy and Doctors* published by the Church of England Moral Welfare Council—there are some interesting statements. Members of the Inquiry responsible for that report approached the perplexing problem it set out to investigate in a very realistic fashion; and its findings call for close and careful study.

Having dealt with certain anomalies of the law, the report proceeds:

> "There is, however, a very much more serious legal anomaly. In no other department of life does the State hold itself competent to interfere with the private actions of consenting adults. A man and a woman may commit the grave sin of fornication with legal impunity, but a corresponding act between man and man is liable to life imprisonment, and not infrequently, is punished by very long sentences, five, ten, or even more years.
>
> "Such interference would only be warranted if there were proof that homosexual practices between males gravely affect society. Even if this were true, it could with justice be maintained that fornication and adultery threaten the well-being of society still more seriously than homosexual practices. With fornication there is the risk—and the common result—of the birth of illegitimate children who may be deprived of the security of a home and the love of a father and mother. Adultery undermines the unit of society, the home and family. Yet no legal penalty is now imposed for either fornication or adultery as such. The latter is only a ground for damages or (*sic*) divorce at the instance of the person aggrieved.
>
> "Can we find evidence of social injury caused by private homosexual acts which would validate the action of the law? It has been suggested that homosexual practices make a man of less use to society by rendering him secretive, undependable and nervous. In reality, however, these defects of character are due, not to homosexual practices, but to the fears of punishment or of blackmail engendered by the law. It is arguable that if legal reform removed the occasion of these fears, such blemishes of character would not be associated specially with the homosexual."

From those opinions the natural inference to be drawn is that the Church of England Social and Moral Welfare Council favours the abolition of Section II and so makes it no offence for two adult men to engage in homosexual practices provided they are indulged in private. This is made all the more clear by its serious consideration of the age of 'consent'. The Committee has this to say on that aspect of the matter:

> "There is, therefore, no valid reason why the same age of consent which is regarded as suitable for both sexes in cases of heterosexual relationships should be held to apply to homosexual coitus. If changes are to be made in the present law governing homosexuality, consideration should be given to defining the 'age of consent' for males as 21, thus protecting the young National Serviceman who is compelled to live for two years in a predominantly male community and faces special risks of mixing with homosexuals."

If such a proposal commended itself to Parliament, there would be obvious difficulties. One of them would be—how is the man who sets out on his filthy errand to be satisfied that the other person has, in fact, reached the prescribed age? Would he, to be on the safe side, get the other's birth certificate? Homosexuals are not made that way, and would not engage in such practices if

they were endowed with such prudence. There would, it seems to me, in fairness to the man concerned, have to be a protecting provision, akin to a similar safeguard in another branch of the law, that it would be a good defence to show that an accused man had good reason to believe that the other person was over the age of consent.

Indicative of the complexity of the problem is this matter of consent alone. To what is the consent given? If given to the commission of an act which is in itself unlawful, then consent is of no value. This matter was discussed in the leading case of *Rex v. Donovan* (1934) 2.K.B.498:25 Cr.App.R.1. The judgment of the Court of Criminal Appeal in that case is clear and unequivocal:

> "If an act is unlawful in the sense of being in itself a criminal act, it is plain that it cannot be rendered lawful because the person to whose detriment it is done consents to it. No person can licence another to commit crime. So far as the criminal law is concerned, therefore, where the act charged is in itself unlawful, it can never be necessary to prove absence of consent on the part of the person wronged in order to obtain the conviction of the wrongdoer. There are, however, many acts in themselves harmless and lawful which become unlawful only if they are done without the consent of the person affected. What is in one case an innocent act of familiarity or affection may in another be an assault, for no other reason than that in the one case there is consent and in the other consent is absent. As a general rule, although it is a rule to which there are well-established exceptions, it is an unlawful act to beat another person with such a degree of violence that the infliction of bodily harm is a probable consequence, and when such an act is proved consent is immaterial. We are aware that the existence of this rule has not always been clearly recognised."

The Court then referred to well-established exceptions and continued:

> "In the present case it was not in dispute that Donovan's motive was to gratify his own perverted desires. If in the course of so doing he acted so as to cause bodily harm, he cannot plead his corrupt motive as an excuse. . . . Always supposing, therefore, that the blows which he struck were likely or intended to do bodily harm, we are of the opinion that he was doing an unlawful act—no evidence having been given of facts which would bring the case within any of the exceptions to the general rule. In our view, on the evidence given at the trial, the jury should have been directed that if they were satisfied that the blows struck by the prisoner were likely to be intended to do bodily harm to the prosecutrix, they ought to convict him, and that it was only if they were not so satisfied that it became necessary to consider the further question whether the prosecution had negatived the consent. For this purpose we think that 'bodily harm' has its ordinary meaning and includes any hurt or injury calculated to interfere with the health or comfort of the prosecutor. Such hurt or injury need not be permanent, but must no doubt be more than merely transient and trifling."

It is, I think, the common experience of those who have judicially to deal with these cases—it is certainly my own—that in the vast majority of them in which there is—as, in fact, there mostly is—a plea of guilty, the offender says that the reason why he committed the offence was that 'something overtook' him, or that he could not control his emotions, or words to that effect. In short, the plea of irresistible impulse. And there are those among us who urge that such a plea should be given considerable weight. The man, at that time, they say, was quite incapable of overcoming and mastering emotions for which nature and not the man should be blamed.

Mr. Justice Avory dealt with that kind of argument put before him in a terse fashion. He said: "An irresistible impulse is an impulse that must be resisted." That, if I may say so with great respect to the memory of a great Judge, may not have much logic, but it has, in its implications, sound law and common sense.

It is quite inconceivable that such a plea should be of any avail. If it were once admitted, it could not be reserved for sexual offences but would have to be made applicable to every crime, including that of murder.

What Judge, bench of magistrates or jury could—if such a plea had to be taken seriously into account in these cases—or, for that matter, in any other cases—ascertain the state of mind of the man charged at the time he committed the offence? By what mechanism could they determine what measure of resistance the man had, and whether he made any, and, if so, what effort to exercise it?

Again, to quote from my own varied experience of these cases, I have found that in nearly all of them the men concerned were of exemplary character. If, then, they have found it possible to

abstain from excessive indulgence in alcohol and other vices by the exercise of will power—the power to resist temptation—how is it that they were unable to bring that same power to bear when this 'urge' comes upon them in the way they allege? Is it the fact that they find such intense pleasure in this method of expressing their emotions that they are prepared to take any risk, quite deliberately, to find and to acquire it? That they do it deliberately is mostly indicated by the manner in which they make their plans and set about their search for satisfaction.

Whether this plea of irresistible impulse unconsciously affects the minds of the occupants of the Bench is merely a matter for speculation. In *Mental Abnormality and Crime*, the eminent psychiatrist, Professor D. K. Henderson, says:

> "On the one hand, an irate Judge will utter the most terrifying diatribes, stating that all such offences must be stamped out, that they are due to negligent parents, that it has been a question of sparing the rod and spoiling the child, and that severe corporal punishment and penal servitude will knock it out of them. On the other hand, there is a large body of opinion which takes an equally extreme view, and believes that all such cases should be examined and treated by the psychiatrist."

In the same work, another eminent psychiatrist appears to find a half-way house between the two extremes:

> "If it be recognised, however, that homosexuality is itself a psychoneurosis in some cases and in others probably a constitutional matter, the judicial attitude with regard to homosexual acts must undergo some modification, more especially when it is recognised that psychoneurotic homosexuality, paradoxical as it may sound, may be the result of the operation of conscience in the earlier period of life."

But even these and other experts in psychiatry make no suggestion, so far as I am aware, that irresistible impulse is the cause and should constitute a valid defence.

In the House of Lords debate, to which I have already made reference, Earl Jowitt dealt with this aspect of the problem:

> "I do not accept for one moment the doctrine of the irresistible impulse. The psychologists have told me that they are quite unable at the present time to distinguish between an impulse which is irresistible and an impulse which has not been resisted. I hope we shall hear nothing more about this. I suppose it is a fact that these unhappy people have temptations of a nature or kind which do not attack the ordinary man. But the ordinary man has his temptations, too, and he has to learn to resist his temptations. So, it seems to me, that the people who are cursed in this way must also resist their temptation. That is the least we can expect of them."

So far as I am aware, no penal code, ancient or modern, made 'irresistible impulse' a defence or even a mitigation. Laws are based on the principle that man was made—in the words of Milton in *Paradise Lost*—"sufficient to have stood, but free to fall". Our law presumes that a man intended the reasonable consequences of his act. It is, indeed, difficult to see how else organised society could proceed. Laws must be of general application: it would be impossible, and obviously undesirable, for them to be applied exclusively to any particular sections or individuals.

Even if 'irresistible impulse' were made a good defence, of what avail would it be to the individual concerned? On such a defence succeeding, the man involved could not be discharged on that account. Otherwise, it would mean that, the law having found that he was not responsible for his actions, he could pursue his evil courses—with incalculable ill effects—for the rest of his days. And, further, such resistance as he might have had would, as a natural and logical consequence, be diminished by such an event as he would consider that there was, in fact, no need for him to offer any resistance to any temptation to commit further offences. He would, there can be no doubt, in this type of case, find that Oscar Wilde was right when he said that the easiest way to get rid of a temptation is to yield to it!

Yet, although such a defence could not, under any circumstances, be permitted to prevail, there are, in my view, many persons who find themselves so out of control of their own emotions that they commit vicious offences just because they, being free to fall, succumb through an utter failure to resist.

The strong-willed, or the not so strong-willed but more or less normal person, being revolted by the type of crime under consideration, would regard an offender as a pariah for whom there should be no pity whatsoever.

"He jests at scars that never felt a wound."

I recall a man who came before me in a Magistrates Court charged with a series of serious sexual offences. When asked, at the end of the taking of depositions, if he wished to make a statement or to give evidence, he gripped the rail of the dock and, his body convulsed in agony, sobbed: "I begged them to keep me in prison: I knew I would do it again. I can't help it." He had only finished seven years' penal servitude for similar offences a few weeks earlier. I committed him for trial at the Old Bailey where he was sentenced to another seven years' penal servitude. He was not the 'beast' that some people may think. He was a man of good education who had held a very responsible position in the banking world. I never had any doubt that he was the hapless victim of an overmastering passion—and what makes this class of case so different from most other crimes is that the actual commission of the crime gives them intense satisfaction and pleasure. This cannot be said, of say, murder or housebreaking. Take another case: there is today in prison a former clergyman serving a sentence of ten years' imprisonment for gross crimes in which boys were involved. He had previously served a sentence of five years for similar offences. Upon his release, he underwent treatment at the hands of skilled experts and endured the penances and self-sacrifices of monks in a monastery in which he lived for several years. Both he and those who had been concerned for his welfare were completely satisfied that the evil had been eradicated and that he was, in every important respect, a 'new man'. But the battle started afresh and he was defeated.

Will it ever be safe to let such men loose upon society after they leave prison? And yet they will have paid a terrible price for their crimes—committed, it would seem, when they were under the dominating influence of some unconquerable demon. Would it be right to lock them up for good when they are not certifiable as insane? Nor are they mental defectives and subject to control as such.

If it were shown that any relaxation of the law in these matters were desirable, it would be of the utmost importance to keep in mind the fact that the fear of punishment acts as a powerful deterrent. One famous Lord Chancellor went so far as to say that "it is not the love of virtue but the fear of being punished that prevents people from being law-breakers".

II

HOMOSEXUALITY AND SOCIETY

OUT of the welter of conflicting opinions and prejudices, one fact emerges beyond dispute. Male homosexual practices known to the police are running at a rate between four and five times that of 1938. The comparable increase in criminal activities generally is about half as much, while sexual offences generally have increased by a multiple of only three during the same period. It is therefore not inapposite to inquire anew what, if any, are the social implications of active homosexuality, and what social attitude, if any, should be taken collectively to those in fact engaged in homosexual practices.

It is not within my province at all to enquire exhaustively into the causes either of the absolute or of the relative increase in homosexual crime amongst men. But there is one conclusion of fact which seems to me quite inescapable. Since there is no evidence of any change in the detection rate for homosexual offences, and, since it is quite impossible to postulate in so short a period a change in the congenital inheritance of human beings, it follows quite certainly that active male homosexuals are made and not born, at least to the extent of the significant increase, and, since this increase is of the order of a multiple of four, it is highly probable that the same is generally true of the vast majority of active homosexuals. In so far as active homosexuality is a problem at all, it is a problem of social environment and not of congenital make up.

There is another conclusion about which the experts, of whom I do not, of course, claim myself to be one, appear to be agreed, and this bears closely upon our practical treatment of the question. Although both homosexuals and their critics tend from time to time to advance the view that homosexual impulses are of a nature to separate active homosexuals from the common run of men, in truth the opposite appears to be the case. Homosexual tendencies are, at some time or another, present in almost every normal individual, and, during adolescence, they are often the prevalent

emotional tendency. What makes an active homosexual out of an otherwise normal individual is the predominance and fixation of this tendency in adult life, coupled with the acquisition of the habit of securing satisfaction of it by physical homosexual practices. Contrary to what is implied by many classifications, such as that into 'perverts', 'inverts', and 'casuals', active homosexuality can exist in some degree either to the exclusion of, or side by side with, normal heterosexual activity.

If, however, homosexuality is something which is acquired from environment by the fixation in a false predominance of a tendency almost always existing in normal individuals, it is unfortunately also true that, once permanently fixed by an established routine of sexual satisfaction, a homosexual can never be 'cured' in the sense of making him invulnerable to temptation by members of his own sex. This, at least, appears to be true in the present state of medical science. The psychiatrist can, it is true, with the conscious co-operation of the patient, and only in some cases, lead a homosexual to accept and adjust himself to his homosexual impulses in such a way as to sublimate and control their physical expression. In other words the physician or the psychiatrist, and, to a lesser extent, the intimate friend and adviser, of a homosexual can, at the most, do for him what such a person could equally do for a heterosexual who is faced with some delicate and difficult problem of self-control. The demand for 'medical treatment' for homosexuals as a means of curing them of the inclination, does not, therefore, come from well-informed or professional sources, but is largely a sentimental demand born of an unwillingness to face the hard choices presented by an intractable problem.

A last fact which must be faced is that, at any rate as regards the great majority of active homosexuals, the precipitating factor in their abnormality has been initiation by older homosexuals whilst the personality is still pliable. Apart from any other evidence, this is the inescapable conclusion from the facts revealed by the criminal statistics. There may, of course, and there probably are, some other precipitating causes which sometimes play their part. But there is no single factor except direct initiation which can account for the phenomenal increase since 1938. Homosexuality is a proselytising religion, and initiation by an adept is at once the cause and the occasion of the type of fixation which has led to the increase in homosexual practices. Of course, not all those who are introduced in adolescence or early manhood to homosexual practices continue them in adult life, but a proportion do, and these provide the principal means of communicating the complaint, if it is one, to the following generation. Unless the deliberate communication of homosexuality is discouraged by some means or another, it may be assumed that the recent increase in homosexuality will continue, and although, no doubt, there comes a point of saturation, an acquaintance with classical literature would seem at least to suggest that such a point would involve a degree of corruption quite beyond the experience of any contemporary civilised society of Christian origins.

This inevitably involves the question whether homosexuality is socially indifferent or harmful and if so whether, and to what extent, homosexual practices should be punished by social or criminal sanctions or whether it should be treated either as an individual aberration of no moral significance or as a moral sin like fornication or adultery with which, however, organised society may have little or no concern.

There is no doubt a deep-seated and justifiable repugnance in a civilised society to interfere with the sexual habits of its adult members. Such an interference obviously affords some temptation to blackmailers, and a considerable field for the deeply demoralising vice of hypocrisy, apart from the fact that it obviously can be regarded as a kind of victimisation of a group of persons in some ways to be pitied, and in many other respects not always less sensitive or honourable than many of those who are loudspoken in their condemnation.

There is obviously, therefore, a plausible case to be made at least for the withdrawl of criminal sanctions from homosexual offences by adults so long as these do not directly offend against public decency, or contain no element of assault, or corruption of the young.

The question is, whether the case is more than plausible, and this question is by no means easy. If homosexuality were of its nature congenital, and the impulse irresistible, the problem would not concern the criminologist or even the moralist at all. If it could be cured by medical treatment, it would primarily be an affair for the physician. If it were induced by circumstances less within the control of individuals than deliberate initiation, it might safely be left to the individual conscience.

But none of these conditions obtain. Homosexuality is the result of environment, and therefore is within the field of social science. Homosexual practices are both contagious, incurable, and self-perpetuating, and therefore not without their social consequences. The tendency is at least as common in mankind at certain ages as the inclination to dishonesty, and, like all sexual impulses, at least as largely within the province of the freedom of the will. The question, therefore, of attaching social or criminal sanctions to it, although repugnant, is not one which can be excluded from public discussion on the ground that it is one which of its nature concerns only the moralist. Homosexuality is, and for fundamentally the same reasons, as much a moral and social issue as heroin addiction.

But like other public and social questions it is not one on which the moral and theological considerations can be ignored, and the morality of homosexual practices is one, therefore, with which the social discussion must begin.

The moral question involved in homosexuality is not one which anyone accepting the Jewish or Christian moral tradition can possibly accept as open. Whether the tale of Sodom and Gomorrah be history or myth, the Old Testament is throughout extremely explicit in its teaching that homosexuality is an immoral practice having in the end a corrupting influence on the society which practices it; and the New Testament is no less uncompromising about a practice which, at the time when the New Testament was being written and read for the first time was even more familiar than it is today. The teaching of the Church throughout the ages has been no less unqualified.

It is, however, wholly unsatisfactory for the present purpose to do more than mention the fact that for the religious person the moral question is concluded by authority. This would be as true for adultery and fornication. Yet in neither case are either of these sins regarded as crimes, nor always, within limits, even as serious social misdemeanours, although no one has ever successfully established in principle that either is the concern only of the individuals affected. It is, therefore, necessary to consider the morality of homosexual practices with as little predisposition to be shocked as possible.

It is important to begin by reminding ourselves that there is nothing necessarily sinful or immoral in being the subject of

homosexual inclinations. All healthy people, homosexual or otherwise, have a large number of sexual inclinations which they are compelled to repress or sublimate. An emotional affection for members of one's own sex may be the occasion of moral danger, but in itself it is no more sinful, still less criminal, than the love of a woman which cannot be satisfied. Nor, in fact, since the greater number of human sex impulses remain unavowed does it place the homosexual in a dramatic situation differing fundamentally from many in which all of us find ourselves from time to time.

Although this is a matter quite impossible of demonstration, I feel myself wholly convinced that the lives of many of the most respected, and even saintly, educationalists, social workers, and others have been inspired by a dedicated and ascetic response by good men and women to sexual impulses, many of them caused by attractions to members of their own sex. Morality is concerned with the response to inclination, and not with the inclination itself.

But, since it is the practice, and not the inclination which is under discussion it is necessary to be absolutely explicit about this practice and its consequences. Whatever meaning is to be attached to the much abused word 'natural', the instinct of mankind to describe homosexual acts as 'unnatural' is not based on mere prejudice. This does not necessarily make them wrong, since many unnatural acts are either desirable or morally indifferent, but it certainly indicates that their morality requires special consideration. Adultery and fornication may be immoral, but, on the lowest physical plane, they both involve the use of the complementary physical organs of male and female in the sense in which they are complementary, and it may be observed in passing that even between man and woman the persistent misuse of these organs in any other way is often fraught with grave dangers, emotional, or even physical, to one or both of the participants. Homosexual practices necessarily involve the use of non-complementary physical organs in a manner which no less necessarily accentuates their non-complementary character. The psychological consequences of this physical misuse of the bodily organs cannot in the long run be ignored. It is certainly my experience, and I do not believe it to be a coincidence, that nearly all the homosexuals I have known, have been emotionally unbalanced

and profoundly unhappy. I do not believe that this is solely or exclusively due to the fear of detection, or of the sense of guilt attaching to practices in fact disapproved of by society. It is inherent in the nature of an activity which seeks a satisfaction for which the bodily organs employed are physically unsuited.

But this is, of course, only part, and perhaps the least part, of the story. No consideration of sexual matters is even possible without discussion about the relationship of the subject to spiritual love, and I wish to say what I have to say here as gently as possible. I do not in the least mean to imply that many homosexuals are not in many ways among the more sensitive and refined of human beings. I am, of course, also aware that in one of the finest discussions on romantic love surviving from the ancient world, Plato's Symposium, homosexual passion is treated as on a par with, and even superior to, the heterosexual affection between man and woman, even within marriage. Such experience as I possess, does not lead me to deny, but does lead me to discount these facts, and indeed it would be surprising if it were not so. The unsatisfactory physical basis for a homosexual relationship, to which I have alluded, cannot form the basis of a lasting relationship physical or spiritual, and this is the end of true love. Its necessarily sterile outcome from the point of view of the procreation of children also deprives it of the basis of lasting comradeship which in natural parenthood often succeeds the passionate romance of earlier days. Nor, I think, does a homosexual relationship ever flower in this way. It is noteworthy that Plato's Symposium contains no eulogy of the permanent ideal of spiritual combined with physical love which is the lasting aim of every true lover's dream, and Socrates, who in the dialogue is made to represent the author's view, comes in it unequivocally to the ascetic conclusion that the complete suppression of the physical side of love except between man and woman for the purpose of breeding within marriage, is the only solution of the problem of sex. I quote now from the report of the Committee of The Church of England Moral Welfare Council on this subject, which, as I shall show, certainly does not err on the side of severity towards homosexual practices.

> "It is rare for his (i.e., the homosexual's) association with one male partner to persist longer than three or four years. Even if such associations, accompanied by homosexual acts were to be considered moral (and we have seen that they can never be so) there is none of the reinforcement of encouragement and permanent association which a common concern for the bringing up of a family of children provides."

My own feeling is that this statement gravely understates the case. All homosexuals in my experience have been more or less promiscuous in their approach to those whom they regard as suitable subjects, and, although no one would deny the existence of romantic affections of a homosexual kind, I would myself be prepared to assert that their continuance is only really possible when they do not develop into acts of physical intimacy, in other words, if they remain morally innocent, if in themselves undesirable.

Of course if active homosexuality were either congenital or contagious, none of this would be of other than personal concern to the people affected, but, in as much as it can be shown to be both the result of initiation, and the object of proselytisation, society must necessarily consider how far it is desirable to tolerate practices which develop within the body of society a self-perpetuating and potentially widely expansible secret society of addicts to a practice intimately harmful to the adjustment of the individual to his surroundings and effecting a permanent and detrimental change in his personality.

At this point it is desirable to discuss the opinion contained in the report already referred to of the Committee of the Church of England Social and Moral Welfare Council that "fornication and adultery threaten the well-being of society still more seriously than homosexual practices. With fornication there is the risk, and the common result, of illegitimate children who may be deprived of the security of a home and the love of a father and a mother. Adultery undermines the unit of society, the home and family".

With all respect to the authors of this report, I can only describe this opinion as perverse. Fornication does not fix the mind of the participants in a state in which the natural sexual satisfaction of a permanent relationship based on a satisfactory physical basis is thereafter impossible. Homosexual practices, where they occur, are just as liable to break up a marriage and cause far more misery to the children of such a marriage, as plain adultery. The tragic

figure of Lady Wilde and her children ought to be sufficient to cause doubts about the wisdom of such an utterance as that in the Report without further argument.

It must, therefore, be seriously considered how far it is reasonable to tolerate homosexual practices in view of the danger to society of the corruption of youth. On all sides it is admitted that this at least is a danger against which society is entitled to defend itself. Thus the Church of England Social and Moral Welfare Council's Report, already alluded to, says:

> "It is a duty of the State to protect young people from seduction or assault and to preserve public decency. This duty of the State is recognised in general on every side by the decent homosexual no less than by the normal man and woman."

Why then, it is argued plausibly enough, would it not be sufficient to penalise acts involving the corruption of youth, perhaps raising the age of consent to twenty-one, or even higher, and leave homosexual acts between consenting adults to the operation of the individual consciences concerned? I believe that a very strong body of intelligent public opinion would in fact favour such a course, and at first sight it has many advantages to commend it.

I believe, however, that it overlooks the nature of active homosexuality and its consequences.

It must be insisted that an active homosexual, whether invert or pervert, if these somewhat misleading terms are to be used, never, or hardly ever, becomes emotionally a woman in a man's body. He is, and remains, emotionally and sexually a man. The male invert, says Dr. Kinsey, responds to precisely the same psychological sexual stimuli as does the normal man. His reactions are characteristic of the man, and not of the woman.*

This means that the male homosexual naturally seeks the company of the male adolescent, or of the young male adult, in preference to that of the fully-grown man. No doubt homosexual acts between mature males do take place, just as other acts of extraordinary sexual perversity take place in other ways. But the normal attraction of the adult male homosexual is to the young male adolescent or young male adult to the exclusion of others.

* I quote this, almost texually, from the report elsewhere referred to.

In this connection it is significant to quote from the speech of the Under-Secretary to the Home Department on this subject in the course of the debate in the House of Commons on the 28th April, 1954. Sir Hugh Lucas Tooth said;

> "The Cambridge Department of Criminal Science has been carrying out an exhaustive inquiry into sexual offences, and my right hon. and learned Friend (the Home Secretary) has recently received a preliminary report of the result of that inquiry. The survey covered all sexual offences reported to the police in 1947 in 14 police areas. It shows that 986 persons were convicted of homosexual and unnatural offences. Of those, 257 were indictable offences involving 402 male victims or accomplices, as the case may be. The great majority of those victims or accomplices were under the age of 16. Only 11 per cent of the whole were over 21, and there was only one conviction involving the case of an adult with an adult in private. Virtually the whole of the non-indictable offences occurred in public places, and, again, only one offender in the non-indictable class was convicted for acts committed in private."*

Whatever be the right solution to the problem it is vain to blind oneself to the fact that the problem of male homosexuality is in essence the problem of the corruption of youth by itself and by its elders. It is the problem of the creation by means of such corruption of new addicts ready to corrupt a still further generation of young men and boys in the future.

The plausible attitude which I am discussing often also fails to recognise that the age at which youth remains open to corruption is one far higher than that commonly adopted as the age of consent for girls. This is explicitly recognised by the Church of England Social and Moral Welfare Council's Report which having reached the conclusion which I have criticised that adult consenting males should not be punished recommends that the age of consent should be raised to twenty-one:

> "The question of what is meant by an 'adult' is important when dealing with homosexual practices. As far as heterosexual intercourse is concerned, the 'age of consent' today is 16 for both boy and girl. Homosexual intercourse, however, involves a different principle, as it is an unnatural activity of the sexual organs, and as

* I think it fair to observe that some allowance should be made in assessing these figures for the difficulty of detection in other cases.

we have seen it may also precipitate a life-long condition of inversion from which there may be no recovery.

"There is, therefore, no valid reason why the same age of consent which is regarded as suitable for both sexes in cases of heterosexual relationships should be held to apply to homosexual coitus. If changes are to be made in the present law governing homosexuality, consideration should be given to defining the 'age of consent' for males as 21, thus protecting the young National Serviceman who is compelled to live for two years in a predominantly male community and faces rather special risks of mixing with homosexuals."

While such an increase in the 'age of consent' is in my view obviously desirable if the law is to be altered at all, I must say, with due humility, that I see grave difficulties in the proposal, and, for the reason that I have already given, it seems to me that the fact that it needs to be made really does away with the case for the proposed alteration in the law at all. From the purely practical standpoint I can see great difficulty in the way of persuading Parliament that if a sexual action is sufficiently harmless to be permitted between consenting adults, it is sufficiently dangerous to make the age of consent 21 for men whilst it remains 16 for girls, and I also personally think that in order to effect their praiseworthy purpose the authors of the report would have had to raise the age of consent to 25 if they desired to nominate an age at which it must be assumed that, if not already corrupted, an adult is reasonably immune from corruption. This would reduce the proposal to an impossibility. Whether this be correct or not, I can see the gravest objection to a provision of the law which would inevitably give rise to the belief, however erroneous, that homosexual practices were fully permissible for an adult, and therefore in the class of vice to which smoking and drinking belong, or even comparable to a fortune which a young man inherits when he is of age to dispose of it prudently. If homosexuality is in truth something which is socially so dangerous that it is to be prohibited before the age of 21, I should have thought that the balance of advantage lay in prohibiting it altogether.

In reaching the conclusion that homosexuality is socially undesirable, I have so far refrained from considering a most important, and possibly even conclusive consideration.

It is, of course, true in a sense, as the Church of England Committee's Report claims, that "the family is the unit of society".

But society is, as a matter of fact, organised on a number of different bases, some of which are not at all, and some of which are only in a limited degree, founded on the unit of the family. Some of the most important of these, for instance, the education of the young at schools, the organisation of physical recreation, or the military organisation of society in peace and war, presuppose a more or less thorough segregation of the sexes, and the problem which these types of organisation set for the homosexual, and which the homosexual sets for this type of organisation are well known, but perhaps more serious than is generally appreciated. In all these spheres, the jealousies and favouritism which any form of homosexuality engenders is ultimately intolerable, and unless homosexuality is thoroughly discouraged these jealousies and favouritisms undermine and disintegrate the whole fabric of social co-operation. This is even true where the sexes are not segregated as in most economic activities (in which society is also not organised on a family basis). In some of these, for instance the stage, it sometimes happens in particular countries that the kind of freemasonry which always exists between homosexuals of both sexes often seems to make success, if not a close preserve for homosexuals, at least a field in which homosexuals enjoy an unfair economic advantage against their fellows, while the existence of widespread homosexuality in a given occupation renders that occupation less attractive, if not intolerable to normal people.

Speaking personally, therefore, I confess that the more I think about this difficult matter, the more convinced I become that homosexuality is to be treated as a socially undesirable activity, and that, on balance, we have been right in attaching to male homosexuality both criminal and social sanctions.

In the long run, I do not think that the admitted disadvantages of taking this course outweigh the solid advantage of shaping the public conscience which is obtained by stigmatising as inherently unlawful an activity which it is of serious consequence to society to discourage and prevent where possible.

In coming to this conclusion I do not in the least wish to deny the strength of some, although not all, of the arguments on the other side.

To say to a confirmed homosexual not merely that the one satisfactory way out for him is to suppress all physical satisfaction

of his sexual nature (which, though hard doctrine, is no more than the truth, whatever the law may be), but that if he does not take this stern advice he renders himself liable to serious criminal penalties, is, undoubtedly, at first sight a Draconian precept. In practice, it is not so bad as it sounds, since, as we have already observed, it is relatively rare for homosexual acts between consenting adults to be the subject of criminal proceedings where no element of corruption or public indecency is concerned, and, where it happens or appears to happen to the contrary, there are usually special circumstances existing which make the case rather the exception which proves the rule. This, I am aware, is not an altogether satisfactory answer. It is dangerous teaching that a law may be justified because its true rigour is seldom, if ever, invoked. Indeed, the purist is entitled to regard this as a good theoretical argument for mitigating the rigour of the law so as to conform with existing practice. But law is not an exact science. It is necessarily a compromise between morality and expediency, and, like most other points at which the organising activities of man come into conflict with human folly and human weakness, the most advantageous and practical course is seldom that which gives the neatest and most logical theoretical solution.

Again, the proscription of a practice which is more or less likely to be widely indulged undoubtedly gives opportunity to the blackmailer. Personally, I regard this danger as exaggerated, but I could not help being impressed by the testimony of Lord Jowitt in the House of Lords* which certainly tells in a contrary sense:

> "When I became Attorney-General, I became oppressed by the discovery that there was a much larger quantity of blackmail than I had ever realised. I have no figures—I do not suppose one can get figures in a case of this sort—but I can certainly charge my recollection to this extent. It is the fact—I do not know why it is the fact, but it is the fact—that at least 95 per cent of the cases of blackmail which came to my knowledge arose out of homosexuality, either between adult males or between adult males and boys. Why on earth it should be—and the noble Earl asked the question—that it attracts so much more blackmail, or did in those days, than did other vices, I do not know; but that was certainly the fact, and I think we have to bear it in mind."

* *Hansard*, 19th May, 1954.

Personally, I am inclined to think that Lord Jowitt's experience of a single tenure of office might not be borne out by the figures over a large period, but no one who holds the view I am advocating ought either to discount the danger or withhold measures likely to diminish it, for instance by the generous protection of anonymity to the victims of blackmail, or the more widespread publication of the devices to meet it, already fairly well known in the legal profession. (My father always used to proclaim privately that no one need be blackmailed unless they wanted to be if they would only come to him for advice.) But, even if Lord Jowitt's experience were typical I should still expect to find that homosexuality was sufficiently unpopular amongst the normal to provide the blackmailer with all the material for his activities that he desired.

Almost as serious, and, in one sense logically unassailable, is the argument which draws attention to the apparently anomalous attitude of society towards homosexuality in men and women.

It is well known that not only men, but women also have homosexual inclinations and relationships and indulge in homosexual physical practices. Yet Lesbians never attract quite the same notice as male homosexuals, and, from the point of view of the criminal law, in the absence of assault or public indecency escape all liability. This is apparently illogical, and, it may be to some extent, actually anomalous.

Nevertheless, there is usually some basis for apparently illogical social attitudes, and the explanation may well be found in the fact that female homosexuality is, in fact, a different type of activity from male homosexuality. Just as a male homosexual never becomes a female in a man's body, so a Lesbian is never, or at least seldom, other than a woman, and a very feminine woman at that. In my own life I have only known two cases of female homosexuality which in fact raised important questions of social behaviour and social consequences. In neither was the active partner otherwise than recognisably feminine in her social behaviour; in one case, although the homosexual motive was plainly to be seen in one of the parties, I was never at all satisfied that any active homosexual conduct had ever taken place between them. Seen from this angle, the difference between the treatment by society of male and female homosexuals is only another example of the different treatment generally accorded by society

to men and women in relation to their sexual behaviour. The two practices are not, in truth, wholly analogous, although the existence of the female homosexual in schools or in the Armed Forces presumably requires special attention.

Some of the other objections are not quite so serious. For instance, I find it hard to take seriously the argument that homosexuality would not increase if it were partly legalised. This argument is usually accompanied by the assertion, wholly without proof, that in France and other countries where the law is less severe, there is much less homosexuality than in this country.* My own belief is that the contrary is the case, but since, where there are no prosecutions, there can be no statistics, I regard the matter as wholly incapable of proof in either direction. I content myself with observing that, until statistics showed the contrary was the case, the advocates of a far more worthy cause, the relaxation of the licensing laws, used as confidently to assert that there was far less drunkenness or alcoholism in France than in this country. In fact we now know the opposite to be true.

I also find it rather difficult to treat seriously the argument that the proscription of homosexuality creates "an aggrieved and self-conscious minority which becomes the centre for dissatisfaction and ferment".† For the reasons I have given, the dissatisfaction and ferment among homosexuals is due to far more deep-seated causes than the danger of criminal prosecution, and, if the law were altered in the sense advocated by the Report which makes use of this argument, it is doubtful whether active homosexuals would, in fact, find themselves much less the target of legal proceedings than at present.

I suppose that the last word on this subject will never be spoken. Speaking for myself I have never been able to withhold sympathy with criminals of almost any class, murderers, thieves, sexual offenders of all classes, persons guilty of assault, or the authors of elaborate financial frauds. But the law must needs deal with society's, and the moralist's failures. Punishment and repression is a poor substitute for morality in any field, and the aim of statesmanship should be to limit, rather than extend, the need for it. Nevertheless, like another, and no less inveterate, type of

* See per Sir Robert Boothby, M.P. *Hansard*, 28th April, 1954.
† I quote this from the Report I have already referred to.

public nuisance spoken of by Tacitus, I suppose it is as true of the homosexual as of the fortune-teller.

"Hoc genus et vetabitur semper at retinebitur."

I am to some extent comforted by the thought that the epigram is as true of burglars and thieves as it is of fortune-tellers or homosexuals.

III

THE HOMOSEXUAL AND CHRISTIAN MORALS

(I) MAIN FACTORS FOR CONSIDERATION

FEW of the personal, moral, and social problems which confront the pastor and the theologian are more complex and delicate than those connected with homosexuality. In the first place, the whole subject bristles with inherent difficulties. We have, as yet, no certain knowledge of the cause or causes of the homosexual condition. In many cases it appears to be psychological in origin, and attributable to unsatisfactory emotional adjustment in childhood; an unhappy home, a faulty parent-child relationship, the disruption of the family by divorce, death, and even war service —these are factors which occur again and again in the histories of inverts. But they are not present in all cases; sometimes the condition of inversion seems to be constitutional, and due to hormonal causes—indeed, allowance must be made for the possibility that environmental factors may only encourage the development and emergence of homosexual propensities already latent. Into discussion of such technical matters the theologian cannot enter; he can but note the divergencies of opinion among the experts, and recognise the points at which their uncertainties impose limitations upon him.

In regard to the 'cure' of homosexuality the theologian will exercise no less caution than in regard to its ætiology. Some experts claim that it is possible to heterosexualise the invert and that treatment has been successful in many cases, but others contend that little or nothing can be done to establish sexual normality. In this connection the fact should not be overlooked that men who appear to be, and regard themselves as, inverts are sometimes found simply to be arrested in emotional development, and with skilled therapy can often be assisted to attain maturity. Such persons are usually anxious for help and co-operative under treatment, whereas the invert proper, while grateful for guidance in his problems of adjustment to life, generally finds the idea of

a 'cure' no less distasteful or abhorrent than would the normal man or woman the suggestion that he or she should be changed into a homosexual. From the few data as yet available it would be premature to draw any definite conclusion, but it must be admitted that there is little at present to encourage the belief that the homosexual condition is reversible.

These are not the only difficulties with which the theologian has to contend. Like other students of the problem of homosexuality, he finds that impartial investigation and temperate discussion are hindered by the emotional reactions which the very mention of the subject tends to arouse, and which create an atmosphere far from conducive to profitable consideration of a great social, personal, and moral question. He finds, too, that the issue is to some extent obscured by a traditional attitude whose socio-psychological origins have never been fully examined, and that it is commonly prejudged on the strength of certain theological assumptions which have influenced legislation and opinion in the past, but which can no longer pass unchallenged.

With a scrutiny of these assumptions the theologian's task begins; they must be put to the test of biblical and historical enquiry in order to discover whether they can be accepted any longer as determinative for the moralist, the magistrate, and the law-giver. This done, other matters demand attention—and notably, a review of the morality of homosexual acts in the light of what is now known about the condition of inversion. Here it is important to observe both the relation and the distinction between crime and sin, and to recognise that the civil and the spiritual powers each have a dual responsibility. In declaring God's abhorrence of sin and his judgment upon the wicked, the Church does not omit also to proclaim his mercy and love towards sinners as displayed on the Cross, and to extend to the penitent his promise of forgiveness and restoration. Likewise the State, while taking all necessary measures to protect the community against the vicious and the depraved, ought not to neglect the reclamation and reformation of the homosexual who falls foul of the law, and the provision of medical and psychiatric treatment for those whose conduct is attributable to their mental or physical condition. Furthermore, every endeavour should be used to secure the acceptance of the honourable invert by society as a citizen who, despite a heavy handicap, can make a special con-

tribution to the common good. To all these aspects of the problem the theologian must pay due regard, attempting to approach them in a strictly objective and rational spirit, free from sentimentality and from vindictive harshness.

Despite our imperfect knowledge of the cause and nature of homosexuality, there are certain facts, now sufficiently established, which must not be ignored in any consideration of the moral questions connected therewith, and certain definitions which are necessary in order to ensure that no confusion shall arise over terminology. First, it is important to recognise the essential distinction between the homosexual *state* and homosexual *behaviour*. Although the latter is commonly described as 'homosexuality', both in colloquial and in scientific usage, homosexuality is not a kind of conduct, and the word will not be employed here in that sense. *Homosexuality*, strictly speaking, denotes a *personal sexual condition* characterised by a specific emotional and physico-sexual propensity towards others of the same sex—just as *heterosexuality* denotes a like condition in which the propensity of the subject is towards members of the opposite (or better, the complementary) sex. While heterosexuality, however, is normal and natural in adult human beings, homosexuality is abnormal and comparatively uncommon—though in any society the ratio of the one to the other can never be ascertained exactly, and is likely to vary markedly according to circumstances.

Sexual conduct, too, can be classified as heterosexual or homosexual (though it is inaccurate, as already observed, to speak of 'committing homosexuality'), but it cannot be correlated directly with the subject's sexual condition, for the latter is not in every case the sole determinant of behaviour. Statistical research confirms the evidence of history and anthropology that men and women are capable of displaying remarkable sexual versatility, adaptability, and adventurousness when social custom permits or encourages experiment, or when the sanctions of morality, law, and religion lose their restraining power. Thus not a few persons exhibit patterns of physico-sexual behaviour which are, in varying degrees, complex and irregular in their deviation from the type of conduct consonant with each individual's basic sexual condition. Failure to appreciate the reason for these deviations has led some students of the problem to postulate or assume a third personal sexual state—the so-called 'bi-sexual', which finds expression indiscriminately in heterosexual or homosexual acts. While such a pattern of conduct, however, may appropriately be termed 'ambisexual', to conclude that it implies the existence in the subject of a *state* of 'bisexuality' would appear to be an unwarrantable inference of sexual condition from sexual behaviour. The hypothesis of 'bisexuality' seems to disregard the fact that circumstances or disposition may induce a person to act in a manner incongruous with his or her 'nature' as a heterosexual or a homosexual, yet none the less agreeable or expedient for the time being.

It is, indeed, no exaggeration to say that the whole problem of inversion has to some extent been obscured and narrowed by too exclusive a concern with sexual acts. Consequently insufficient attention has been paid to sexual condition, and in particular to the existence of what may be called the homosexual (as distinct from the heterosexual) *attitude to life*—of which homosexual practices are only one, and that not a necessary or inevitable aspect. Simone de Beauvoir's definition of Lesbianism holds good equally for male homosexuality. Not only is it a personal condition in which the sexual impulses are deflected in an abnormal direction; it is also "an attitude *chosen in a certain situation*—that is, at once motivated and freely adopted"; and she continues: "No one of the factors that mark the subject in connection with this choice—physiological conditions, psychological history, social circumstances—is the determining element, though they all contribute to its explanation. . . ." No ethical study of homosexuality should fail to recognise that the behaviour of the invert is often an expression of this total attitude to life, and must not, therefore, be viewed in isolation from its context.

Two further points of general relevance deserve mention. First, there is a tendency to assume that homosexuality is largely a male phenomenon and a male problem—partly, no doubt, because little notice has been taken in the past of the Lesbian and her activities, and because at the present time the British law only takes direct cognisance of, and defines as criminal, homosexual acts committed by males. The homosexual condition, however, is found among women no less than among men, and women no less than men indulge in homosexual practices. The fact that tradition and the law discriminate in this anomalous way does not warrant any similar distinction in treating of the theological and

moral aspects of homosexual conduct, nor should it be inferred from our statutes that male practices as a whole are intrinsically more reprehensible or sinful than those in which females may engage. Second, homosexual acts as a class are sometimes regarded as deserving stronger censure than any form of heterosexual immorality, however anti-social in its effects—a view which is forcibly illustrated by our legal toleration of the fornicator and the adulterer. Such an attitude, however, is open to the charge of practical unrealism, and demands careful scrutiny in the light of the principles by which the morality of sexual behaviour must be assessed. It is important that consideration of the ethical aspects of homosexuality should not be influenced by arbitrary or unexamined assumptions concerning the relative degrees of guilt attaching respectively to homosexual acts, and to heterosexual acts which contravene the Christian moral law.

(II) ORIGINS AND DEVELOPMENT OF CHRISTIAN ATTITUDE

Having indicated some of the main factors which must be taken into consideration in approaching the ethical problems of homosexuality, we must now examine the origins and development of the traditional Christian attitude to homosexual practices which has influenced so profoundly both public opinion and legislation. I shall treat this subject somewhat briefly here, since I have already dealt with it at length in my book, *Homosexuality and the Western Christian Tradition*, to which I would refer the reader for references and full discussion of the question.

The story of the destruction of Sodom has probably made the most impressive contribution to the development of this tradition. Not only is it cited as authoritative in legislation from the *novellæ* of Justinian to the canons of the third Lateran Council, but it has had a powerful effect upon the fears and the imagination of Western Christendom for close on two thousand years. Men believed without question that God had visited Sodom and its neighbours with a terrible overthrow on account of their reputation for homosexual practices, and that a like vengeance from heaven awaited all those who tolerated or indulged in unnatural vice.

This conviction received support from the Scriptures. In the Old Testament the Law condemns to death the man who com-

mits the abomination of the Egyptians and the Canaanites by lying with mankind as with womankind (Lev. xviii. 22; xx. 13), and a mistranslation of the Deuteronomic prohibition against the *qādhēsh* (the 'sodomite' of the Authorised and Revised Versions—Deut. xxiii. 17) has given these statutes additional force in the eyes of the English reader. In the New Testament St. Paul denounces the men who, "leaving the natural use of the woman, burned in their lust one toward another, men with men working unseemliness" (Rom. i. 27), and declares that neither catamites (*malakoi*) nor sodomists (*arsenokoitai*) shall inherit the Kingdom of God (1 Cor. vi. 9–10); while the author of the Pastorals states that it is the province of the civil law to punish "abusers of themselves with men (*arsenokoitai*)" (1 Tim. i. 9–10). In the passage already cited, St. Paul also appears to refer to Lesbianism, though his allusion to women who "changed the natural use into that which is against nature" (Rom. i. 26) could refer to heterosexual perversions.

The Sodom story and these biblical texts played a large part in determining the attitude of the early Church, which directed its condemnations principally against that characteristic sexual vice of antiquity, *paidophthoria* or the corruption of boys. Roman law likewise concerned itself with the protection of minors (*pueri prætextati*). The nebulous Scantinian Law, which dated from the days of the Republic, appears to have penalised this offence, and the opinions of the great third-century jurisconsults were given in favour of the protection of the young. These lawyers also concluded that sodomy should be treated as a capital crime, and their view received statutory expression in an edict of Theodosius, Valentinian, and Arcadius issued in the year 390. This bequeathed to succeeding ages the penalty of burning as a means of execution—though it is doubtful whether this mode of punishment, preserved in medieval systems of customary law (such as that of Touraine-Anjou) which has been influenced by the Theodosian Code, was often, if ever inflicted. It remained for Justinian, one hundred and fifty years later, to epitomise in his 77th and 141st *novellæ* the attitudes of Church and State to homosexual practices and thus, in no small measure, to control thought and action in the West during the Middle Ages.

In addition to the Sodom story, the Scriptures, and Roman law, two other elements in the formation of our tradition may be dis-

cerned. One of these is described by Blackstone as "the voice of nature and of reason", and the other may best be represented as a nexus of socio-psychological factors, underlying and determining to no small degree the sexual ideas of a community, an age, or a culture. Neither calls for special discussion here, but it will be well not to overlook the probability that they are inter-related; perhaps we may feel less certain than Blackstone that 'nature' speaks in unambiguous accents, and may sometimes suspect that the voice of 'reason' is only the voice of rationalisation. One thing, however, is certain: no student of the sociological aspects of the problem of homosexuality should fail to make due allowance for the influence which has been exerted upon our sexual attitudes by deep-seated and often unsuspected psychological factors.

Such are the main features of the Western Christian tradition as it relates to homosexual practices. Can it be accepted as sound and authoritative, and as a sufficient guide for the present-day magistrate, pastor, and legislator? Can it be regarded as in any way determinative for the purpose of the moralist?

When we embark upon a critical examination of this tradition, it is disconcerting to find at the outset that its most striking feature proves also to be its most vulnerable. Careful investigation fails to substantiate the venerable belief that Sodom was destroyed because its inhabitants were inordinately addicted to male homosexual practices. Let us consider first the internal evidence. It is generally held that the Genesis narrative itself affords sufficient proof of the Sodomites' vicious proclivities, since there can be no other satisfactory explanation of their demand: "Bring [the men] out unto us, that we may know them." This interpretation rests upon the fact that the verb 'to know' (*yādha'*) can also mean 'to engage in coitus'—but is that its connotation here? Three points tell against it: although *yādha'* is a common verb, its use in a coital sense is exceptional; when employed in this sense, its reference is always heterosexual, and not homosexual—indeed, the very possibility of 'knowing' in this way depends upon sexual differentiation and complementation, and can only occur between man and woman; and the Sodom story can be expounded no less convincingly by taking *yādha'* in its normal sense. Thus the Sodomites' demand is simply for the production of the men, in order that they may become acquainted

with them—probably with the object of investigating their *bona fides*, since Lot may have exceeded his rights as a tolerated alien in admitting strangers to the city. Anxious, however, that there shall be no breach of the sacred obligations of hospitality, Lot attempts to buy off the importunate demonstrators by proffering his daughters for their enjoyment; but the story tells how they were finally thwarted by the angelic visitors themselves. The exegetical and other problems connected with the Sodom story are fully discussed in the book already mentioned.

Turning now to the external evidence, we find confirmation from other biblical allusions to Sodom that its sin was not regarded as homosexual. Ezekiel sums up the Old Testament conception of the wickedness of Sodom in the words, "pride, fullness of bread, and prosperous ease"; and in the Apocrypha, ben Sirach and the author of the Wisdom of Solomon denounce the Sodomites for their folly, arrogance towards God, and inhospitality. The Rabbinical writers likewise substantially uphold the witness of Scripture, and we learn from the Talmud that the appellation, 'a man of Sodom', was commonly bestowed upon any person who behaved like a dog-in-the-manger. On the other hand, it is no less significant that none of the passages in the Bible condeming homosexual practices refers to Sodom or to its destruction—a strange omission indeed, if it was generally believed at the time that the overthrow of the city and its neighbours was a Divine judgment upon sodomists.

How, then, did the 'homosexual' conception of the sin of Sodom arise? A study of the Jewish pseudepigraphical writings shows that it first emerged, in an undeveloped and somewhat confused form, during the second century B.C., and became progressively more defined until it attained its most elaborate expression in the works of Josephus, and particularly of Philo. There is every indication that this remarkable re-interpretation of the Sodom story emanated from Palestinian Pharisaical circles distinguished for fervent patriotism no less than for strictness in matters of religion, and that it was inspired by antagonism to the Hellenistic way of life and its exponents, and by contempt for the basest features of Greek sexual immorality. In Hebrew tradition Sodom had long stood as a symbol for every kind of wickedness that offended the devout Jewish spirit, and nothing was more natural than that its citizens should now be represented as

practising the debased *paiderastia* and the other homosexual perversions which were abhorrent, not only in themselves, but as the depravities of an alien and hostile culture.

This revised conception of the sin of Sodom, devised and exploited for polemical purposes by patriotic rigorists, had little effect upon the mainstream of Rabbinical tradition, and was never recognised by contemporary Judaism. On the other hand, it was readily assimilated (along with other elements in the Pseudepigrapha) by the Christian Church, and is even echoed in the New Testament, where Jude 6–7 (and its derivative, 2 Peter ii. 6–8) is plainly indebted to a passage in the *Testament of Naphtali*; and thus it passed into Patristic thought, and found expression in ecclesiastical legislation. Nevertheless, the Sodom story can no longer be accepted as determining the Christian attitude to homosexual acts. There is no evidence whatever that God himself, by an act of retribution in the remote past, pronounced such acts "detestable and abominable" above every other sexual sin; consequently their morality is still open to investigation by the theologian on the same principles as that of other human actions.

Westermarck and others have asserted that homosexual acts were condemned by the Hebrew Law less on moral grounds than because they were typical of the life and religion of those idolatrous nations with which Israel was commanded to have no dealings. This view, however, betrays a misunderstanding of the meaning of 'abomination' (*tô'ēbhāh*) in the Levitical passages, for there is little to show that unnatural vice prevailed among the Egyptians and Canaanites, and nothing to suggest that it had any place in their cults. In biblical usage, 'abomination' has a technical significance, and designates not only false gods and their worship, but also the entire way of life and attitude of mind characteristic of those who serve them. Thus it can be employed to denote anything which, like idolatry, reverses the natural or proper order of things. Homosexual acts, therefore, are 'abomination', not because the heathen commit them, but because they typify, in the sexual realm, the whole ethos of idolatry—they subvert due order in the use of the sexual faculties.

When the Old Testament condemns homosexual practices as 'abomination', it is clear that it regards them as unnatural; but does it condemn all such practices? This question is prompted by the wording of the laws, which specify lying with a male "as with

womankind"—literally, with "the lyings of a woman". The phrase is ambiguous, and its meaning difficult to determine. While it could be regarded as covering every kind of male homosexual act, it could equally be construed as relating only to sodomy, in which normal heterosexual coitus is simulated by penile intromission. Whichever interpretation the exegete favours, it is indisputable that the Old Testament treats sodomy as a capital offence; and although a more humane jurisprudence has now set aside the death penalty, the Christian may not disregard the Old Testament's condemnation of this, and perhaps other homosexual acts, as incompatible with the vocation and the moral obligations of the People of God.

Turning now to the New Testament, we find its teaching quite clear. There is little doubt that the men whom St. Paul describes as burning in their lust one toward another and "working unseemliness" together are those whom he specifies elsewhere as *arsenokoitai* (active sodomists) and *malakoi* (passive sodomists, who were frequently prostitutes, or *exsoleti*), and that he had in mind such depraved catamites and pæderasts as Petronius brings before us in the pages of the *Satyricon*. Moreover, though the Apostle does not expressly mention them, we may be certain that he intended to include in his condemnation the *paidophthoroi*, or corrupters of youth, whom the Roman law also penalised.

It is clear that the Bible condemns as sinful the practices of those whom we may call homosexual perverts. But does it also brand as sinful the acts to which a genuine invert may be impelled, not by moral obliquity, but by a disorder of the sexual nature for which he (or she) cannot be held responsible? We can only say that this is a question to which neither Testament affords an answer, since inversion and its peculiar problems were unknown to antiquity. Homosexual practices were, and could only be, regarded as wilful evil-doing; the moralist had no alternative explanation of which to take account. Today, however, the situation is different, and the sexual behaviour of the invert gives rise to problems which call for special consideration—though we must be careful not to misinterpret the silence of the Scriptures on this matter. Such behaviour is not thereby exempted from judgment according to the principles by which the morality of all sexual acts must be determined.

While the Bible and earlier Roman law dealt severely with the

homosexual offender, Justinian's legislation had a mitigating influence which is not always acknowledged. In his 77th and 141st *novellæ* he distinguished between the sinner and the criminal and, calling the sodomist to repentance, reserved the penalties of the law for the obdurate and impenitent who spurned the Church's ministry of reconciliation. Medieval practice reflected, and indeed went beyond, the spirit of these edicts. Homosexual offences were reserved for trial and sentence in the ecclesiastical courts, and although penance and spiritual discipline were imposed upon the delinquent, he was rarely (in England, probably never) handed over to the civil magistrate for the capital punishment which the latter alone could inflict—unless, of course, as sometimes happened, conviction had also been secured on other and primary counts, such as heresy. It was only when the jurisdiction of the Church courts over the sodomist was transferred to the temporal power that clemency yielded to rigour, and the sinner became a felon. Thus the Act of 1533, which reasserted the death penalty, was a retrograde step which even the Offences Against the Person Act of 1861 did not fully reverse; while the Criminal Law Amendment Act of 1885, by treating as crimes the *private* homosexual practices of adult consenting males, removed to the cognisance of the courts certain sexual sins which more properly lie within the competence of a spiritual tribunal. It may therefore be said that the British law represents a departure from the developed Western Christian usage and tradition of the Middle Ages.

(III) THE MORALITY OF HOMOSEXUAL ACTS

The biblical attitude to homosexual acts is determined, as we have seen, by one primary ethical and theological consideration; it regards them as 'abomination' because they involve the reversal of what is sexually natural, and are thus typical products of what St. Paul calls the "reprobate mind"—the deliberate refusal to acknowledge God's laws, though they are manifestly declared in his works for all to understand. But here we encounter certain difficulties. The Bible speaks principally in terms of sodomy: are other homosexual practices also denounced as sinful—and are all such practices, female as well as male, to be treated as equally sinful? These questions are not easily answered from the Scriptures, nor do the latter assist us in the critical and delicate matter

of the genuine invert's behaviour; therefore we must now examine the morality of homosexual acts as such.

In this task we receive little assistance from Patristic writers. Those few who touch upon the subject stress chiefly the unnatural character of sodomy, the unlawfulness of the pleasure derived therefrom, and the injury inflicted upon another—by which is doubtless meant, not physical hurt, but moral degradation. Augustine condemns these "shameful acts against nature" as transgressions of the commandment to love God and one's neighbour, and John Chrysostom and others hold that by diverting the genital organs to other uses than procreation they jeopardise the human race itself.

A more thorough treatment of the question is found in the Penitentials, where penances are graded according to the particular homosexual act committed. These codes comprehend every kind of practice from simple kissing to sodomy, and take due account of circumstances and persons. Lesbianism is recognised, and careful distinction is made between the active and the passive male, between habitual and occasional indulgence, and between first and subsequent offences. Boys and youths are treated differently from older men; monks, priests, and nuns from the laity; the higher grades of the ministry from the lower; and the married from the single. In general, clergymen and monastics of both sexes are penalised more heavily than lay people, and men more heavily than women and boys; and in the case of the cleric, regard is paid to his order. While the Penitentials are by no means lenient in their requital of homosexual sins, they do not reserve them for exemplary treatment, but attempt to deal with them equitably; thus sodomy and *fellatio*, for instance, are commonly punished with the same impositions as heterosexual fornication, incest, infanticide, homicide, adultery, remarriage after divorce, and the like—though the codes exhibit a striking diversity in their assignment of penances.

The Penitentials are notable for their realistic approach to the problem of homosexual sin, but they offer us no rationale of their system, and no explanation why one practice should merit a greater penalty than another. But a few centuries later a thorough discussion of the morality of homosexual acts appears in the *Summa Theologica* of Thomas Aquinas. The moral act, he says, is one which is consonant with right reason, being directed to its

proper end in a fitting manner. In the case of venereal acts, the proper end is procreation, and the fitting manner the 'natural method' of heterosexual coitus; every homosexual act between males, therefore, is *contra naturam* and inconsistent with right reason, since it necessarily involves the pursuit of venereal pleasure in such a way as to exclude the possibility of generation.

Aquinas observes further that venereal acts may be contrary, not only to right reason, but also to "the natural order of the venereal act as becoming to the human race", as for example, when ejaculation is procured without coitus, or when there occurs *concubitus ad non debitum sexum*—a phrase which denotes, presumably, any kind of venereal act performed by male with male, or by female with female. From these arguments Aquinas establishes the conclusion that all homosexual practices are unnatural, lustful, and sinful in the highest degree.

He also considers other relevant questions. Some would contend that other sexual sins (adultery, rape, seduction) are graver than the sins against nature, since they injure one's neighbour, whereas the homosexual practices of consenting adults harm no one; but Aquinas insists that any transgression against nature is an injury to the Creator, even if it is not an offence against charity. He would seem, however, not to condemn homosexual acts such as caresses expressing the affection of one person for another, provided that their motive is not the enjoyment of forbidden pleasure, and that they do not lead to the commission of sinful acts.

In his treatment of the subject, Aquinas is concerned with the objective morality of homosexual acts, and with this we may begin our own consideration of the problem. Are such acts, *per se*, consistent with the standard of right reason?—that is to say, do they conform to the will and purpose of God for human sexuality, as apprehended through revelation, intuition, or the exercise of the rational faculties? It will be easier to answer this question if the theological meaning of sex is first understood.

In the debased and often incorrect usage of today 'sex' has acquired a predominantly physical and venereal significance, but for the theologian it retains its original, primary connotation of existence as male or female. Sexual differentiation in plants and animals serves chiefly for propagation, but in the human order it is more than a reproductive device. 'Animal' sexuality is assumed into and transformed by personality, so that the biological

function is seen to be simply one aspect of a complex creative dynamic resulting from the fact that Man (the *'ādhām*, or Adam, of the Genesis Creation stories) is not an individual, but an unique duality of persons—and as such, in a special sense, an 'image' or symbol of his Maker's triunity. Male and female are held together in the purpose of God as constituents of this total Man; yet, being at once mutually complementary and radically dissimilar, there exists in every concrete relation between them a certain tension. In this lie the integrative and creative potentialities of sex, which can be realised in many different ways, from the evocation of latent personal qualities or powers to the procreation of a child.

While many forms of relation between man and woman may serve to release the creative dynamic of sex, one in particular is distinguished from the rest because it involves the use of the sexual organs; this, in all its varying phases and modes of expression, is the complex psycho-physical experience of coitus. Coitus, however, as St. Paul perceived, is never merely an act of the sexual organs alone; it is always (because of the very nature of human sex) an act of the whole 'body' (*sōma*)—that is, in the Apostle's terminology, a person's total being. Its relational context, and not simply its mechanical performance, invests coitus with its special significance, and whenever it expresses a genuine love, it rises above the level of crude, sensual indulgence.

The purposes of coitus may be described as conceptional and relational—the latter denoting its part in the establishment and consolidation of the 'one flesh' union, and in the development and enrichment of the common life of those so united. While these two purposes are to be carefully distinguished, neither must be isolated from the other. This does not mean that man and woman have not the freedom and the moral right to decide conscientiously that any concrete act of coitus shall be (so far as it lies in their power to make it) non-conceptional; only the means employed, and not the right itself, are now seriously in dispute among theologians. They may not, however, so separate the relational from the conceptional purpose as to exclude the latter entirely and permanently, thus rejecting the vocation to parenthood which is always implict in union as 'one flesh'.

Finally, the use of the sexual organs, both for relational and for conceptional coitus, is significantly limited by two unique creative functions which these organs discharge. First, they are

the means whereby there is established (in principle) the 'one flesh' *henōsis* which forms the personal and interior basis of marriage. Second, they are the means whereby children are conceived, who will require for their nurture and education many years of parental care. It is clear that both functions confine the use of the sexual organs within the bounds of an exclusive and life-long relationship—that is to say, within the married state as the Church has always understood it.

Right reason thus points to the ineluctable conclusion that the use of the sexual organs, being governed by the nature of sex itself and by the recognised purposes of coitus, is proper only in the context of a personal relation which is both heterosexual and specifically marital. Considered, then, in terms of objective morality, it is evident that homosexual acts are contrary to the will of God for human sexuality, and are therefore sinful *per se*.

The genuine invert, however, sometimes contends that he is such by the will of God, and should be permitted his 'natural' mode of sexual expression; but this argument shows a lack of understanding of the meaning of the 'will of God' and of 'natural'. The normal and divinely ordained human condition is the heterosexual and homosexuality, strictly speaking, is an aberration—though not one for which the subject is responsible or culpable. Inversion can no more be regarded as God's will for a person than can, for example, deformity or mental deficiency—and in all such cases there is a problem of theodicity which lies outside the scope of this essay. Heterosexuality and homosexuality are not alternative human conditions, nor is the invert (man or woman) a sort of *tertium quid* between male and female; he is an anomaly whose sexual disorientation bears its own tragic witness to the disordering of humanity by sin. But sympathy with the homosexual's predicament cannot alter the fact that his practices, though congruent with his condition, are objectively unnatural and cannot reasonably be regarded otherwise.

Frequently the invert will claim that his (or her) sexual acts, like those of the heterosexual, are relational—by which is meant that they are a means of expressing love. But this argument is open directly to the objection that the relational purpose of the sexual organs must never (as we have seen) be separated entirely and permanently from their conceptional purpose—as must inevitably be the case in homosexual acts. Setting aside this question, however, we may ask: Are heterosexual and homosexual love so fundamentally alike that what is true of the one must equally be true of the other?

Much depends, of course, upon the meaning attached to 'love'. In common parlance it appears to denote a sentimental, sensual attraction which seeks expression in sexual acts. No doubt there are many homosexual as well as heterosexual relationships which never rise above this crude level; but there are also other homosexual relationships based upon a strong and honourable affection, and perhaps enhanced by mutual sympathy in the sharing of a common burden, or by mutual satisfaction in the enjoyment of a creative friendship. In such relationships deep feelings may admittedly be engendered, and may be expressed in words or acts of endearment—and it will be recalled that Aquinas does not condemn these if the motive is innocent and they do not lead to the commission of sin. There is an obvious difference between such innocuities and the venereal acts which are legitimate only in a coital context.

This reputable homosexual 'love' may exist between men or between women, and between inverts and non-inverts alike; comparable in some measure to it (though they have their distinctive qualities) are various kinds of heterosexual 'love'—for example, that of father for daughter, of sister for brother, of close friends for each other. Both types of 'love' have characteristics in common, but their special distinguishing feature may be termed chastity, or the total exclusion of physico-sexual expression. In contrast to them stands another 'love' which is *sui generis*—a love between man and woman which seeks fulfilment in the establishment of a 'one flesh' *henōsis*, the creation of an unique common life in marriage, and the building of a family. This, too, has its chastity, but of a different order, for it is a love in which the sexual organs have their proper and necessary uses, both in its consummation and in the furtherance of its relational and conceptional ends; chastity here, therefore, relates to the due employment of the sexual faculties for their appointed purposes.

It will be evident *ex hypothesi* that such a love as that last described, and the union in which it results, cannot possibly have any parallel in homosexual relationship. While, therefore, we may not deny that homosexual love can be a true and elevated experience, we must insist that it is one to which expression may

not be given in sexual acts—a limitation which it shares with all forms of heterosexual relationship except one.

(IV) SINFUL ACTS AND BLAMEWORTHY ACTS

It is necessary to distinguish between the objective morality of an act and the moral culpability of the agent. It is sinful to steal —but what degree of blame must be assigned respectively to the burglar, the kleptomaniac, and the person in desperate need who takes what is not his own? A similar problem confronts us in the case of homosexual practices. In terms of objective morality—that is, according to the standard of right reason—homosexual acts are undoubtedly sinful; but what judgment ought we to pass upon those who commit such acts? It may be helpful if we first consider very shortly some general principles.

For a human act to be susceptible of moral evaluation it must be free from external compulsion—though it may be inwardly compelled by good, neutral, or bad motives, conscious or unconscious. The agent must also have an adequate knowledge of what he does; if he lacks such knowledge, his ignorance may be either vincible (such as no reasonable person ought to display) and therefore culpable, or invincible. In the latter case the ignorance is such that it cannot be dispelled by reasonable means, so that the agent acts with a 'clear' (albeit an unenlightened and erroneous) conscience. Conscience, indeed, must always be obeyed. It is authoritative—but not infallible; being liable to error, it needs to be informed and educated. Knowledge, ignorance, and conscience, however, do not alter the objective fact of sin, but only determine the extent to which a sinful act is morally imputable. Wrong-doing does not always imply moral culpability, or attract equal blame in all cases regardless of circumstances. Consequently it is important to distinguish between two kinds of sin—formal sin, which is committed knowingly or in vincible ignorance, and material sin, which (though none the less sin) is committed in invincible ignorance, good faith, and a clear conscience.

It will be evident that these principles, while of the utmost assistance to the casuist in deciding *individual* cases of doubt or perplexity, do not lend themselves to the evaluation of group or class behaviour; we can only consider, therefore, how they might

bear upon typical individual instances of homosexual practice. In the past a curious double moral standard has tacitly been applied to homosexual acts; when committed by a man they were generally regarded as grave crimes and gross misconduct, but when committed by a woman they were (if not entirely ignored) simply dismissed as mere feminine lewdness. This discrimination, however, can hardly be justified on rational grounds, and will be ignored here. There would also appear to be no warrant for maintaining either the minute distinctions between homosexual practices elaborated in the Penitentials, or the broader differentiations made by Aquinas. For the purpose of moral judgment it would seem logical to treat alike all homosexual acts resulting in orgasm, disregarding both the sex of the agent and the precise nature of the act in question.

We must first ask: Are homosexual acts really free? External compulsion commonly arises through fear, but in certain cases it may be due to other causes, including disease. Can it be claimed that inversion, being a radical disorganisation and disorientation of the whole sexual nature, so deprives a person of the capacity for voluntary and deliberate choice in the matter of venereal acts, that such acts are not, in fact, amenable to moral judgment—and are therefore not imputable? After making every allowance for the invert's peculiar condition and situation, it can hardly be maintained that homosexual acts are compelled to such a degree that the agent is relieved of all moral responsibility for them. We must hold that the invert is ordinarily as capable as the heterosexual of acting freely and properly in his or her physical relationships, and that if homosexual practices take place they are entirely voluntary and subject therefore to moral judgment. This must also be true, *a fortiori*, of the behaviour of the 'pervert'—that is, the normal person whose ambisexual disposition and lack of restraint lead to occasional or regular indulgence in homosexual practices. The only acts which may perhaps be regarded in some measure as morally non-imputable are those committed by homosexual psychopaths, or by others whose condition is abnormal to such a degree that they may be considered to be under real external compulsion. Such cases are not common, and concerning them the theologian must seek expert psychiatric advice. For the rest, only one conclusion is possible: the average invert must be treated as morally responsible for his or her sexual acts.

But moral responsibility does not necessarily imply blameworthiness. An act may lie within the sphere of moral judgment, and may be intrinsically wrong; yet the agent may not be culpable, either because he is unaware that the act in question is wrong, or because despite all attempts to gain enlightenment, he remains convinced that it is right. So we must now ask whether homosexual acts are done in knowledge or in ignorance—whether the adult practising homosexual always understands fully the moral import of his conduct. We may assume that in almost every case he is completely aware of what he does—in other words, that he is conscious of his act, and recognises it as one of a particular class of venereal acts. But such awareness does not necessarily convey any sense, either of the act's intrinsic morality, or of personal wrong-doing. Men and women do not always appear to possess an intuitive conviction that homosexual acts are immoral—and this, despite the general belief that there are certain basic moral principles (including, presumably, the unlawfulness of such acts, as contrary to nature) concerning which no one is entitled to plead ignorance.

The problem becomes critical in the case of the practising invert who would condemn pæderasty, prostitution, and licentious promiscuity, yet who would justify his own behaviour (within its particular limits) by maintaining that homosexual acts are morally legitimate for the purpose of expressing love, and are unexceptionable when they take place privately between consenting adults. Such a person might contend that for him the theological arguments against his conduct are wholly unacceptable, either in themselves or because they are based upon religious and Christian premises to which he cannot assent, and that he acts with a 'clear' conscience in the conviction that his practices are right for one in his condition. Is he in a state of invincible ignorance, and therefore personally blameless for his behaviour, although it is intrinsically wrong?

It is impossible to answer this question in general terms, for each case needs separate assessment, and various factors require consideration. Much will depend upon whether, and to what extent, the invert has sought enlightenment and has attempted to inform his conscience. His ignorance cannot be regarded as invincible, for instance, if he has deliberately avoided enquiry into the morality of his conduct lest he might feel compelled to

reform his ways, or if from the same motive he has refused to heed doubts which may have arisen in his mind. Let us suppose, however, that having taken all reasonable steps to ascertain the moral character of homosexual acts, an invert remains convinced that they are not in themselves sinful, and that in certain circumstances they are right for him. It is difficult not to allow that in such a case something very like a state of invincible ignorance appears to exist—and here the distinction between formal and material sin is important.

If a person indulges in homosexual practices, either knowing that they are wrong, or being clearly in vincible ignorance, he is held to have committed formal sin and to be culpable accordingly. If, on the other hand, he acts conscientiously in good faith and in invincible ignorance, this does not relieve his practices of their intrinsically sinful character and his conduct must still be regarded as sinful—but now, only materially and not formally. That is to say, his acts have the matter of sin (they contravene the standard of right reason in venereal behaviour) but not the form of sin, which consists in wilful and deliberate disobedience to God—and consequently do not render him morally blameworthy. It should, of course, be understood that this conclusion involves no condonation of his conduct. He is a sinner—and that is not denied; yet reason and charity demand that even the erroneous conscience shall be respected, and that blame shall not be imputed where genuine ignorance relieves the agent of his culpability.

The moral theological judgment upon homosexual acts, both male and female, may be stated roughly as follows:

(*a*) All homosexual acts are intrinsically sinful;

(*b*) Almost all homosexual acts are free, and therefore morally imputable—i.e., they are capable of being treated as blameworthy;

(*c*) Whether or not specific homosexual acts are regarded as attracting blame will depend principally upon the knowledge or the ignorance of the agent, and each case will require individual determination:

(i) For acts committed in a state of vincible ignorance the agent is undoubtedly culpable;

(ii) In certain instances, usually involving the genuine invert, homosexual acts must be considered as committed in a state of invincible ignorance, and for these the agent cannot

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morally be blamed—though such acts nevertheless remain sinful in themselves, and are materially sinful in their commission.

One final point perhaps deserves emphasis—namely, that in evaluating the morality of homosexual acts, care must be taken not to confuse subjective estimates with objective. The practising invert, for instance, might maintain that he is invincibly ignorant in the matter of his behaviour; but his competence to judge in his own cause is naturally suspect, and the casuist, with all the facts before him, might well reach a different conclusion. Thus the fact that homosexual practices may, in certain circumstances, be non-imputable in terms of blame does not entitle the invert to assume automatically that because of his condition he can indulge without fault. His conduct, as we have seen, must inevitably be at least materially sinful, and it might prove to be formally sinful and seriously culpable. In other words, the moral distinctions of the theologian do not offer any encouragement to laxity of sexual behaviour.

(V) THE CRIMINAL ASPECT OF HOMOSEXUALITY

This essay would be incomplete without at least some brief reference to a matter which deserves fuller consideration than is possible here—namely, the criminal aspect of homosexual sin. The terms 'crime' and 'sin' are often confused and used loosely, and it is important to observe the distinction between them. Crime has been defined as "conduct (either in commission or in omission) of which the State disapproves, and for which it demands a penalty"; sin, on the other hand, consists in free transgression of the law of God by thought, word, deed, or neglect to do what is enjoined therein. While it happens not infrequently that an act is both criminal and sinful, it should nevertheless be noticed that crime does not necessarily imply moral wrongdoing, and that sin is not (and, indeed, cannot be) always punishable by the State. This is well illustrated, for example, by the fact that British law regards the sodomist as a criminal while treating the practising Lesbian as innocent of any sexual offence; yet both equally rank as sinners, no matter what degree of moral blameworthiness may or may not be imputed to

them by the casuist, as he finds their sin to be either formal or material.

If this distinction in law between male and female homosexual acts is anomalous, no less so is the distinction in law between heterosexual and homosexual acts; for both, an explanation can be found, but neither would appear to be warranted on rational grounds. The purpose of attempting to regulate the citizen's sexual conduct by statute is no longer to restrain him from committing sin as such; but even if it were, it would be difficult to justify the selection of only one kind of sexual sin for punishment, to the exclusion of others equally grave. If, on the other hand (as would doubtless be maintained), the object of the State's action is to deter the subject from behaviour prejudicial to the health and stability of society, it is curious that the law should take no account of anti-social conduct such as prostitution, adultery, seduction of a husband or wife, and illegitimate parenthood. By making every male homosexual sin a criminal offence, it would seem that the State has in fact departed from a principle which has otherwise implicitly governed modern legislation and public policy in regard to sexual behaviour—namely, that however the purpose of the law may be defined in this connection, it is not to safeguard private morality or to shield the mature citizen from temptation to do wrong.

Consequently there is a growing conviction that reform of the present law is desirable, and that this could most effectively be accomplished by repeal of the statutes under which male homosexual acts are now penalised, and the substitution of legislation designed simply to protect the young, to punish assault and violence, and to prevent nuisance and breaches of public order and decency. Besides restoring some measure of consistency to the law, such a reform would have obvious practical advantages —for example: the removal of opportunities for blackmail, the protection of the citizen's privacy and personal liberty, and the facilitation of legal business. It would also secure equality of treatment as between men and women in the matter of homosexual offences. Nevertheless, such proposals have been opposed on the ground that they are both misconceived and mischievous, and are likely, if adopted, to prove harmful to the community.

This objection, however, proves on examination to be somewhat nebulous. Its proponents maintain that male homosexual

practices are always so dangerously anti-social in their effect that they cannot be treated simply as sexual irregularities, and that it is the duty of the State to suppress them by force of law. This, of course, is no new argument; for many centuries an extensive and intimidating catalogue of evils has been attributed to such practices. Philo believed that they produced sterility and emasculation, and John Chrysostom that they resulted in depopulation; Justinian declared that they caused famines, earthquakes, and pestilences; a Church council at Naplouse in 1120 was told that they had provoked menacing signs, attacks by Saracens, and grave political and social ills; Albert the Great asserted that they were as contagious as any disease; and underlying the general attitude of Christendom there can clearly be discerned the fear of another act of divine vengeance like that which was supposed to have overwhelmed Sodom and Gomorrah.

Yet no causal connection has ever been established between this sin and its alleged consequences, nor has any conclusive evidence (either historical or contemporary) been adduced to prove that it is actually (and not merely conjecturally) more anti-social than other forms of sexual wrong-doing. Lesbian practices, for instance, are equally prevalent and are arguably no less dangerous to society; it cannot but appear illogical, therefore, that those who wish to leave the law undisturbed should ostensibly condone in the case of a woman what they denounce in the case of a man. Furthermore, the impartial observer might well be perplexed that on such tenuous evidence the homosexual acts of males should be deemed more perilous to the community than the widespread heterosexual immorality which is reflected so strikingly in our divorce and illegitimate birth rates.

Resistance to legal reform springs also from a fear lest it should encourage the supposedly insidious influence of what may not inaptly be described as the homosexual 'underworld'. In considering this aspect of the matter, however, it should not be forgotten that statutory proscription of male homosexual practices has itself contributed to the creation of this 'underworld'. Inverts, and especially practising homosexuals, naturally tend to discover and associate with one another—but they do so under the shadow of a law which regards them as potential if not actual criminals. In such circumstances it is not difficult to understand the emergence of a sort of homosexual 'freemasonry' (it would be an

exaggeration to term it, as some have done, an organised fraternity) with its recognised conventions and distinctive jargon. This not only facilitates introductions and friendly intercourse, but also finds expression in an artificial, intense, unstable, and often somewhat sordid social life which has its obvious attractions for the pervert, the male prostitute, the blackmailer, and other undesirable persons. In its total effect and its implications this development is undeniably contrary to the good of the community; not only may it serve to attract others to homosexual indulgences, but if not judiciously handled it could foster a self-conscious and aggrieved minority which might prove a dangerous focus for social or political disaffection. Here, however, important questions of public policy are involved; but it would be wise to weigh carefully the possibility that continuation or extension of the present law might only intensify and drive further underground the abuses against which it is directed, while its amelioration might prove beneficial to society at large.

It has been urged that in regard to male homosexual practices there is good reason for the state's departure from the general principle that the criminal law should take no direct cognisance of private sexual sin. Adultery and fornication, so it is claimed, are at least 'natural' in that they involve the performance of normal heterosexual physical acts, but homosexual practices are demonstrably 'unnatural'—and to offend against sexual morality by contravening 'nature' is more dangerously anti-social than to offend 'naturally'. This argument appears to rest upon the premise that any subversion of the natural order in the realm of sex is a disruptive potential of sufficient power and magnitude to threaten both the health and the stability of society. Plausible though this is, however, there is no proof that it is more than an attractive theory. Homosexual practices have persisted, with fluctuations of incidence due to fashion and social upheaval, during most of recorded history, yet there is apparently nothing to show that they have contributed in any ascertainable measure to the decay of civilisations or the disintegration of society. Moreover (to return once again to a point which has already been stressed enough) the law at present ignores private Lesbian practices, and doubtless will continue to do so—yet if naturalness is a criterion of what is socially acceptable in sexual behaviour, they stand condemned with male practices. Penalisation or even

suppression of the latter, therefore, will not wholly eradicate from the midst of the community the inordinate conduct which is held to imperil it—a fact which seems to have been overlooked.

The chief defect of this theory is its reliance upon a crudely mechanical conception of the 'natural' in sexual behaviour which has tended to dominate the discussion of this question from at least the time of John Chrysostom. Venereal acts, however, are natural, not simply because they are heterosexual or involve penile-vaginal copulation, but rather because they are consistent with the whole purpose of human sex as perceived by the exercise of right reason—in other words, because they are directed to conceptional or relational ends within the context of the 'one flesh' relationship. Fornication and adultery, therefore, in a different but equally real degree, are no less unnatural than male and female homosexual practices—and to maintain otherwise would seem to be dangerously sophistical; they too contradict and frustrate the ordinance of God for the sexes, and in illegitimate parenthood and the disruption of marriage produce results which are flagrantly anti-social in character. Consequently it is difficult to justify as reasonable the argument that male homosexual practices alone should be proscribed by the State as criminal on the ground that they are perilously unnatural.

The problem of sexual immorality and its effect upon the community must never be viewed or tackled piecemeal. St. Paul wrote that homosexual practices brought upon their perpetrators "that recompense of their error which was due", and Augustine interpreted this to mean that such practices are not only sinful *per se*, but also a requital for other sins. In other words, their very existence is evidence of a mysterious nexus between cause and effect in the moral realm, the significance of which must not be underestimated.

In any society the prevalence of homosexual practices is always one of the more striking indications of corruption in its sexual life as a whole. Thus the 'problem of homosexuality' which now confronts us arises from a decay of moral standards and an abandonment of moral responsibility in the field of sexual relation generally—and these, in their turn, are due to false or imperfect conceptions of sex and to ignorance or rejection of God's will for man and woman. Homosexual practices, therefore, are not themselves so much a source of corrupting influence as the ineluctable

result of a corrosion which has already left its mark upon marriage and family life in our time and may, if not checked, lead to further evils. Hence attempts to suppress such practices by law may be little more than efforts to cure symptoms while neglecting the disease itself.

It is impossible to resist the conviction that despite a superficial show of complacent indifference our society is well aware of the nature of this disease, and has a profoundly uneasy conscience about it. But an unpalatable truth must be faced: instead of addressing itself energetically to the reform of what is amiss in its sexual life and ideas, it has tried to relieve its sense of guilt by treating the male homosexual (as once it treated the prostitute) as a convenient scapegoat. Ultimately such a projection of blame must prove futile; but much harm, distress, and injustice may be caused before it is effectively exposed as a discreditable evasion of social and moral responsibility. If Augustine is right, it is certain that homosexual practices (whatever may be said of their intrinsic morality) are a 'recompense' with which any society may be visited if it departs from the Divine principles by which human life should be governed, and from the allegiance which it owes to God. It is certain, too, that they always point to a radical disorganisation of the relationships between men and women upon which the whole complex social structure is reared. Hence it is vital to see the question of male homosexual practices in a wider context than that in which it is commonly set.

Does this then mean that the State should treat as criminal offences *all* sexual sins which are demonstrably anti-social in their effects? A moment's reflection will show that even if this were desirable it would be manifestly impracticable. Innumerable attempts have been made in the past to suppress both homosexual and heterosexual immorality by statute and police action, and all have failed. The present legal proscription of homosexual practices is thus an anachronism, and its conspicuous lack of success is sufficient proof that this method of trying to enforce moral behaviour upon the subject is futile. The principle already mentioned—namely, that it is not conceived to be the purpose of the law to safeguard private morality or to shield the mature and presumably responsible citizen from temptation to do wrong—appears to represent the limit beyond which the modern legislator is not prepared to go in taking cognisance of sexual sin,

except where there has been assault or violence, corruption of the young, or public indecency or nuisance. The only exception to the general application of this principle is in the case of male homosexual acts—and several reasons have already been adduced to show that such an exception is unwarranted. It should clearly be understood, however, that to exempt the private sexual sins of the individual from the scope of the criminal law is not to condone them or dismiss them lightly. Nothing can alter the fact that they are moral offences for which he or she must normally be held culpable; yet at the same time they are regarded as acts of wrong-doing which, by reason of their peculiar character, cannot properly be prevented or punished by the State. And from this category of immoral sexual acts which are deemed not to be cognisable by the law there would seem to be no justification for excluding male homosexual practices.

(VI) SUMMARY

In this essay I have tried to present an impartial and balanced assessment of some of the moral and cognate problems connected with homosexuality. This has involved both a critical estimate of the biblical and historical factors which have contributed to the development of the Western attitude, and a consideration of the moral character of homosexual practices. In dealing with the latter, I have adhered closely to the theological principles by means of which the morality of human behaviour has traditionally been determined, but I have also paid due regard to modern insights into the nature and purpose of sex. I trust that the result may not unfairly represent a reasoned Christian judgment upon the matter.

There are, of course, many religious and social aspects of this question which could not be considered here. Thus I have said nothing about the Church's pastoral and reconciliatory ministry, either to the sinning or to the innocent homosexual, nor have I discussed the special responsibilities and obligations of the State —though to both I have alluded in passing. Again, I have omitted all reference to the invert's personal problems, and in particular, to that of attaining a satisfactory and morally sound adjustment to life. These are all matters of such great importance

that they cannot be handled and dismissed in a few sentences; since, therefore, some selection was inevitable, it seemed right to concentrate upon the moral and allied issues, as these are of immediate and pressing interest.

THE MEDICAL ASPECTS

INTRODUCTION

THERE is much interest, some alarm and considerable prejudice about homosexuals. Much of the last named is founded on ignorance and misconceptions, as the belief that homosexuality is simply a form of vice which could be controlled at will. But apart from such facile assumptions, wide differences of opinion exist about the extent, causation, and treatment of the condition. The reasons are not far to seek; homosexuals are secretive about their lot, and naturally disinclined to give information about themselves. When they do seek advice, it is more often than not because they are in trouble. Consequently, as Bennett points out, doctors are apt to see a selective rather than a representative cross-section of the disorder. Even such an authority on the subject as the late Havelock Ellis had to base his estimates of the incidence of the disorder largely on clinical experience.

Various large-scale enquiries have been made; but with the notable exception of the Kinsey Report and K. Davis's enquiry into homosexuality in women, they have been criticised chiefly on the grounds that full and frank information could not have been obtained. Kinsey went to great pains to cross-check his results' numbers, and though his figures of 37 per cent are perhaps startling, they are probably accurate.

Opinions differ considerably about causation, and the same applies to treatment. The results of any forms of treatment are notoriously difficult to assess, and are inclined to give rise to passionate controversy in most fields of medicine; the field of homosexuality is no exception to the rule! Probably owing to the difficulty of assessing results and obtaining adequate follow-ups, no figures of results appear to exist. The field is thus wide open to expression of clinical opinions, which vary from the very cautious to the incredibly optimistic, and probably more accurately reflect the personality of their sponsors than the reliability of the results.

If the reader is to be able to form adequate judgments on this complex subject, and to see it in perspective, what he requires above all is facts. It is also essential to view the matter dispassionately, with the same detachment and objectivity as, for example, the venereologist approaches his task. It is not a question of approval or disapproval of the patient's behaviour, it is a question of scientific observation, and drawing the conclusions warranted by the facts.

To the best of my ability I have tried in the ensuing pages to follow my own advice, and give as factual and objective an account of the subject as I can. My task is to present the medical aspects, and I have, as far as possible, confined myself to these. In the chapter on offenders, the very nature of the subject has, however, involved some trespass into neighbouring sociological territory. I have not trespassed more than I need, but I believe in any case that the doctor's special knowledge of these problems gives him some right to intrude. I have been told there is, in actuality, no law of trespass; however this may be I can only say that I am quite brazen and unrepentant about my transgressions!

I should make it clear that *all* the opinions expressed here are my own, and must not be attributed to any of the authorities I work for, or my co-authors. I deliberately wrote my manuscript quite independently so as to avoid any possible mutual embarrassment on a controversial subject.

I would like to thank my wife for her assistance and advice, and to thank Mrs. E. K. King for her efforts on the typewriter and in deciphering my execrable handwriting. I would also like to make acknowledgment to Mr. H. V. Usill for the friendly interest he has shown and help he has given in getting this work to press.

W. L. N.

I

INCIDENCE AND CAUSATION OF HOMOSEXUALITY

HOMOSEXUALITY refers to sexual attraction and interest between members of the same sex. There are all gradations of the condition. At one end of the scale there are those who have never had a normal sexual impulse. These are sometimes referred to as constitutional inverts, a term which is regarded as doubtfully accurate by some. Others have both homosexual and heterosexual impulses, and are called bisexuals. At the other end of the scale from the complete invert are those who are only homosexual under exceptional conditions, for example, when they are totally segregated from the opposite sex; their homosexuality disappears as soon as they return to a normal environment.

The incidence of homosexuality in males has been variously estimated as 2–4 per cent of the population by Havelock Ellis in England, 5 per cent by Hirschfeld in Germany, and 37 per cent by Kinsey in the United States. Kinsey's survey was made on over 1,000 cases—which were extremely carefully investigated and cross-checked. The criteria he used for men is that actual ejaculation had been reached in the course of some kind of homosexual activity. Rating his cases according to the degree of preponderance of homosexuality over heterosexuality, he considered 13 per cent of men were predominantly the former. Havelock Ellis estimated that in about 50 per cent of homosexuals in this country overt homosexual practices did not occur.

In women—where the term *Lesbian* is used to designate the condition—Kinsey puts the figure at about half that for men, though Ellis thought Lesbianism was the commoner. Katherine Davis, from investigating 1,200 college women in the United States, found 50 per cent of women had shown evidence of some degree of homosexuality at some time in their lives, overt practices occurring in about half this number. The wide divergencies these figure show indicate at the outset some of the complexity of the

tropins (substances which in men should theoretically increase the amount of male sexual hormones and decrease the amount of the female hormones), in fact, sometimes the reverse occurred.

One must conclude, therefore, that present-day knowledge does not allow it to be said that any *known* sexual hormones cause homosexuality. The only exceptions are in cases of males who are physically underdeveloped, where some results from the administration of appropriate hormones can be obtained—otherwise all that can be said is that hormones which produce known physical sexual characteristics, have no effect in regard to the direction of the sexual impulse. The endocrinologists seem generally sceptical, yet Mayer Gross, Slater and Roth, in their recent textbook, express the belief that a physical, probably endocrine basis will ultimately be found in "the more constitutional cases." As discussed later, it is hard to see that any of the psychological explanations put forward can adequately explain them. An organic cause seems far the most likely. Nevertheless, most writers seem to favour a psychological causation.

PSYCHOLOGICAL FACTORS

All writers on the subject are agreed that whatever other causes there may be, psychological factors are of great importance. They can be considered in what might be termed an ascending scale of complexity of explanation.

Kinsey, who clearly is exceptionally widely informed on the subject, does not think complex psychological explanations are even necessary. His views can be summarised as a belief that opportunity and facilitation are the main determinants. He contends that homosexuality is by no means so abnormal as is popularly supposed. His arguments are based on the frequency of its occurrence as judged by his own figures, its great prevalence in Eastern countries, and its existence in nearly all mammals "from mice and pigs to chimpanzees". He believes that, in animals, it is largely fortuitous whether the male approaches his own or the opposite sex. Observations on rats who have been artificially segregated showed that in the absence of females, the male rat indulges in sexual activities with his fellow males. The longer the segregation lasts, the harder it is to rewaken his interest in the females. It is always dangerous to argue from

animal similes, but there is a clear parallel between this and what can be observed in humans.

Returning to behaviour in humans, Kinsey advances the interesting argument that the attitude of society in making homosexual activities taboo, in fact tends to perpetrate them.

East and Hubert in an extensive investigation, and Taylor in a shorter paper, agree that seduction in youth was the commonest single factor which would appear to cause homosexuality. While it undoubtedly plays a part, this explanation, like Kinsey's, appears an over-simplification of the issue. In some homosexuals the time-lag between the seduction and the development of homosexual tendencies is great, and they often appear either to have been indifferent to, or actively to have disliked the experience. In other cases, all the evidence points to the youth acquiescing in homosexual practices because he was already predisposed, making opportunity rather than being made by it. Finally, as East himself points out, many homosexuals have their first homosexual phantasies at a very early age, for example when four years old, which must be well before they were seduced. On the whole seduction, like rejection by a woman after adolescence has been reached, seems more likely to account for homosexual tendencies manifesting themselves, than explaining the origin of the abnormality. To understand these it is necessary to go deeper, as discussed later.

East and Hubert also found broken homes, especially the absence of the father, contributory causative factors, and stress, as Clifford Allen does, the harmful effects of foolish upbringing, not only on sexual matters, but in the parental attitude to the child generally. Those who desire a daughter, for example, bring the son up as girlishly as possible. A widowed mother, anxious not to lose her son, keeps him away from women and unconsciously fosters any latent homosexual tendencies.

Fenchel makes the observation of how often perverts find the genitals of the opposite sex repugnant. I would endorse this observation from my own experience as I believe it plays a very important role. It possibly results from instilling shame about their bodies into children. Foolish upbringing on sexual matters, as some of the case-histories will show, seems to be partly responsible in some cases for later sexual mal-development. Fear, as well as repugnance, seems to be aroused by the genitalia of

the opposite sex. Freud explains this, in the case of men, as a castration fear, alleging that there is a phantasy of a woman as a man who has lost his genitals. Another factor which must be taken into account is the anatomical association between the organs of reproduction and of excretion, which may account for the fascination of lavatories as a site for homosexual practices and for the interests of the pæderast.

East also points out that fear of venereal disease may so frighten a young man that he dare not have relations with a woman. I have seen some striking examples of this in my own practice, but usually underlying this fear is an already present sense of guilt about sex, imbibed from earlier teachings, which is expressed as a fear of venereal disease. This, of course, does not mean that venereal disease is not a very real danger to be guarded against, but experience shows that the fear is not always as rational as it appears.

Finally, there are the psycho-analytic theories to account for homosexuality. Adler hypothesises that feelings of inferiority in the male prevent him fulfilling his normal role, while women compensate their supposed feelings of inferiority at being feminine, by the masculine protest, i.e., they identify themselves with men. This is somewhat in keeping with Kinsey's findings that elderly spinsters turn to homosexual practices as they cannot secure normal relations. Freud's theories are based on the existence of infantile sexuality. A good deal of confusion has arisen, through his use of concept of the libido (the life force or *elan vitale*) deriving its energy from the sexual instinct, which is purely theoretical, and observations on overt sexuality in the child. The former concept is often disputed. Though many, e.g., Mayer Gross, *et al*, who are not psycho-analytically orientated, are prepared to admit that sexuality manifests itself at a very early age, and shows a variety of manifestations already in childhood. As already stated, sexual sensations are experienced, and masturbation can be witnessed, as early as four years of age and possibly before. Freud's assertion that the pleasures derived from stimulation of all errogenous zones, as, for example, the lips in suckling, are all a variety of sexual manifestation, is again often not accepted. It is more widely agreed however that sensations derived from the urethral and anal zones, which are anatomically so closely linked, are early forms of sexuality. The objections to admitting

to the existence of infantile sexuality often arise from prejudice at the idea of sex occurring at a tender age in an 'innocent' child.

The importance of realising that sex develops very early, is that therein may be found much of the explanation of the perversions generally. Freud regards the child as a polymorphous pervert, an alarming sounding phrase, though it aptly conveys his meaning. He believes that the child passes through various stages of sexual development, much as the fœtus recapitulates its racial history. If for any reason such development is interfered with, then sexuality remains 'fixated' at the particular level it has then reached. It is a plausible enough explanation, the main criticism lies in regarding the child as a 'pervert' in what is a natural stage of development: Freud, of course was implying no censure, but as Mayer Gross *et al* point out: there is a tendency on the part of psycho-analysts to explain childish experience in adult terms.

It is impossible to go widely into Freud's theories here; the main points are: various psycho-sexual phases of development are already gone through by the age of seven, and the success with which each stage is passed through will form the pattern of later sexual development at puberty. The three main developmental phases he postulates are: firstly, the 'oral' or auto-erotic stage, when the child's pleasures are connected with its own body. As well as oral satisfaction, he believes the infant experiences pleasurable sensations connected with defæcation; a failure to pass through this stage may account for the frequency with which erotic satisfaction is obtained from anal intercourse in some homosexuals, and indeed in some heterosexuals. Secondly, there is an 'œdipus stage', when the child loves the parent of the opposite sex, and identifies itself with this parent. In the third stage the child comes to love the parent of its own sex, and if this stage is safely reached, then later he (or she) will mature into a normally sexed individual.

Two dangers arise in the second stage: one is that if a boy, for example, develops feelings of guilt at wanting his mother to the exclusion of his father, he may escape from the anxiety aroused at being the latter's rival, by identifying himself with the mother, so that he shall receive his father's love instead of his wrath. This may appear far-fetched and improbable. But it does fit in

with certain observed facts. Potential antagonism between father and son (to a lesser extent between the mother and daughter) is seen in the animal kingdom, where the father is ultimately overthrown by the son, who is a real danger to him. So in humans such rivalry shows itself by parents being stricter and more critical of children of their own sex. Freud's hypothesis also fits in with observations of how frequently homosexuality occurs where the father has been away or the home broken, the guilt aroused at being left in 'possession' of the mother, necessitating greater inhibition of potentially incestuous trends. Such conflicts are, of course, outside the realms of consciousness, and it is necessary to accept the existence of an unconscious mind, if these explanations are to be accepted. The sexual precocity of perverts, referred to earlier, suggests that these conflicts may have a greater reality for them than they would in less highly sexed children.

Stekel stresses psychological factors almost exclusively, and indeed, by sweeping constitutional factors aside in the most cursory manner, tends to over-simplify the problem and throws suspicion on his own objectivity. But, as so often is the case in his works, his intuitive grasp of a problem shows considerable psychological insight, and often makes him easier to follow than other psycho-analysts. He postulates the following processes in the development of the disorder. The patient is potentially of a highly jealous disposition; he fears that if he loved a woman he would be so terribly jealous that he could not bear it if she were faithless, and becomes terrified of what he would do if this occurred. He fears he might even kill her rather than forgive her. This arouses such anxiety that he must at all costs avoid any possibility of such a situation arising, and does so by avoiding women. From my experience of perverts generally, I would be prepared to believe that such a mechanism may exist. Indeed, it is a point of view which might explain the early seeds of perversions. As noted, the sexual precocity of perverts can be taken as a sign of early emotional development. Hence they love and hate intensely but they are still too young to cope successfully with such strong feelings. In consequence they cannot tolerate those rejections which come the way of every child. Then, just as with a rejected adult lover, they come to hate those they really love, that is, the parent of the opposite sex. This would fit in with

Stekel's hypothesis, and yet be compatible with the early manifestations of homosexuality so frequently observed.

None of the psychological theories, however, answer the question why these experiences, common to all children and adults, only affect some. As Henderson and Gillespie point out, to answer this it would seem necessary to look for some constitutional factor; the soil, in other words, is responsible for how the seed grows.

HEREDITARY AND CONSTITUTIONAL FACTORS

Havelock Ellis took the view that homosexuals were a variety of hermaphrodite, being unfortunately endowed with the body of one sex and the desires of the other. The fact that some homosexuals have certain bodily characteristics of the opposite sex would lend support to these views, which are largely based on analogy of certain moths, which, if bred together, produce an intermediate sexual species. Long also postulates an 'intersex', which can occur as sex is determined not by a particular gene or group of genes, but by a balance being struck between opposing groups of genes. The details of this process, and the objections to this hypothesis are too technical to enter into here, and it is enough to say that Elliot Slater, who is an authority on genetics, believes that hermaphrodism and homosexuality could plausibly be explained in this manner. Havelock Ellis also claimed familial or hereditary inversion in 35 per cent of cases; Kinsey criticises these figures, and points out that it would need extraordinarily large numbers to prove anything, in view of the prevalence of homosexuality, and asserts that in fact there is no such proof. Direct transmission of the disorder in the complete invert is obviously impossible.

Some interesting findings pointing to a strong constitutional element have resulted from studies on homosexual twins. An investigation by Kallmann in the United States is both representative and the largest of its kind. He sought out homosexual men not only via medical sources, but via "disreputable haunts of the underworld." He collected eighty-five predominantly homosexual men, each of whom had a twin brother. Forty-five of these men had a binovular twin, i.e., a twin resulting from the simultaneous fertilisation of two ova; each of the other forty

was one of a pair of identical twins, i.e., twins who result from a splitting in two of one ovum immediately after fertilisation. In the case of the 45 binovular twins, just under half the brothers displayed overt homosexual traits, a figure approximating to Kinsey's estimate for the general population. But in the 40 identical twins, *all* the twin brothers were similar in regard to the degree of homosexuality as far as could be estimated from the history, and also in regard to overt practices. Of particular interest is the author's statement that as far as he could elicit—and it appears to have been a very careful study—these twins had shown customary homosexual secrecy about themselves, and developed the condition quite independently. In some cases they had not even been brought up together. A point of additional interest, in view of a widely held theory that in schizophrenia the patient is often struggling with latent homosexual tendencies, is that 6 of these 40 identical twins developed schizophrenia.

This concludes a short survey of the various explanations given to account for homosexuality. None of them are entirely satisfactory, none of them account fully for the condition. The psycho-analytical explanations reveal how sexuality develops, and the factors which may interfere with development. They would seem most satisfactory in explaining bisexuality. In the 'complete invert', who has never known a heterosexual impulse, they are less satisfactory. Even if psychological development has gone astray in earliest infancy, owing to emotional difficulties, the question arises why does it do so in children where upbringing and environment have been no different from those who have developed normally? Some inborn constitutional factors must be assumed present as it so often is the case in medicine, for example, in explaining why one individual gets tuberculosis, while another equally exposed to infection does not? Kallmann's work on twins is strong evidence in favour of a constitutional factor, for in some of his cases the situation was actually reversed: instead of a different characteristic resulting from the same upbringing, the reverse occurred, identical twins brought up under different circumstances both becoming homosexual.

Throughout psychiatry one finds that the structure of the personality is an interplay between environment and constitutional endowment, so much so that it is almost possible to devise an equation that constitution $\times$ environment $=$ a constant.

With increased knowledge it may be possible to analyse and resolve the so-called constitutional factors; they may, for example really be an expression of some physiological dysfunction which as yet we do not understand. If so, at present there is nothing that can be done about them. It is on this account that psychological theories are more popular, as they at least open up possibilities that preventive or therapeutic measures can be taken. How far this is, in fact, possible is discussed later on, but it is very necessary not to allow wishful thinking to influence judgment in the assessment of causation.

complete woman invert should only contemplate marriage with her male opposite number, when both parties will be content with companionship, without any question of sexual relationship entering into the matter.

IV

THE HOMOSEXUAL OFFENDER

THE post-war increase in homosexual offences has focussed attention on this problem, which is so important as to merit a chapter to itself. Anyone with experience of these offenders knows what intractable problems they can present, for many of them are unresponsive either to treatment or punishment. And the question is what can be done? Is the answer that there should be more facilities for treatment, or should there be special custodial institutions? Alternatively, should punishment be more drastic, or the law altered so that practices between consenting adults, however objectionable they may be considered, would only be regarded as breaches of the moral code, and not as criminal offences? In order to answer these questions, it is useful to sub-divide homosexual offenders into the following three categories:

(1) Those who offend against young persons or children.

(2) Those who commit acts of indecency in public, and who importune in public places.

(3) Those who indulge in sexual practices in private with another consenting adult.

All sexual offenders can be further sub-divided into those who are stable and those who are psychopathic, though, of course, there are degrees of instability. In advising Courts on the chance of the non-repetition of offence, this question of stability is the most important guide, but in deciding how best to deal with the individual offender, the first classification is the most useful.

Taking the second group first, i.e., those indulging in indecent practices in public and importuning: though a good number of these are psychopaths and male prostitutes, they are not infrequently otherwise respectable, educated and cultured individuals. They are often engaged in artistic pursuits, but staid business and professional men are included in their numbers. Generally, the more respectable they are, the more likely it is

that the offence is importuning rather than an act of public indecency. One of the most puzzling and peculiar features in these cases is a repetition of such behaviour, often after several convictions. The offences frequently occur in West End lavatories where those who commit them must be aware—indeed, know from their own melancholy past experience—that the police keep a regular watch. Hence it might be supposed that expediency alone would encourage discretion, but this does not appear to be so.

A possible explanation why lavatories are so often chosen is that they are good places for meeting like characters, but so are certain well known West End resorts and public houses, where presumably it would be equally easy to pick someone up, and to do so with greater safety. Probably the sight of other men's genitals is a precipitating factor in many acts of indecency. It is also possible that lavatories are not entirely fortuitously chosen, an element of vicarious excitement being present—the very risk involved being an added stimulant. Moreover, as indicated in Section I, the association in the mind between excretory and sexual function, may mean that the lavatory itself adds sexual interest. This, of course, is purely speculative.

That the sight of the male genitalia may be a powerful stimulus, is borne out by certain case histories. Thus a homosexual who served in the army told of the embarrassment he experienced, and the struggle he had in remaining chaste, owing to the very strong desire which was aroused in him by the sight of naked men in the bathhouse. He resisted temptation throughout the war, but after demobilisation ultimately succumbed, committing an indecent act in a public lavatory, where he happened by chance to see another man's penis through an aperture in a urinal. He came from a strictly religious family and had fought temptation to the uttermost, but once the barrier was broken down, as so often happens, he indulged in such acts on a number of occasions. Some more fortunate individuals find the mere act of looking is a source of satisfaction in itself, and are not tempted into any indecent practices. For example, I was referred to a patient who had been found loitering in lavatories, watching boys urinate. He explained his action by saying he was conducting a piece of research into the comparative number of boys who were circumcised here compared to foreign countries, and using this as a

measure of the efficacy of the National Health Service! This was clearly a rationalisation of a desire to look at boys' genitalia, but there was no evidence that he had ever tried to do more than this.

Alcohol undoubtedly plays a most important part in acts of importuning and indecency. As stated earlier, homosexuals often become very depressed. They then seek relief of tension through alcohol. The alcohol destroys inhibitions and impairs self-control, discretion is thrown to the winds, and a sexual offence all too readily occurs. One educated patient, an agreeable, quiet, retiring individual, whom I saw on his third charge of importuning, told me how he was normally very shy and would never be able—or, indeed, try—to make advances to anyone. But under the influence of alcohol his inhibitions would disappear and he would importune in public lavatories. Afterwards he would feel thoroughly disgusted with himself.

In the case of those committing acts of indecency in public which offend others, it would be fairly generally agreed that they must be stopped, but how to do this is by no means so easy to decide, for, as noted elsewhere, treatment is so often ineffective and punishment more so.

In regard to importuning, possibly the simplest solution would be to change the law. *The Lancet* recently made the interesting and sensible suggestion that importuning should only be an offence where a minor is concerned, where payment is demanded, or where the other party complains. This would seem a common-sense measure, for not only are homosexuals not interested in trying to importune normal individuals, but they have an uncanny flair for recognising their own sort, so that normal individuals would rarely be molested. Further, as normal adults would be entirely indifferent to their blandishments, no harm would result. Nor, as in the case of acts of indecency, would most persons be likely to be very offended if by chance they were the recipients of a smile, raised eyebrows, or even had to listen to some obscene suggestion.

It is within the bounds of possibility that indecent practices might actually be reduced if there were no punishment; sexual behaviour is paradoxical, the more forbidden the fruit, the greater the temptation. It is also possible that publicity given to sexual offences may itself incite others to commit them; the

mere fact that they know that others behave in the same way in some measure removes the moral sanction even though the legal ones remain. Both suggestions are purely hypothetical and tentative. A more practical, if expensive, prophylactic measure, would be to make the stalls in lavatories deeper, and to patch up the numerous holes and deficiencies in the walls that appear to be the cause of so much undoing. As homosexuals so often seem to congregate in lavatories, notices that confidential treatment can be secured, similar to those put up in regard to venereal diseases, might be a useful measure.

OFFENDERS AGAINST CHILDREN AND PSYCHOPATHS

These present the most serious and difficult problems. It is generally agreed that whatever tolerance may be extended to practices between adults, offences against young persons cannot be condoned. Admittedly, some of the juveniles who are assaulted are not made homosexual, in so far as they are already predisposed. With sensible handling, the effects on normal youngsters are not always as grave as is feared, yet there is clearly always a danger that such assaults may start a conditioning process in which latent homosexual tendencies will be awakened. Apart from these considerations, it is reasonable that boys should be protected against sexual practices exactly in the same way as girls are.

The theory has been advanced that the amelioration of the laws regarding adult homosexuality might allow an outlet which would lessen the temptation to seduce young persons. This, however, is no solution in most cases, for usually those who seduce juveniles are not the same as those who are interested in adults. Stanley Jones, who is very sympathetic in his writing about homosexuals and those he calls 'true inverts', goes as far as to designate homosexuals who assault children as 'perverts'. The term 'pervert' is at best an undesirable one; the expression 'paraphilia', used by Stekel, Allen, etc., is preferable. However, if the term 'pervert' is to be used, it hardly seems justifiable to regard one particular type of sexual abnormality as more perverse than another.

As the case histories have shown, seducers of young persons are often either frankly psychopathic or quite unable to resist

temptation, and often have a complete—and, indeed, remarkable—inability to appreciate there is anything morally wrong in their acts. The proper method of dealing with them is exceedingly difficult and an extremely important problem. Treatment, as the reader will gather, can only claim modest success, and the more unstable the offender, the smaller the chances of treatment achieving anything. The alternatives are punishment or custodial care; the latter being either in a prison or in a hospital.

At this stage it would be profitable to consider the existing facilities for custodial care, and if the reader is to have an understanding of the practical difficulties, a digression to explain the medical and legal concepts of insanity, and the present laws of certification, is needed.

At present a sexual offender can be sent to an institution in the following ways:

(1) As a voluntary patient to a mental hospital.
(2) He can be certified insane.
(3) He can be sent to prison.

In the future committal to a 'Prison-hospital' may be possible.

Voluntary Treatment in a Mental Hospital

Psychological treatment of sexual abnormalties does not usually necessitate admission to hospital. The exceptions to this rule are when for some reason it is desirable to remove the patient from his ordinary environment. This may be necessary if he has become so depressed or anxious that he cannot be safely treated outside, or he may be required to enter hospital, as a term of probation by the Courts. In the latter instance In-Patient treatment is often not really a therapeutic necessity, but the Courts probably feel that it is an added degree of protection for the public. It also undoubtedly satisfies public sentiment to some extent, by giving the impression that the matter is being treated with the requisite degree of seriousness. Further, as treatment usually is of necessity in a mental hospital, for there are virtually no other In-Patient facilities, it also gives the impression—quite spuriously—that the patient has been 'put away'.

As discussed later, certification is extremely rarely possible. What occurs is, that under the powers given by the Criminal Justice Act, 1948, the prisoner is bound over subject to his agreement, to enter a hospital named by the Court. Where this

Kinsey and others, it is very prevalent. Yet we recently won a fearful war, and have since increased production steadily (Butler, 1954). If this is a sign of national decay and soft living, then the fleshpots of Britain are indeed of a very austere variety! Once again, objective evidence that homosexuality is harming society is not very striking; though one must allow for the argument that, were it not for the law, it would spread so rapidly that it would bring about this decay. But this is only supposition.

Against this fear can be put the argument advanced by Kinsey, Ellis, Bennet, McKinnon, etc., that the feeling of isolation and segregation experienced by homosexuals is itself a potent factor in producing or aggravating the condition. Thus an easing of the law might in fact bring about the very ends desired by those who want the penalties increased!

As already remarked, these are questions which society, through Parliament, must answer; the psychiatrist is only concerned in so far as many of these cases come his way, and that his intimate knowledge of homosexuals puts him in a strong position to advise on the problem.

To summarise the position. All degrees of homosexuality are found. At one end of the scale is the complete invert, at the other the transient bisexual. The latter may be influenced to greater heterosexuality by treatment, the former are quite unresponsive. Overt manifestations will depend on the individuals aims, ideals and personality exactly as in heterosexuals. The commission of offences in public are not invariably associated with a poor personality, but the greater the degree of psychopathy the smaller the chance of avoiding repetition of such offences, either by treatment or punishment. It is in those of good personality that psychotherapy combined with physiological treatment has its successes. The prevention of sexual practices in private is another matter; many perfectly stable and socially useful individuals have no desire to be changed. They feel that as they can never have any other sexual outlet, society has no right to demand more of them than is expected of their normal brothers in whom extra-marital practices, though not condoned, are not punishable in law. In view of this, many think the law should be altered where consenting adults are concerned in private sexual activities. In the case of the seduction of young persons, however, even if the offender is regarded as ill, it is universally agreed that the

interests of the young must come first. If no other methods prevail the offender must be put in custodial care of some sort. Imprisonment is generally regarded as an unsatisfactory place of detention, and largely fails to attain its object. Therefore, special prison hospitals have been advocated as an alternative.

The one definite conclusion which emerges from a study of all the facts is that there is no universal panacea for this age-old problem, but that each case must be judged strictly on its individual merits.

HOMOSEXUALITY AND THE LAW IN OTHER COUNTRIES

THE purpose of this contribution is to summarise information about the law in the countries of Western Europe so far as it may affect homosexual behaviour, and to discuss the tendencies of recent development which may be discerned from the practice in those countries.

The attitude of any given legal system to the homosexual is not by any means fully defined by those rules, or articles, in the codes which expressly envisage acts of indecency committed by an offender with persons of his own sex. On the contrary, the laws of all civilised countries contain provisions which lay the sanctions of the criminal law upon certain undesirable sexual behaviour contrary to morality whether committed against persons of the opposite or of the same sex. These offences, which often indirectly affect homosexual conduct but are not exclusively directed against it, may be summarised under four heads:

(*i*) ABUSE AND DEFILEMENT OF THE YOUNG AND IMMATURE: i.e., the general provisions concerning indecent behaviour with minors under the age of consent.

(*ii*) ABUSE OF WEAK MEMBERS OF SOCIETY BY EXPLOITATION OF A POSITION OF AUTHORITY OR DEPENDENCE; FORCE OR FRAUD.

(*iii*) ACTS OF INDENCY COMMITTED IN PUBLIC.

(*iv*) SOLICITING OR IMPORTUNING.

After consideration of the provisions of the various legal systems under examination relating to the foregoing heads, which are not primarily concerned with homosexuality but with sexual behaviour unlawful on general grounds, this paper will set out the provisions of the various codes in so far as they affect expressly, and not merely incidentally:

(*a*) Adult homosexuals whether male or female in their relations with one another.

(*b*) Special protection of juveniles above the age of consent against homosexual acts committed by adults.

(*c*) Homosexual offences committed by minors.

(*d*) Criminal offences arising out of sexual behaviour not necessarily of a homosexual nature.

(*i*) ABUSE AND DEFILEMENT OF THE YOUNG AND IMMATURE

The ordinary provisions concerning indecent behaviour with children and young people under a given age of consent, regardless of sex. In all these cases the consent of the victim is by definition irrelevant.

FRANCE:—According to Article 331 Section 1 of the French Criminal Code:

> "An attempted or completed indecent assault (*outrage à la pudeur*) committed without violence against a child of either sex of the age of less than 15 years is punishable by penal servitude."

The age of consent in France is 15. Error about the age appears to be no defence in such cases.

BELGIUM:—According to Article 372 of the Belgian Criminal Code:

> "Any indecent assault committed without violence or threat against or with the assistance of a child of either sex, before the latter has completed the 16th year of age is punishable with penal servitude."

HOLLAND:—According to Article 247 of the Dutch Criminal Code:

> "Whosoever commits . . . acts of indecency (*ontuchtige handelingen*) with a person under the age of 16 years or induces such a person to carry out or submit to such act . . . is punishable with imprisonment up to a maximum of six years."

The age of consent in Holland is 16. Error about the age may in certain cases be a defence.

SPAIN:—According to Article 436, 429, 430, indecent behaviour (*abuso deshonesto*) directed against a child under the age of 12 of either sex is punishable with imprisonment (*prision menor*) from six months to six years and/or fine. The protection of young girls is extended by Article 436 III to the age of 16 against any sexual interference, provided they are uncorrupted (*honesta*).

ITALY:—According to Article 530 I of the Italian Penal Code:

> "whoever . . . commits acts of indencency (*atti di libidine*) with or in the presence of a person below the age of 16 is punishable with imprisonment (*reclusione*) between six months and three years."

The age of consent in Italy is 16, ignorance of age cannot be pleaded if the minor is under 14 years of age (Art. 539) Prosecution under Article 530 I cannot be instituted except upon complaint of the victim or his guardians (Art. 542). It is a complete defence to the charge to prove that the minor was 'already corrupted' before the offence was committed (Art. 530 III).

SWITZERLAND:—According to Article 191 I of the Swiss Criminal Code:

> "anyone who has carnal knowledge of, or subjects to an analogous act, a child below the age of 16 years, is punishable with penal servitude (*reclusion*)."

The age of consent in Switzerland is 16.

W. GERMANY:—According to Article 176 (3), indecent acts committed against a person below the age of 14 of either sex is punishable with penal servitude up to ten years and not less than imprisonment for six months. The protection of girls against carnal interference by men is extended by Article 182 to the age of 16 provided they are uncorrupted (*unbescholten*).

NORWAY:—The age of consent is 16. With regard to sexual abuse of children Norwegian law does not differentiate between males and females nor between heterosexual and homosexual behaviour. In this respect, however, Norwegian law does distinguish between 'indecent intercourse' with a child on the one

hand, in which case coition or an act of a kindred kind must be proved, and 'indecent acts' committed with a child. Article 195 makes indecent intercourse subject to a minimum penalty of three years and a maximum of fifteen years imprisonment, if the child is under 14; if the child is between 14 and 16, punishment is more lenient (6 months to 5 years). (Art. 196.) A person who commits an indecent act with a child under 16 or induces such a child to indecent practices is punished with imprisonment from six months to three years, but with imprisonment from one to three years if the child is under 14 or under the authority or charge of the offender, or if the offender has used threats. (Art. 212 II.) Ignorance as to age is no defence.

DENMARK:—Article 220 of the Danish Criminal Code threatens with long term imprisonment any sexual interference with or act of indecency against a girl below the age of 15, the penalty may be doubled if the child is still under 12.

This provision against heterosexual interference with a child is extended by Article 225 I to similar offences committed with a young person under 15 of the offender's own sex.

The age of consent is 15, and ignorance of age is no defence.

SWEDEN:—As the Swedish law stands at present, acts of sexual interference or indecency committed against children of the same sex are treated in the Criminal Code separately from heterosexual acts (ch. 18:10 I); but the separation affects only the severity of the punishment which may be inflicted. The punishment for homosexual offences committed on children below the age of 15 is penal servitude for not more than four years or imprisonment for not more than two years.

The age of consent is 15.

(*ii*) ABUSE OF AUTHORITY OR DEPENDENCE; FORCE OR FRAUD

Sexual intercourse or acts of indecency committed under exploitation of a position of authority or dependence, or by the abuse of mental defectives, as well as sexual intercourse obtained by force, intimidation or by a trick, are punishable under all legal systems under examination here, in most cases without express distinction of sex.

FRANCE:—Article 332 Code Penal, which punishes attempted or completed indecent assault if accompanied with violence by penal servitude, is applicable without distinction to all indecent assault: it applies therefore to indecency committed against a person of the same as well as of the opposite sex.

BELGIUM:—Article 377 Criminal Code deals with abuse of authority and dependence.

Article 373 I and 373 II with violence and intimidation etc., in connection with sexual acts, whether hetero- or homosexual.

HOLLAND:—Article 247 of the Dutch Criminal Code makes punishable indecent acts of sexual intercourse obtained by abuse of temporary defencelessness of the victim. It applies equally to hetero- and to homosexual acts.

SPAIN:—Article 434 Spanish Criminal Code deals with abuse of authority, Article 429 I and 429 II with force and intimidation, Article 436 with fraud.

ITALY:—Article 520 Codice Penale of Italy deals with abuse of public authority.

Article 519 with violence used in furtherance of acts of indecency.

SWITZERLAND:—Article 194 II of the Swiss Penal Code envisages expressly homosexual relations when it renders punishable by imprisonment "anyone who by exploiting the distress of a person or his or her sex, or by abuse of his authority as an official, employer or similar position, induces that other person to suffer or commit an act of indecency."

W. GERMANY:—Article 174 German Criminal Code renders punishable with penal servitude up to five years indecent acts whether of a heterosexual or homosexual nature committed by abuse of a position of dependence (guardians, educators, officials and doctors in relation to persons in their care or under their charge). In addition Article 175a I renders punishable homosexual conduct by males accompanied by force or threat of force and 175a II similar conduct under exploitation of a situation of

special dependence (a term wider than that envisaged in Article 174).

NORWAY:—Articles 193, 194 deal with the use of fraud or threats, or the abuse of a state of unconsciousness or insensitivity to promote intercourse, and are applicable to homosexual as well as heterosexual behaviour. Article 197 renders liable to imprisonment up to one year indecent intercourse with a person under 18 who was under the authority or charge of the offender.

DENMARK:—Article 225 I Danish Criminal Code makes applicable to homosexual behaviour Articles 216, 217, 218, 219, 220 which are directed against the use of force, fraud, abuse of authority etc., to bring about heterosexual acts of intercourse or sexual lust.

SWEDEN:—Under Chapter 18:10a of the Swedish Criminal Code are punishable (a) homosexual acts committed with a lunatic or mentally defective person, (b) homosexual acts committed with persons under care and protection in prisons, hospitals, almshouses, orphanages or similar institutions, provided the offender is on the staff of that institution, (c) homosexual acts committed with any other person by grave abuse of that person's dependence. These offences under 18:10a envisage expressly homosexual as distinct from heterosexual behaviour, but a report issued in 1953 by the Swedish Royal Commission for reform of the Criminal law (which is to come before the Swedish Parliament shortly in the form of a government bill), proposes to abolish the distinction between heterosexual and homosexual offences in this respect. This would simplify the law, the more so since heterosexual acts against the persons enumerated above are already punishable in Swedish law and no distinction on principle need or can be drawn between the two.

(iii) ACTS OF INDECENCY COMMITTED IN PUBLIC

Acts of indecency committed in public or so as to cause public scandal are punishable in all legal systems here considered, regardless whether the offence is committed by persons of the same sex or of different sex, by one person alone or by two or more acting in concert.

FRANCE:—According to Article 330 Code Penal:

> "anyone who commits a public outrage to decency is punishable with imprisonment from three months to two years, and by a fine from 2,000 francs to 24,000 francs."

According to the decisions of the French Court the 'publicity' envisaged in Article 330 does not exist in a private place where there has been a single involuntary witness who was especially likely to have been upset by what he saw; the presence of a third person does however usually render the occasion a public one, for it is evidence which tends to show that sufficient precautions were not taken against being seen.

HOLLAND:—Article 239 Dutch Penal Code deals with gross indecency in public:

> "Shall be punished with imprisonment of up to two years or by fine up to a maximum of 300 guilders:
> (1) public outrage to decency
> (2) outrage to decency committed in the presence, even involuntary, of a third person."

ITALY:—According to Article 527 of the Italian Criminal Code of 1931 provides:

> "anyone who commits in a public place, or in a place which is open or exposed to the public, acts of obscenity shall be punished with imprisonment (*reclusione*) from three months to three years."

According to Article 529:

> "for the purpose of the Criminal Law acts and objects which, according to general feeling, offend the general feeling shall be considered obscene."

During preparatory work on the 1931 code a proposal was made that indecent acts committed on or with a person of the same sex should be made punishable "whenever public scandal is caused thereby" but this was not adopted.

SWITZERLAND:—According to Article 203 of the Swiss Criminal Code 1942:

> "anyone who commits in public an act contrary to decency shall be punishable with imprisonment or fine."

L

GERMANY:—According to Article 183 of the German Criminal Code:

"anyone who causes public annoyance by indecent behaviour shall be punishable by imprisonment up to two years or by a fine."

NORWAY:—According to Article 378 Norwegian Criminal Code:

"whosoever by word, gesture, or improper conduct in a public place, or by any means likely to cause disturbance of the peace, unmistakably invites or entices to indecent behaviour, shall be punishable by imprisonment up to three months."

"Imprisonment up to six months can be given for a repeated offence."

"A fine may be imposed in case of extenuating circumstances."

Exposure is punishable under Article 212 I.

DENMARK:—Article 232 of the Danish Criminal Code provides:

"anyone who violates decency or gives public scandal by lewd behaviour is punishable with imprisonment up to four years or under extenuating circumstances with *havte* (a special lenient form of imprisonment from two days up to a maximum of two years) or fine."

SWEDEN:—A person found guilty of indecent behaviour in public (i.e., behaviour which has given public offence but does not otherwise constitute a penal offence under the Penal Code) is punishable by fine or imprisonment for not more than two years.

(*iv*) THE ACT OF SOLICITING OR IMPORTUNING

This survey does not concern itself with the question of homosexual prostitution, and in many legal systems acts of solicitation to homosexual behaviour, in so far as they are not punishable under special legal provisions or police regulations, are dealt with in the relevant articles aiming at suppression of homosexual prostitution. A few special legal rules are quoted here as specimens.

FRANCE:—By a law of April 13th, 1946 (Dalloz Compilation 1946 Legislation o. 177) Article 3 soliciting (*raccolage*) is a punishable offence regardless of the sex of the person practising it or that of the person solicited. Both sexes are covered by this law.

SWITZERLAND:—Article 205:

"anyone who publicly and with indecent intent importunes a person who has given him no reason for such acts shall upon complaint be punishable by arrest or fine."

NORWAY:—Soliciting in public is punishable under Article 378 (quoted above under iii).

DENMARK:—Soliciting in public even without expectation of gain is an offence against police regulations and is punishable by a fine and or an injunction not to be found again in the same place in future if this place is one frequently resorted to by homosexuals. Article 232 (quoted above under iii) is also occasionally used to deal with the offence of soliciting in certain public places.

Adult homosexuals whether male or female in their relations with one another

Only two of the ten countries of Western Europe which were the subject of this survey possess in their Criminal Codes express provisions which make homosexual behaviour carried out in private among consenting male adults a punishable offence. These two countries are Germany and Norway, and even of these two Norway, despite the express provision of its Criminal Code, does not now in fact institute criminal proceedings against adults for homosexual relations with other adults. In the other eight countries here examined the threat of criminal punishment has, in some cases quite recently, been removed from homosexual conduct among grown-up persons. As will be seen from the fact that this change has usually been accompanied by retention, indeed in most cases by a strengthening, of the criminal law regarding homosexual acts involving young people under the age of 21, this step does not in any way imply that in these countries homosexuality is necessarily regarded as harmless.

Nor should it be forgotten that homosexual conduct among adults may be unlawful on other grounds and involve the commission of an offence not expressly and exclusively directed at the suppression of sexual behaviour among members of the same sex. In none of the countries subject to this survey do homosexual acts among consenting adult females constitute a criminal offence, though it might be noted in passing that homosexuality among females (Lesbianism) is a criminal offence in at least one country not dealt with here, in Austria.

GERMANY:—According to Article 175 of the German Criminal Code of 1871:

> "Unnatural indecency committed between persons of the male sex, or between human beings and animals, is punishable with imprisonment . . ."

An amendment to the German Criminal Code which came into force in June, 1935 (i.e., was enacted by the Nazi Government) rephrased the old Article 175 and added Articles 175, 175a and 175b (of which the last one, dealing with bestiality, does not concern us here).

According to Article 175 (Indecency [*Unzucht*] among men) in its new version:

> "A male person who commits, or submits to, an act of indecency with another person, is punishable with imprisonment (up to a maximum of five years)."
>
> "In the case of a participant who at the time of the offence was under the age of 21 years, the Court may abstain from inflicting punishment if his offence was only very slight."

It is under this article that homosexual conduct among consulting adults even if practised in private is rendered punishable in German law. In addition, Article 175a renders punishable with penal servitude up to a maximum of ten years the following aggravated cases of 'gross indecency' among men: (1) acts of indecency accompanied by the use of force or threat involving danger to life and limb; (2) acts of indecency committed by abuse of a relation of dependence or sub-ordination; (3) seduction of a person under 21 years of age by an adult over 21 years; (4) professional male prostitution or solicitation for the purpose of prostitution.

Attempts are punishable only in the aggravated conditions of Article 175a.

A question arose in the immediate post-war period whether these new provisions concerning homosexual offences, having been introduced by the so-called 'Third Reich', should be considered abrogated after the collapse of the Nazi regime, so that the original version of Article 175 would have been immediately restored. The Courts in Western Germany did not adopt this view and their attitude has been finally confirmed by the third Criminal Law Amendment Act of August 1953. Article 175 and 175a in the new version of 1935 therefore represent the present criminal law in the Federal Republic.

There is no definition of 'indecency' in the German Criminal Code, but for proof of an 'act of indecency' within the meaning of Article 175, 175a, the Courts do not at present insist on evidence of any action more or less analogous to coition. It is not on the other hand clearly established in German law whether a conviction under Article 175 or 175a could be based on an action not involving any physical contact with the body of another man. Certainly casual touching does not come under the heading of homosexual conduct, though it might be punishable as an assault.

German criminal statistics for most years before 1952 contained only a single figure comprising all convictions for unnatural indecency among males above the age of 18 arising out of Articles 175 and 175a:

Year	Article	Convictions	Total
1932:		625	
1933:		674	
1934:		872	
1935:	(Art. 175)	1791	
	(Art. 175a)	48	total 1839
1936:	(Art. 175)	4027	
	(Art. 175a)	968	total 4995
1937–1947:	No Statistics published		
1950:		1732	
1951:		1897	
1952:	(first six months)		
	(Art. 175)	704	
	(Art. 175a)	353	total 1057 (for half-year)
1953:	(first six months)		
	(Art. 175)	643	
	(Art. 175a)	364	total 1007 (for half-year)

Details of sentences are not available to me for recent years. The rapid rise of the figures during the years 1935 and 1936 must be attributed to a large extent to express National-Socialist policy aiming at severe repression of homosexual activity; beyond that it is dangerous to base any conclusions concerning the extent of homosexuality either on the high figures of the late 30's or on the substantial fall by the 50's. What is plain is that Articles 175 and 175a are fully enforced in German Courts; it is unfortunately impossible to tell what proportion of these convictions refers to homosexual offences committed among adults.

The application of the criminal law to homosexual offenders has been for many years a subject of keen discussion not only among German lawyers and medical men, but among the public in general. After thorough investigation, the Committee of experts which prepared the Draft Criminal Code of 1927 came to the conclusion that indecency among males even in the non-aggravated form (corresponding to Article 175) should remain a criminal offence, though the wording of the draft restricted the offence to actions 'analogous' to coition (though not to a definition as narrow as that required to sustain an indictment under Section 61 of the Offences against the Persons Act 1861). The debate for and against Article 175 (indecency among men) has been strongly resumed in W. Germany in the post-war years. There is, on the other hand, a considerable consensus of opinion which holds that any possible reform of the German criminal law would have to maintain the aggravated form of offences enumerated in Article 175a, above all that involving seduction of persons under 21 years of age.

Work is once more in progress in W. Germany on full scale restatement and reform of the whole of the German Criminal Code which is now eighty years old. This work, which will no doubt take a number of years to complete, has not yet reached sexual offences and it is difficult to forecast what recommendations in respect to homosexuality the new draft may eventually propose. In the meantime, experience in Germany has shown that, as in this country, blackmailers tend to exploit above all else knowledge of homosexual conduct. This was one of the chief reasons for adding, in 1953, to the German Code of Criminal Procedure a new Article (154c) which enables Public Prosecutors to refrain from instituting criminal proceedings for an offence

which has been the subject of extortion or blackmail. It is too early to say whether this provision is effective in countering the serious menace of blackmail arising out of the criminality of homosexual behaviour.

NORWAY:—Under the Norwegian Criminal Code of 1902, Article 213:

> "Indecent intercourse between male persons, or aiding and abetting therein, shall be punishable with imprisonment for not more than one year."
>
> "An offender shall be prosecuted only if this is considered necessary in the public interest."

So far as adult homosexuals are concerned, it is the proviso of the second sentence which is of overriding practical importance. In fact, although the decision whether prosecution be necessary in the public interest is left at the discretion of the Public Prosecutor and might thus be determined according to the special circumstances of each case known to the police, it is well established that for many years past no case has occurred where prosecution was decided upon unless one of the parties concerned was below 21 years of age. Despite the wording of Article 213 therefore homosexual acts carried out in private among consenting adults though punishable are not punished in Norway. Women are not punishable under present law at all.

What is more Article 213 is nowadays hardly ever invoked even where homosexual acts have been carried out with young people; the total number of persons sentenced in Norway for homosexuality and acts of bestiality from 1945 to 1952 being no more than 13. The protection which Norwegian law offers to adolescents between the ages of 16 and 21 is now clearly recognised to be inadequate in practice (for details, see pages 164-6). For this reason, and so as better to define the duties of the prosecution, reform has frequently been mooted during the past two or three decades and appears to be due shortly. As early as 1925 it was proposed by a Committee then working on amendments to the Penal Code that Article 213 as it now stands be repealed and that legislation in this field should confine itself exclusively to provision for the effective protection of minors. Proposals were made in this sense but did not find their way into the subsequent

Government Bill which carried out other changes in the Norwegian criminal law, because the Ministry of Justice was of the opinion that it would be "a serious matter to legalise perverse activities of this kind."

In 1953 the question was taken up again in a recommendation submitted by the present Norwegian Penal Code Commission, the permanent advisory body to the Government in matters of criminal law. The Commission proposed, as the earlier Committee had done, that the penal provision against homosexuality among adults should be repealed and be replaced by an article expressly designed to secure more effective protection of minors against homosexual influence. When the recommendations of the Commission were published the only public criticism with which they met was that they were not liberal enough. These recommendations of the Penal Code Commission now provide the basis for a government bill submitted to the Norwegian parliament in 1954. During the last session time was not found for debate on this subject which is expected to come up again during the current year. It is generally believed that the ultimate result will be a new act conforming in all essential aspects with the Commission's recommendation. This would bring the Norwegian Criminal Code in accord with standing practice in Denmark which does not concern itself with homosexual behaviour practised in private between consenting adults.

FRANCE:—The criminality of homosexual acts carried out by adults which does not fall into one of the categories of aggravated behaviour mentioned above (i.e., abuse of authority or dependence, fraud, public indecency, soliciting) has been abolished since the French Revolution. Under the Criminal Code of 1810 (the Code Napoleon) now in force in France homosexual behaviour is not mentioned but an amendment introduced in 1942 and re-enacted after the liberation in 1945 now renders liable to severe punishment homosexual acts committed among or against juveniles between the ages of 15 and 21. (Art. 331 II.) Homosexuality constitutes a criminal offence in France only where one of the partners is aged less than 21 years. Public opinion in France does not pre-occupy itself greatly with the problem of homosexuality. The vice is known to exist but is not believed to have any important repercussion on the life of the

nation which treats it, generally, with mockery and contempt. Although there are indications that, at least in some of the big cities, an increase in homosexuality may have taken place in recent years (no statistics are available), the suggestion has never been seriously mooted that homosexual behaviour carried out in private among consenting adults should once again be made a punishable offence. The Institute of Comparative Law of the University of Paris points out that the question of homosexuality is in France "generally considered a matter of special physiological conditions and that for the most part it is a medical rather than a moral question." A senior French Criminal Judge consulted gave it as his opinion that in any case "young men frequent our girls rather than other young men."

BELGIUM:—No punishment is provided for homosexual behaviour among consenting adults under the Belgian Code Penal of 1867.

HOLLAND:—The Dutch Penal Code of 1886 (*Wetboek van Strafrecht*) did not mention homosexual acts until the introduction, in 1911, of Article 248bis which concerns only homosexual relations of adults of either sex with minors between the age of 16 and 21. Homosexual acts among consenting adults in private are not criminal. No distinction is made between male and female homosexuals.

The Institute of Criminology of Utrecht University reports that there is no evidence that homosexuality is spreading in Holland nor that it is flourishing especially in distinct social groups. With one exception when, in 1950, a small circle of Roman Catholic politicians suggested that homosexuality should be punishable even amongst adults (a proposition which met with general disapproval even in Roman Catholic circles and "disappeared practically without discussion"), no serious suggestion has ever been made that the law as concerns homosexual practice amongst adults requires modification.

It is however interesting to note that, during the German occupation, the occupiers in 1940 modified in accordance with the strict German law regarding homosexuality and in accordance with Nazi ideology about racial purity, etc., the existing Article 248bis so as to include homosexual behaviour even if committed

between adults. After liberation this amendment, not having the sanction of the Dutch Parliament, was automatically repealed and the position prior to 1940 was restored. Prosecutions under the modified Article 248bis between 1940 and 1945 were few since Judges and Public Prosecutors were reluctant to enforce the law as altered by the occupiers. Only when offences were detected or made known by the Germans the Dutch Authorities saw themselves obliged to proceed, but even in these cases the sentences imposed are reported to have been very mild.

SPAIN:—Acts of homosexuality do not constitute a criminal offence under the Criminal Code of Spain of 1944 unless the behaviour would be criminal if committed with a person of the opposite sex.

ITALY:—Under the Italian.Criminal Code (*Codicil Penale*) of 1930 which entered into force in 1931, homosexual acts as distinct from heterosexual criminal behaviour are not mentioned. Homosexual relations between consenting adults are not punishable unless carried out in public and likely to cause public scandal.

The Italian draft Criminal Code of 1950, which represents a revision of the 1930 Code, does not envisage punishment for homosexual acts carried out in camera. The Ministerial Report accompanying the draft writes in this connection: "This disgraceful vice is not so widespread in Italy as to require the intervention of the criminal law. The introduction of new criminal offences is justifiable only if the legislator finds himself faced with immorality which takes on alarming forms in social life. Fortunately this is not the case with regard to the vice in question."

Nonetheless the problem of homosexuality has attracted considerable public attention in the post-war years, and the search for an adequate policy in dealing with it is a present preoccupation of the legal and medical profession (OP. Ulisse XVIII, Spring 1953).

SWITZERLAND:—Before the enactment of the Swiss Federal Criminal Code of 1937 which, with modifications (made in 1941) entered in force in 1942, criminal matters depended largely on Cantonal Law, and the attitude of homosexuality

varied from canton to canton. Under the present Criminal Code homosexual behaviour is not expressly mentioned and is not distinguished from heterosexual criminal offences except for the protection of young people of either sex between the age of 16 and 20. Homosexual behaviour among consenting male or female adults is therefore not punishable so long as it is committed in private.

SWEDEN:—Under the Swedish Criminal Code of 1864 bestiality committed with an animal and homosexual acts among men or women were treated on the same footing as a criminal offence under the old Chapter 18, Article 10 of the Code. Statistics show that a total of about 600 persons were convicted by the Courts of this offence during the period from 1913 to 1932; although Article 18:10 envisaged equally homosexuality among women and bestiality committed by women, only one woman was convicted under the Article during that period. In the years 1931 to 1940 the average annual rate of convictions was 48; in 1942 and 1943 (the last full years of the operation of the old Article 18:10) the figures (always including offences committed against minors) were 87 and 93.

In the 1920's and the early 30's a new approach toward the problem of homosexuality was advocated by several prominent Swedish lawyers and by a section of public opinion with the result that in 1932, the Minister of Justice appointed a committee of experts to report on the reform of the Criminal Code and especially on such reforms in the section concerning sexual offences as might appear desirable. At the same time the government requested the Medical Board of the Ministry of the Interior to formulate its views. The Medical Board in 1935 expressed the opinion that homosexuality was socially abnormal but biologically conditioned. The Experts Committee appointed by the Ministry of Justice submitted its report in 1935. It proposed the abolition of punishment for bestiality (including homosexuality) and suggested at the same time specific measures to protect children and young people under the age of 20, and persons of both sexes under care and protection.

When introducing a new Criminal Law Amendment Bill in 1937, the Minister of Justice stated in the Swedish Parliament that he was not yet prepared to propose reform of the relevant

provisions of the Code. Parliament, while accepting this view, suggested the appointment of a new committee of experts to study the whole question.

The Ministry of Justice now invited a well-known psychiatrist, Professor Petren, to report on the social dangers of homosexuality. The Petren report submitted in 1940 came to almost the same conclusions as the committee of 1935. The Minister of Justice thereupon requested the Royal Commission for Penal Reform under its Chairman Dr. Schlyter to give its opinion on this report and in due course the commission itself published a special report on bestiality and homosexuality in 1941. In the main points the proposals of the Commission coincided with views of the Petren Report and of the 1935 committee.

The Minister of Justice now accepted the outline of these reports and the need for reform of the law. A Bill was introduced in Parliament replacing the old Article 18:10 by two new Articles 18:10 and 18:10a. These new Articles establish express protection against homosexual contacts for age-groups under 21 (see p. 169) and against abuse of authority and dependence in furtherance of homosexual purposes (see p. 148). At the same time increased powers were granted to Child Welfare Boards to deal with homosexual prostitution among adolescents. The Bill became law in July 1944.

Under Swedish law as it now stands homosexual behaviour among consenting adults carried out in private is no longer a punishable offence unless committed with a mentally defective person or under similar aggravated circumstances. Swedish law now makes no difference between homosexuality among men or among women.

The reform of the Swedish law concerning homosexuality does not yet appear to be entirely completed. A report on the reform of the Criminal Code submitted by Royal Commission in April 1953 proposes on principle to abolish where possible, all distinction between heterosexual and homosexual offences, whilst strengthning at the same time still further the legal protection of young people against seduction by adult homosexuals. These proposed amendments do not however in any way affect the position of adult homosexuals in their relations with one another which remain outside the sphere of Swedish criminal law.

DENMARK:—Homosexuality as a crime *per se* was abandoned in Danish law in 1930 at the same time when adultery and sexual intercourse with animals ceased to be criminal offences. The chief reason given for this change, based as it was on a change of public opinion, was the intention to concentrate all efforts on the protection of juveniles against seduction by adult homosexuals.

Since introduction of the Danish Penal Code of 1930 (which entered into force in 1933) homosexual behaviour is—as a general rule—no longer punishable unless the offence would be punishable if it had been committed between persons of different sex. Sexual indecency among consenting adults of the same sex is not a sexual offence if committed in private without expectation of gain.

No distinction is made between men and women.

Legal provisions affording special protection to juveniles above the age of consent against homosexual acts committed by adults

In most countries under survey protection of juveniles against homosexual interference continues well *beyond* the age of consent. The age-groups given in brackets after the name of each country relate to the years to which the following provisions of the law apply.

FRANCE (15 to 21):—The French Criminal Code contained no provisions affording special protection to juveniles against homosexual acts committed by adults until a law of 6 August 1942, enacted by the Vichy regime, and modified and re-enacted by Ordinance of 8 February 1945 as an amendment to the Criminal Code. This is now Article 331 II Code Penal:

> "Without prejudice to any more severe punishment applicable . . . whosoever commits an indecent or unnatural act (*acte impudique ou contre nature*) with an individual of his own sex under the age of 21 years shall be punishable by imprisonment from six months to three years and by a fine from 2,000 to 500,000 francs."

The Code does not define what is meant by "an indecent or unnatural act", but it is clear that the term not merely envisages

buggery but also other indecent or unnatural practices. Mere attempts, however are not punishable under Article 331 II. Article 331 II makes no distinction between male or female offenders so long as one or both partners involved are under 21 and over 15 years of age, but in practice it is almost exclusively concerned with males. Consent of the younger is no defence and both offenders are liable to punishment. Convictions are reported to be relatively few, but the penalties inflicted by the Courts against adults found guilty under this Article of the French Criminal Code are said to be very severe. No psychological examination of adult offenders is usual either before trial or before sentence in French Courts. Nothing has become known hitherto about any special treatment given to homosexual offenders in French penal institutions.

HOLLAND (16 to 21):—Dutch Criminal Law afforded no specific protection to juveniles against homosexual acts until the enactment, in 1911, of Article 248bis:

> "Any adult who commits an indecent act with a minor of his own sex of whom he knew or ought to know that he is under the age of 21 years, is punishable with imprisonment up to a maximum of four years."

Under this Article both male and female juveniles are equally protected against homosexual interference, but only if the offender is an adult over the age of 21 years of age. Homosexual contacts among two minors between 16 and 21 are not punishable if carried out in private (see p. 171). The practical application of Article 248bis is considerable: offenders over 21 years sentenced for homosexual offences with boys between the age of 16 and 21 under this Article averaged almost 200 a year during the years 1948 to 1952.

1948:	150
1949:	236
1950:	215
1951:	175
1952:	162

Trials are usually held under the exclusion of the public. Sexual offenders are often, but not invariably, examined by a psychiatrist before sentence.

With regard to punishment, offenders are frequently put on probation under the condition they will undergo treatment with a private psychiatrist. Under Dutch law in such a case a sentence of imprisonment is imposed upon the offender but the execution of this sentence may be wholly or partially suspended upon his undertaking to comply with certain conditions formulated by the Court. There exists in the Netherlands Code of Criminal Procedure (Article 167) also a form of conditional suspension of criminal proceedings, i.e., a discretionary power granted to the Public Prosecutor to dispense altogether, at the request of the suspect, with the prosecution for certain offences subject to similar conditions.*

No use seems as yet to be made of this expedient in cases of homosexual offences.

Special treatment centres for sexual offenders do not yet exist in the Netherlands, but experiments in therapy for homosexual patients are being pursued in some asylums and institutions.

SPAIN:—Juveniles above the age of consent are in Spain protected only by the ordinary provisions of the Criminal Law regarding sexual offences which are expressly made applicable also to homosexual practices.

ITALY:—There is no special legal protection under Italian Criminal Law for juveniles above the age of 16 (i.e., age of consent) against homosexual interference beyond the offences which envisage sexual abuse of persons of the opposite as well as of the offender's own sex.

SWITZERLAND (16 to 20):—Under the Penal Code of 1942, protection of minors of both sexes between the age of 16 and 20 against homosexual 'seduction' is provided in Article 1941 as follows:

> "Whosoever persuades a young person of the same sex over the age of 16 years to commit or to submit to an act of indecency (*acte contraire a la pudeur*) shall be liable to imprisonment."

* For details about this distinction between suspension of proceedings and suspended sentence see United Nations Survey: *Probation and Related Measures*, 1954, esp. Chapter 12: 'Netherlands'.

Proof of any "act contrary to decency" is sufficient. Seduction however is difficult to prove unless the seducer is considerably older than the seduced, so that it would appear that Article 1941 is in practice seldom applied except against adult homosexuals interfering with young people under the age of 21 years of age.

W. GERMANY (14 to 21):—Under Article 175 German Criminal Code (already quoted) any male person regardless of age found guilty of an act of indecency (*Unzucht*) with another male renders himself punishable with imprisonment up to five years. This Article applies to all offenders above the age of 14 and, even where one partner is over 21 years of age and the other a minor, both are punishable, subject to the proviso of Article 175, second sentence, which enables the Court to refrain from inflicting punishment on a person under 21 years of age "if his offence was only very slight."

Moreover, the crime of gross indecency (punishable with penal servitude up to ten years) is committed under Article 175a (3) by

> "any man above the age of 21 years who seduces a male person under the age of 21 years to commit with him, or to submit to acts of indecency."

Homosexual intercourse among women is not punishable under German law.

No separate German statistics are available showing the number of convictions for homosexual offences committed by adults against young people under the age of 21, but there can be no doubt that their number is considerable and that both Article 175 and 175a are enforced with severity in W. Germany.

There is, as pointed out above, a considerable body of German opinion advocating reform of the law concerning homosexual offenders, but the suggestion has never been seriously raised that homosexual conduct carried out by adults with juveniles should cease to be a punishable offence.

NORWAY (16 to 21):—Under Article 213 Norwegian Penal Code (already quoted p. 155) any male person regardless of age found guilty of indecent intercourse (*utuktig omgoengelse*) with another male (or of aiding and abetting therein), renders himself

de jure punishable with imprisonment up to one year. The offence of 'indecent intercourse' consists in acts kindred to coition as well as mutual masturbation (but see pp. 145–6 for difference from mere 'indecent acts'.)

Homosexual intercourse among females is not punishable under the present law.

We have already pointed out that, as far as homosexual behaviour among adult men in private is concerned, the Article is nowadays a dead letter, because the proviso contained in the second sentence of this article: "an offender shall only be prosecuted if this is considered necessary in the public interest" has for many years been interpreted in such a manner as to prevent all prosecutions as unnecessary in the public interest so long as no young persons were involved. Indeed it would appear that Article 213 does not play any great part in Norwegian Courts at all, and it is substantially true to say that the ordinary provisions of the criminal concerning sex offences are nowadays in practice almost exclusively relied upon even for the protection of young people under the age of 21 against adult homosexuals.

It is true that a circular issued by the Attorney General of Norway in February, 1925, Public Prosecutors (on whom this decision rests in Norwegian Law) were enjoined to institute criminal proceedings whenever one of the parties involved was found to be below the age of 21, especially whenever there was any indication that such a youngster had been seduced by an adult. Qualified Norwegian observers however, doubt whether even in this restricted form Article 213 has in fact been strictly enforced in recent years. In any event Norwegian sources suggest that such offences are very seldom reported to the police unless a minor below 18 or 19 years of age is affected.

No exact figures of convictions under Article 213 of the Norwegian Penal Code can be given, since figures for homosexual offences of all kinds are combined in criminal statistics with figures for the crime of bestiality. It is significant however that in the period from 1906 to 1952 the total number of persons sentenced for such crimes was no more than 120; the figures for the last few years being:

1939–40:	6
1941–42:	1

1943–44: 4
1945–46: 2
1947–48: 7
1949–50: 3
1951–52: 1

Even of this small number the majority of convictions presumably related to the crime of bestiality.

It is fairly obvious that this can hardly be the total number of such offences committed against boys even below the age of say 18. In the circumstances it is not surprising that, when drafting, in 1953, its recommendation to abolish Article 213 and with it the general penal provision against homosexuality (which is already a dead letter), the Danish Official Penal Code Commission should have felt that abuse of young persons might be more effectively prosecuted if the law were to be limited entirely to cases of this kind. The police and the Public Prosecutor would, it was felt, then have their duties more clearly defined than is the case at present. The following is the new suggested wording of Article 213 which, it is said, is likely to become law without major modifications in the near future. Article 213 in the new version of the Bill now before the Danish Parliament provides:

"any person over 18 years of age who performs an indecent act with another person of the same sex below 18 years of age shall be punishable with imprisonment for not more than two years. Punishment may be waived if the two persons concerned are approximately equals in age and development or if it would be unreasonable for other special reasons to apply punishment. The same punishment shall apply to a person over 21 years of age in the following cases:

(*i*) if advantage has been taken of a state of dependency to perform an indecent act with another person of the same sex between 18 and 21 years of age, or
(*ii*) if he (she) has seduced another person of the same sex between 18 and 21 years of age to commit an indecent act with him (her), or
(*iii*) if he (she) furthers the performance of an indecent act by another with a person of the same sex below 21 years of age.

An error with regard to age does not affect the liability to punishment."

The text speaks for itself. It will be seen that no distinction

is made in the Bill between homosexual behaviour among male or among females. Young people under 18 years of age enjoy higher protection than those in the older age group. The emphasis of the new text of Article 213 lies in the prevention of interference with a young boy under 18 by an adult or adolescent considerably older, and of seduction which, as pointed out before, is extremely difficult to prove unless there is a considerable discrepancy of age or development. The Bill proposes no punishment where both partners are between 16 and 18 or both partners are between 18 and 21 years of age.

An article contributed to the *British Journal of Delinquency* 22/3 (1954) by Professor Andenaes of the Institute for Criminology at the University of Oslo, draws attention to a Norwegian Statute of 1954 under which castration or sterilisation may be performed upon any person at his own request if there are reasonable grounds for such request. The law thus provides the possibility of castration of a sexual offender not as a punishment for his crime, but as medical treatment undertaken at the request of the offender, and in his own interest. As experience proves that castration reduces to a minimum the risk of relapsing into this type of criminality, the operation may render unnecessary further security measures which might otherwise have been indispensable. It is not established if, or in how far, castration or sterilisation have been carried out on persons prone to homosexual offences. In Sweden, where a similar statute was enacted in 1944, about a hundred castrations are said to have been carried out in the past ten years, but there is no evidence to suggest that any of the offenders so dealt with came before the Courts as a result of homosexual offences.

DENMARK (15 to 21):—Under the Danish Criminal Code of 1930, Article 225 II provides:

"Any person who commits an act of sexual indecency with a person of his own sex under the age of 18 will be punished by imprisonment up to a maximum of four years. Punishment shall not be inflicted, however, if the persons concerned are almost equals in regard to age and maturity."

The term 'sexual indecency' includes all forms of sexual interference provided they are carried out with sexual intentions.

No distinction is made in Article 225 II between homosexual acts among male or female offenders.

Juveniles under 18 are absolutely protected by Danish law; homosexual relations by an adult with a person under 18 being invariably a punishable offence.

Under the Danish Criminal Code of 1930, Article 225 III provides further:

> "any person who, by taking advantage of his superiority in age or experience, seduces a person of his own sex under the age of 21 years to commit with him or her any act of sexual immorality, will be punished by imprisonment up to a maximum of three years."

Under this Section which is enacted for the protection of juveniles between 18 and 21, proof of actual 'seduction' is necessary, so that only the elder or more experienced of the two partners renders himself liable for punishment. In any case, such proof is said by the Danish police to be 'almost impossible' to make even against adults.

Although no separate statistics exist, it is believed that prosecutions arising out of Article 225 section III are comparatively rare. For this reason and especially since it is believed that homosexuals have a clear understanding that it is difficult to convict them once their partner has reached his 18th year, it has been recently suggested in authoritative Danish circles that the absolute limit of Article 225 II might be raised to 21 years so that any adult would be punishable for intercourse with a minor of his own sex. No legislation in this direction is however to be expected in the near future.

Statistics for offences under Article 225 I (which covers interference with children under 15 as well as abuse of authority and fraud), Article 225 II, Article 225 III and Article 230 (Payment for sexual immorality) are lumped together. Minimum punishment under these Articles is 30 days' imprisonment, but under certain circumstances the Public Prosecutor may suspend the proceedings, or the Court may after trial, suspend the execution of the sentence it has imposed. No data of any great value can therefore be gained from the knowledge that under all these Articles, a total of 82 male persons were actually convicted by the Danish Courts in 1952. Of these 12 were placed upon probation; 36 received sentences under 3 months' imprisonment;

28 sentences between 3 and 6 months; the remaining 18 sentences between 6 months and 3 years.

SWEDEN (15 to 21):—When, in 1944, punishment for bestiality committed with animals and for homosexual behaviour among men or women was abolished by an amendment to the Criminal Code in Sweden, special provision was made in the new Chapter 18:10 to give protection to young people against all homosexual interference.

Under Chapter 18 Article 10 of the Swedish Criminal Code adults are punishable:

> "for acts of sexual indecency with a person of the same sex under the age of 15 with penal servitude for a maximum of four years or with imprisonment (Section i);
>
> "for acts of sexual indecency with a person of their own sex between the age of 15 and 18 with imprisonment up to two years (Section ii)."

Children and young people under 18 are absolutely protected in Swedish law against homosexual interference.

Under Chapter 18 Article 10 III of the Swedish Criminal Code:

> "Any person over the age of 18 years who has sexual relations with a person of the same sex over the age of 18 years but under the age of 21 years by taking advantage of the other persons inexperience or dependence shall be punished (by penal servitude up to maximum of two years or by imprisonment)."

Under this Section, which is enacted for the protection of juveniles between 18 and 21, proof is necessary of seduction, or in other words of the fact that one of the two has taken advantage of the other's inexperience or dependence upon him.

Attempts at these offences which apply equally to homosexual behaviour among males and among females are punishable. The law does not define "act of sexual indecency".

Statistics for homosexual offences exist in Sweden merely in a single annual figure including cases of abuse of authority or offences of this kind committed against persons classed as "under care and protection" or "mentally defective". Convictions for all such offences under Chapter 18:10 and 18:10a are very small in number since 1944. The following are figures for the years 1945 to 1950:

1945:	25
1946:	23
1947:	35
1948:	21
1949:	31
1950:	39

No figures have been published concerning homosexual offences known to the police. In 1949 all those convicted were male; of these one was sentenced to imprisonment for less than 6 months, 11 to penal servitude for from 2 to 6 months, 4 to 6 months, 12 to 6 months to 2 years. Two (habitual) offenders were sent to preventive detention; one put on probation. Of the 30 who received sentences of penal servitude no fewer than 17 were given sursis (postponement of the execution of the punishment pending compliance with a condition imposed upon them by the Court).

In its comprehensive report on the reform of the Criminal Code, the Swedish Royal Commission for Reform of the Criminal Law has restated last year the law on homosexuality such as it was introduced in 1944 by the amendment to the old code but has proposed certain minor alterations with regard to juveniles. Of these the only significant change under the new Bill (which is likely to reach the Swedish Parliament shortly) will remove the character of criminal offence from homosexual relations during the age of puberty, provided both partners are over 15 and less than 18 years of age; an offender over the age of 18 would remain punishable for any homosexual act with a young person under 18. These proposed changes are said to have been received with satisfaction by Swedish public opinion as a whole.

Homosexual offences committed by minors under 21 years of age

In most countries under investigation the minimum legal age of criminal responsibility (which was raised in this country in 1933 from 7—the Roman Law limit for an infant—to 8 years of age), is very much higher than in the United Kingdom. This seems to be more in accord with modern opinion which seeks to keep juveniles out of the Courts (even Juvenile Courts) and to lay emphasis in the case of young people, at any rate, upon

readjustment and rehabilitation, and not on punishment. There are on the other hand everywhere facilities for the re-education of young people which can be employed without recourse to criminal prosecution and punishment, but it would lead too far to elaborate these here in detail (cp. e.g., Donnedieu—Vabres: Traité de Droit Comparée s. 318 and 319).

Homosexual prostitution is not included in this survey. Unless otherwise stated, no difference is made whether the offence is committed among males or among females.

FRANCE:—Under French law no criminal proceedings can be taken under any circumstances against children below the age of 13. Under Article 331 I or 331 II (quoted above) both partners to a homosexual offence can be punished provided they are over 13 even if the initiative was taken by one. Nonetheless the full force of the law is never applied to minors to under 18; these, moreover are invariably tried not before the ordinary Courts but before a *Tribunal pour Enfants*, composed of the *Juge des Enfants* as Chairman and of two lay assessors appointed for a period of three years. Observation centres for psychological study are to be attached to all Juvenile Courts in France under a law of 1942 and 1945 but his has not yet been carried into effect everywhere. So long as young delinquents of this kind are under the age of 18, the investigating judge (*Juge d'Instruction*) at the Juvenile Court may, without proceeding further, entrust these delinquents to the care of a Public Welfare Organisation, to a charitable institution or to a private person of suitable standing. Even where an actual hearing for a Juvenile Court takes place young delinquents of this kind are normally restored to their families with a suitable warning.

A minor does not in France render himself punishable for homosexual contacts with an adult. (arg. ex 331 II).

HOLLAND:—Homosexual contacts among two minors between the age of 16 and 21 are not punishable in Holland (arg. ex. Art. 248bis.). This is generally considered reasonable on the grounds that homosexual acts among boys during the years of puberty should be a matter for the psychiatrist rather than for the criminal judge. Holland appears to be among European countries here considered the only one where the law

expressly recognises this fact, although elsewhere a similar position frequently obtains in practice. Theoretically, as the law of Holland stands, two boys under 16 having sexual relations with each other could be punished under Article 247, but in practice this eventuality never materialises.

Boys under 21 are not punishable for homosexual acts committed with adults.

ITALY:—Children and young persons under 14 years of age escape all criminal responsibility under Italian law. Homosexual behaviour among juveniles under 21 years of age is not treated differently from heterosexual behaviour.

SWITZERLAND:—No criminal responsibility devolves upon children below the age of 14.

Where both boys or both girls are between the ages of 16 and 20, only the 'seducer' is punishable under Article 194 I. Under a general provision of Swiss Criminal Law all minors under 20 are less severely punished upon conviction than adults and may be placed under supervision upon probation with suspension of the execution of any penalty. Article 194 III which deals with professional homosexual prostitution is not limited to any age. Otherwise boys and girls under 20 are never punishable under Swiss law for homosexual contact with adults in private.

W. GERMANY:—A child under the age of 14 is incapable of committing a punishable offence under German law.

Acts of indecency committed by a male person above the age of 14 with another male person above that age are invariably a punishable offence under Article 175 of the Criminal Code. Both partners are punishable, but this rule is subject to the proviso of the second sentence of this Article, according to which:

> "in the case of a participant who at the time of the offence was under the age of 21 years, the Court may abstain from inflicting any punishment if his offence was only very slight."

Offenders under the age of 18 are dealt with by Juvenile Courts in Germany, and subject to their consent, Public Prosecutors have wide powers to refrain from criminal proceedings if no punishment is to be expected in view of the offender's immaturity or if educational measures have been ordered before trial.

Separate statistics exist which show the numbers of boys between the age of 14 and 18 dealt with for offences under Article 175:

1952 (first six months): 151 (68 between 14 and 15)
(83 between 16 and 17)
1953 (first six months): 189 (90 between 14 and 15)
(99 between 16 and 17)

Actual prosecutions before the Juvenile Court took place only in a very small proportion of these cases and actual criminal punishment (as opposed to other measures) was inflicted only in 9 cases during each period. Offenders between the ages of 18 and 21 convicted and sentenced under Article 175 were:

1952 (first six months): 119
1953 (first six months): 107
(Figures for male prostitution are not included).

A minor renders himself punishable in German law for homosexual contact with an adult.

NORWAY:—No criminal responsibility below the age of 14. In fact, however, under Norwegian practice juveniles under the age of 18 are rarely brought to trial. Delinquent boys and girls under that age are usually referred to the local Child Welfare Councils established in every township in the country by a Statute of 1896. Child Welfare Councils or Boards which exist in all Scandinavian countries, are special municipal bodies entrusted with wide powers for the care of neglected and delinquent children, and in sole charge of maladjusted juveniles up to 15. Among the measures at their disposal are appointment of a supervising guardian, or the placing of delinquent juveniles in foster homes and institutional care. The great majority of minor juvenile offenders up to 18 years of age are nowadays handed over to these non-judicial bodies without trial, either directly where there is obvious neglect, or upon suspension of criminal proceedings by the Public Prosecutor. Suspended *sentences* are accordingly hardly ever imposed on the age-group below 18 in any of the three Scandinavian countries under survey.

As the law stands (Article 213) anyone over the age of 14 renders himself liable to punishment for homosexual behaviour

with a minor or with an adult. In fact, however, during recent years prosecutions have been taken only against adults for abusing minors and none even against juvenile adolescents between the ages of 18 and 21.

Under the new Bill proposed by the Penal Code Commission (quoted, p. 166) an adolescent boy or girl between the age of 18 and 21 would be liable to punishment for any homosexual contact with one who has not yet reached 18 (unless the two are approximately equals in age and development). The Bill does not propose any punishment on the other hand where both partners are either between 16 and 18 or both partners are between 18 and 21. In the case of male prostitution the provisions of the Criminal Law applicable to the female prostitution can be employed.

DENMARK:—Children and young persons under the age of 15 cannot be guilty of a criminal offence under Danish Criminal Law. Homosexual intercourse by an adolescent above the age of 18 with a person of the same sex under 18 is invariably a punishable offence under Article 225 II (quoted, p. 168). Where both boys are under 18, proceedings are most unlikely to be instituted (even if one be barely 15 and the other almost 18), because, as in Norway and Sweden, it is altogether unusual in Denmark to bring to trial offenders under 18. Such juveniles will usually be placed in the charge of a Child Welfare Council upon conditional suspension of proceedings by the Public Prosecutor. Such conditional suspension of criminal proceedings pending reference to a Child Welfare Council was adopted in Denmark in 1952 in altogether 15 cases involving homosexual activities by juveniles under 18.

Where one of two minors involved in homosexual conduct is under, and the other over, 18 years of age, the younger of the two commits no offence, and, according to the proviso of Article 225 II (second sentence):

> "Punishment shall not be inflicted if the persons concerned are almost equals in regard to age and experience."

Proceedings are not likely to be taken against the older unless it is pretty obvious that he has taken advantage of the immaturity of the younger.

Under Article 225 III Criminal Code of Denmark (quoted, p. 168) which is enacted for the protection of juveniles between 18 and 21, proof of actual 'seduction' is in law required, so that only the older or more experienced of the two renders himself liable to punishment. Such proof of seduction of one adolescent over eighteen by another adolescent is invariably extremely difficult to make and prosecution against adolescents under Article 225 III are known to be very rare.

SWEDEN:—No criminal responsibility below the age of 15. Chapter 18 Article 10 I of the Swedish Criminal Code provides:

> "Any person who commits an act of sexual indecency with a person of the same sex under the age of 15 shall be punishable by penal servitude for a maximum of four years or by imprisonment."

Article 10 II provides:

> "Any person under the age of 18 years who commits an act of sexual indecency with a person of the same sex over the age of 15 years, but under the age of 18 years, shall be punishable by penal servitude for a maximum of two years or by imprisonment."

Moreover, any person who is 18 years old or more and who is involved in homosexual conduct with another person of the same sex who has completed his 15th year but has not yet completed his 18th year, shall be punished for indecency against youth with imprisonment up to two years.

These rules of Swedish law concerning homosexual conduct where one or both partners are under eighteen years of age, appear complicated on paper. In effect they amount to this:

Where one partner is under 15, the other between 15 and 18, the elder is punishable (18:10 I).

Where both partners are between 15 and 18, both are punishable (18:10 II).

It must be pointed out however that, though young people under the age of 18 can commit these offences and render themselves punishable under the above-quoted sections, in effect criminal prosecutions are practically never instituted against boys or girls under 18 in Sweden, such delinquents being placed, as in Denmark and Norway, under the care of the local Child Welfare Boards.

Young people under 18 years of age do not commit a criminal offence under Swedish law by homosexual conduct with members of their own sex who have completed the 18th year; but where necessary the Child Welfare Boards may also step in.

An adolescent of either sex above the age of 18 renders himself punishable for indecent behaviour with a young person of his own sex under the age of 18, but where there is only a small difference in age and development between the offender and the younger person involved, this fact is to be 'taken into consideration'.

Chapter 18, Article 10 III of the Swedish Criminal Code (quoted, p. 169) establishes the legal situation where both partners are above the age of 18. In such a case no prosecution can be instituted under Swedish law unless there is proof of actual 'seduction', and it is only the seducer who commits a punishable offence. Where both partners are under 21 years of age, but over 18, only one of them, the seducer (if any), renders himself punishable, and it would appear that even theoretically the seduced partner cannot, by definition, so aid and abet him as to become liable to punishment as accessory. A person under 21 years of age does not commit the offence envisaged in 18:10 III by indecent conduct with an adult of his own sex.

A Swedish Royal Commission has (as mentioned p. 170) been working for several years on a restatement of the Swedish law with regard to offences against the person. Its report is likely to be submitted to the Swedish Parliament shortly in the form of a new Criminal Law bill which would somewhat simplify, but not alter in any essential point the law concerning homosexual offences committed by minors under 21 years of age. It is proposed to abolish, on principle, the distinction between heterosexual and homosexual offences so that, for instance, children and young people under the age of 15 would enjoy identical protection against homosexual and heterosexual offences. This simplification would do away with the need for an express section, like the present 18:10 I, dealing with "sexual indecency involving a person under 15 of the offender's own sex", but the following two types of offences would still be giving special protection to young people against homosexual interference analogous to the present situation:

(*a*) homosexual acts committed with a young person under 18 provided the offender has reached that age;

(*b*) homosexual acts committed with a person over 18 but under 21, provided the offender himself is over 18 and the act is committed by abuse of that person's inexperience or dependence on him.

Homosexual acts between two young people in the age-group 15 to 18 would, it appears, cease to be regarded as criminal.

SUMMARY OF THE SURVEY

In any discussion of homosexuality and the attitude which the criminal law should adopt towards it, it is well to recall that such deviant sexual behaviour has been known and practised at all times of our history, and, so far as is known, in all parts of the world. It is mentioned with abhorrence in the Bible, Book of Genesis, and again, in his Epistle to the Romans, St. Paul castigates the men who "leaving the natural use of the woman, burned in their lust toward another". Pæderasty was extremely widespread in ancient Greece and assumed eventually scandalous proportions in the Roman Empire. *Incontentia, contra naturam* was and is a grave offence under Canon Law visited, in most cases, with the extreme penalty of *infamia*, while the common law jurisdictions which sprang up independently of the Church in various parts of Europe almost invariably inflicted (and carried out) most severe punishment on homosexual offenders, frequently the death penalty, castration or even burning alive. The crime of sodomy among men was for many centuries closely linked in the eyes of the law with the crime of bestiality (with animals) (*sodomia ratione generis* as opposed to *sodomia ratione sexus*), a situation which has tended to befog rather than to clarify issues. The development of the law concerning the crime of adultery, on the other hand, also for a long time ran parallel with the treatment meted out by the criminal law to homosexual offences; in Sweden, for instance, both ceased to be punishable at the same time (as late as 1944). Gradually, as the criminal law in most civilised countries became more humanitarian and punishment for all criminal offences became less savage, less Draconian sentences were imposed for all these offences, too.

There is nothing to suggest that when, in 1810, the Code Napoleon took a lead in abolishing the crime of homosexuality

in France, the reasons for this innovation were in any way derived from increasing medical knowledge about the nature of this evil; (though it is of course true that medical and physiological considerations did play an ever more prominent part during the next century-and-a-half in establishing the present attitude of the various legal systems in Europe). What is more, it can hardly be maintained with any confidence that the change which has, in many of the countries examined in this survey, tended to turn public opinion against the idea of punishing adults for sexual behaviour with other adults of their own sex, a change which has come to be reflected in the various criminal codes here surveyed, stems from any vastly increased or in any way accurate knowledge of the nature of the evil, its numerical incidence, or its reasons. Indeed, it is surprising, given the fact this phenomenon has been with us for so long and has always attracted so much attention and detestation, that so little should be known about its incidence and causes, about its physiological reasons, or its social significance. It is even more surprising that so little effort should yet have been made to assemble, on a comprehensive basis, the relevant data which are indispensable to enable public opinion to form reasoned views and to define its attitude. Even if the history of British penal policy in the 18th and early 19th century makes it abundantly plain that in the sphere of the criminal law reform cannot, and should not, wait until an overwhelming part of public opinion has come to insist on a new approach, the law is always, in the last resort, dependent on the approval and the support of the community which it is to serve.

In view of the absence of any adequate knowledge and investigation of the phenomenon itself, the law and practice of civilised countries in their approach to the individual homosexual show wide divergence in principle and detail. Indeed, if we take the United States, where the law of crime against the person is not a Federal matter, but left to the individual state legislatures, there is no kind of uniformity even within the same nation. Retribution ranges from the threat of life-sentences in three states to no more than fines in six others and complete immunity for adult homosexual offenders in two (New Hampshire and Vermont), so that it can fairly be said that within the United States criminal legislation concerning this offence varies more widely than between all the other nations of the world. Moreover, it appears

that criminal legislation as laid down in the Codes of the various states of the U.S. does not, by any means, necessarily correspond to the actual practice of prosecutions there prevailing, so that the severity or otherwise of the Codes (some of them of very ancient standing) represents by no means invariably a reliable guide to the actual position. A similar problem arises, of course, in every study of comparative law, and it is for this reason that an attempt has been made in this survey of the legal position in the ten European countries not merely to collect up-to-date information about the present practice of the Courts with regard to homosexual offenders, but to add statistics of prosecutions where these were available.

That the number of prosecutions and convictions (which inevitably only affect a small, probably a very small fraction of those who are given to homosexual behaviour) and their decrease or increase at different periods in any given country, cannot under any circumstances be expected to yield reliable data concerning an increase or decrease of the incidence of homosexuality as such, is a warning that need hardly be given today. If it be argued, for instance, from the statistics that the rise of convictions for such offences from less than 200 in 1936 to over 1,000 in 1952 necessarily reflects a corresponding alarming rise in homosexuality in England, the fall from a similar figure of over 5,000 in 1936 to about 2,000 in 1952 in Western Germany would, even allowing for the reduction in the population figures, reflect a striking abatement of homosexuality there. In fact, of course, we cannot be sure that it does anything of the kind; there are numerous, and many quite obvious fallacies in such reasoning. Unfortunately, the sources of error which entirely vitiate argument from criminal statistics to the incidence of homosexuality in the community are only beginning to be fully exposed and known.

The example of Norway is a typical case in point to show how misleading and useless it is to base an opinion on the law in any country exclusively on a study of its written law. Norway is almost invariably cited as one of the European countries where homosexuality among adults is a punishable offence and this view gains support from an express article on the Norwegian Penal Code. Further investigation as set out in this survey shows, however, that so far as adult homosexuals are concerned in their relations with one another, this penal provision of the Norwegian

Code has for years been a dead letter; what is more, even its formal abrogation is impending.

Under most of the Continental systems here considered, homosexual activities carried out by consenting adults of either sex in private are no longer a punishable offence. Recent development in Scandinavia, above all in Sweden, which is set out at some length in the text, shows how slowly, carefully and deliberately this result has been reached. This survey contains evidence on every page to show that abolition by no means implies indifference to the phenomenon and the problems of homosexuality. Even where homosexual acts of indecency among adults have ceased to be criminal *as such*, adult homosexual behaviour does still occupy the criminal Courts whenever it involves the commission of another offence not exclusively directed against it. Employment of physical force, intimidation or abuse of authority in furtherance of acts of indecency; acts of indecency committed in a public place or in a place of public resort, importuning, solicitation and prostitution; all these are acts of unlawful behaviour which must and do invariably remain criminal offences regardless of the sex of the offender or of the victim. Moreover, with the exception of Spain and Italy, where special conditions prevail, *all* the countries subject to this survey have retained, and in most cases even strengthened, the legal provisions of the criminal law calculated to restrain and repress homosexual interference with, and seduction of, juveniles above the customary age of consent. The facts show that there is no substance whatever in the suggestion that countries where homosexual conduct among consenting adults in private has ceased to be criminal, regard such practices as harmless.

What can fairly be said as a result of this survey is that the present English law and present practice have no rival for severity towards those who happen to come before the Courts charged with homosexual conduct in the chief Continental legal systems except possibly in Western Germany. Repressive measures of the criminal law are justified only by their social necessity; they are obviously never in themselves desirable, least of all in the case of a behaviour whose physiological and psychological causes are still largely obscure. Moreover, to threaten with penalties of great severity conduct which in the nature of things must escape in the majority of cases the arm of the law, and is thus known to be practised by many with impunity over years, tends to weaken the criminal law as a whole and to bring it into disrepute. That most of our neighbours, almost all the civilised countries of Western Europe, should have been able to do away with the harsh sanctions of the law, thus shifting the emphasis in this unpleasant matter from its criminal to the medical aspect, is a development which must give food for thought.

Another unhappy aspect of the criminal prosecution of homosexual offenders consists in the fact that the prime sanction of the criminal law is the penalty of imprisonment. There can be no doubt that, even apart from the present over-crowding of our prisons, punishment by way of imprisonment is usually highly undesirable in the case of offenders of this kind. It tends, if anything, to aggravate the evil, and the point need hardly be laboured that the suggested segregation of such prisoners in a separate prison would provide no solution in this instance. Although more than five years ago a joint committee of the Magistrates' Association and the British Medical Association rightly affirmed that,

> "punishment without treatment is not likely to have beneficial effect; indeed it can make these offenders worse and thus more likely to repeat their offences,"

there is little evidence to suggest that any systematic medical and psychiatric treatment is or could be given to homosexual offenders in our prisons. It is significant that in Western Germany, where criminal prosecutions for homosexual offences are numerous, prominent members of the legal and of the medical profession should recently have requested the Courts, whenever there is any hope that treatment may be effective (a fact which can perhaps be established through regular pre-sentence examination by a psychiatrist), to put offenders on probation rather than in prison. In most of the other countries considered in this survey the question of treatment is, except in the most serious cases, not for the law, but for the doctors and, in the case of juveniles, above all for the educators.

It is, indeed, perhaps with those who have the responsibility for the education of young people and with it the responsibility for adequate sexual, no less than moral, instruction that the chief hope must rest of reducing and combating the evils of homo-

sexuality. In this connection the determined effort made in Holland and in the Scandinavian countries to keep juvenile homosexual offenders out of the Courts (even Juvenile Courts) in order to increase the chances of success of advice or, where necessary, treatment from those qualified, deserves special attention. In all such cases—and this holds good of adults as well as of young people—voluntary submission to consultation and, where possible, to treatment, offers of course, better prospects than treatment enforced as a result of a sentence imposed upon the offender by the Court, and/or carried out in the peculiar atmosphere of compulsory confinement.

Before it will become possible to form a soundly based opinion on the subject of homosexuality, bearing in mind its moral, social, legal and medical implications, and to formulate, on this basis, an adequate and lasting penal policy towards it, a great deal still remains to be discovered. What is required to any fruitful discussion of this topic is not more opinion, but more facts. In the meantime, since liberty of a large number of human beings is at stake, it is our duty to examine, again and again, the adequacy and suitability of our present criminal law and of our prisons to deal with the problem of homosexuality. I believe that the law as it stands, and the way in which it is at present, at least on occasion, handled by the police and in sentences of the Courts, tends to aggravate the situation. To say this is by no means to suggest that the remedy is easy and obvious; it is not. At all events, I hope I have not allowed my personal views to obtrude themselves in any way upon the subject matter of this survey which is intended merely as an exposition of a number of foreign legal systems so that, out of the experience of other countries, some useful data or suggestive ideas might be gained.

It would have been quite impossible to assemble the material here presented but for a considerable number of helpers in all the various countries concerned who prepared special reports and showed endless patience and forbearance in providing information in response to the writer's often tiresomely frequent requests and enquiries. Among those to whom special gratitude is due are: Dr. Jacques Bentz, avocat au Barreau de Marseilles; Dr. Pierre R. Levy-Falco, avocat au Conseil d'Etat, Paris; Dr. Francois Gorphe, President de Chambre au Cours d'Appel de Poitiers; Abogado José A. Llorens Borras, Barcelona; Prof. Dr.

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A CRITICAL SURVEY OF STATISTICS

The following figures and commentary have been compiled by a member of the Howard League for Penal Reform

INTRODUCTION

NO reliable information is available concerning the prevalence of homosexuality in Great Britain, since no large-scale investigation has ever been attempted in this country. Estimates have been made by psychiatrists and psychologists from clinical observations, and by sociologists upon some limited fields of study, but the general applicability of these estimates is doubtful, since they are based on limited and selected samples. Apart from such studies, there are the official records but these are concerned only with homosexual behaviour which comes to the notice of the police, the Courts and the Prison Commissioners, and they would be very uncertain guides on which to base any general conclusions regarding the total incidence of homosexuality, the effectiveness or otherwise of the law in deterring offenders, and the relation of homosexual behaviour to social class, occupation or other factors.

VOLUME OF KNOWN HOMOSEXUAL OFFENCES

During the last fourteen years, the official statistics of offences known to the police and of prosecutions arising from these cases, show a considerable and progressive increase in all types of sexual offences, including those of a homosexual nature. Whether this is due to a general growth of sexual laxity or to improved vigilance and greater activity on the part of the police, or to both, is open to conjecture.

Criminal statistics can only provide partial and indirect information about the volume of crime and the frequency of certain types of offence. The great majority of crimes are offences against property, involving definite and traceable damage, and

even in these cases the number of offences known to the police is unlikely to correspond exactly with the actual number of crimes committed. Illegal sexual behaviour, especially where consenting parties are involved, is much more difficult to track down, and the official statistics are, for this reason, far less indicative of its extent. It should be noted, also, that offences listed as 'known to the police' cover twenty-two different groups of crime, and are preliminary classifications which may be modified by the final assessment, after the production of full evidence and of legal considerations before the Courts. Nor is there complete uniformity between all the police authorities on the amount of *prima facie* evidence required before these cases are put on record. The police receive a great deal of information, much of which cannot be verified, but which in some cases may lead to a deduction that offences have been committed even though there may be insufficient evidence to justify prosecution.

The following tables are adapted from figures given in the Criminal Statistics for England and Wales, 1953, issued by the Home Office and published by H.M. Stationery Office. Three categories of homosexual offences, listed as 'unnatural offences', 'attempts to commit unnatural offences', and 'indecency with males' have been amalgamated under the term 'homosexual offences'. Similarly, the heading 'heterosexual offences' includes the offences of rape, indecent assault on females, defilement of girls under 13, defilement of girls under 16, incest, and procuration, but do not include the figures for abduction or bigamy.

Table 1. Indictable offences known to the police 1930–53.

	Annual Average							
Offence	1930–4	1935–9	1940–4	1945–9	1950	1951	1952	1953
Homosexual	748	1,119	1,651	2,814	4,416	4,876	5,443	5,680
Heterosexual	2,423	3,112	4,010	6,408	8,220	9,255	9,062	10,135

These figures show that the number of homosexual offences known to the police is now seven times greater than it was twenty years ago, and the number of heterosexual offences four times greater. Of the two sets of figures, that concerned with heterosexual offences may reflect the true state of affairs slightly more accurately, since the other which relates to homosexual offences also includes offences committed between consenting

adults in private, the full number of which cannot be known. Neither set of figures, however, is indicative of the total incidence of sex offences.

Bearing in mind certain inaccuracies inevitably contained in the Registrar-General's figures, the following table reflects the proportion of homosexual offences known to the police in relation to the population:

Table 2. Summary showing the total number of all homosexual offences known to the police in proportion to the population.

	Average						
	1930–9	1940–4	1945–9	1950	1951	1952	1953
Total number of offences	934	1,651	2,814	4,416	4,876	5,443	5,680
No. per million	25.8	44.2	74.0	115.8	128.0	142.3	147.8

It is doubtful whether any deduction can be made from these figures as to the ratio between actual practising homosexuals and the total population.

The table on p. 190, gives some indication of the number of individuals who persist in homosexual conduct in spite of public opprobrium and the legal penalties involved. Figures are also given of other known previous offences of individuals found guilty of homosexual offences.

Although it would appear from the following table that the 1908 individuals found guilty of homosexual offences in 1953 had between them 862 previous convictions, of which 419 were for homosexual offences, this does not necessarily mean that roughly one in every two indivuduals had a previous conviction; a small number may have had a large number of previous convictions.

DEFINITION OF MAIN CATEGORIES OF HOMOSEXUAL OFFENCES

1. *Unnatural offences*

(*a*) Acts of Bestiality (sexual relations with animals);

(*b*) Anal intercourse between males.

The number of cases of bestiality is negligible. Anal intercourse between males is regarded as the most serious homosexual offence and is a felony punishable with up to life imprisonment.

Table 3. Number of individuals found guilty of homosexual offences in 1953 who had previous convictions.

Age-Group	Offence	Number found guilty	Previous convictions of same category	Previous convictions of other categories
Under 14	Unnatural offences	nil	nil	nil
	Attempted unnatural offences	40	nil	4
	Indecency with males	15	nil	6
14–17	Unnatural offences	21	nil	9
	Attempted unnatural offences	64	2	6
	Indecency with males	52	1	11
17–21	Unnatural offences	49	5	15
	Attempted unnatural offences	68	11	10
	Indecency with males	76	2	15
21 and over	Unnatural offences	232	20	42
	Attempted unnatural offences	732	188	81
	Indecency with males	561	196	235
Total		1,908	419	443

2. *Attempts to commit an unnatural offence*

A charge under this head usually carries the inference that anal intercourse was intended. It therefore raises the difficult concept of intent, as with all charges of attempted crime, and generally involves circumstantial evidence. It is a misdemeanour punishable with up to ten years' imprisonment.

3. *Indecency with males*

This term covers all other homosexual acts between males, including the specific charges of gross indecency with male

persons, and indecent assault. It is a misdemeanour punishable with up to two years' imprisonment.

Table 4 shows the number of persons sent for trial for homosexual offences between 1930 and 1953. Two sets of figures are shown against each category of offence: the upper figure relates to individuals appearing before Assizes and Quarter Sessions, and the lower to those dealt with summarily at Magistrates' Courts. Offences tried at higher Courts are usually more serious than those tried summarily.

Table 4. Number of persons sent for trial for homosexual offences.

Offence	1930–4 (Annual Average)	1935–9 (Annual Average)	1940–4 (Annual Average)	1945–9 (Annual Average)	1950	1951	1952	1953
Unnatural offences	33 4(J)	48 9(J)	75 8(J)	119 9(J)	231 17(J)	210 13(J)	283 9(J)	328 13(J)
Attempted unnatural offences	65 183	75 251	110 289	116 424	261 631	263 726	278 742	328 707
Indecency with males	109 10(J)	142 19(J)	171 19(J)	286 28(J)	467 28(J)	694 36(J)	703 48(J)	730 60(J)
	404	544	672	982	1,635	1,942	2,063	2,166

Note. (J) indicates Juvenile Court.

Unnatural offences and indecency with males are indictable offences which can be tried only by higher courts except where the accused is between 8 and 17 years of age. This accounts for the relatively small number of offences in these two categories shown in Table 4 as having been tried in Magistrates' Courts.

It is, perhaps, an odd comment on the law that indecency with males, which only carries a maximum sentence of two years, should be triable only by higher Courts, whereas attempts at unnatural offences, which carries a maximum of ten years, is triable summarily. On the face of it, there is a good case for adding indecency with males to the list of indictable offences triable summarily; and perhaps also for investigating whether young people below the age of 21 should not all have the opportunity of being tried summarily, whatever the homosexual offence with which they may be charged. This would in no way prevent petty sessional Courts from sending convicted persons up to the higher Courts for sentence if they thought the circum-

Library

stances were sufficiently serious.* It would tend to reduce the pressure on higher Courts, while at the same time removing something of a legal anachronism. Furthermore, as will be seen from Table 6, Magistrates' Courts appear to be readier to use remedial measure, such as probation, than the higher Courts.

Ages of homosexual offenders

There can be little doubt that a number of homosexual offenders are probably suffering from neuroses or other functional disorders, and their sexual or pseudo-sexual behaviour may be symptomatic of illness which is unconnected or very indirectly connected with sex. This may particularly apply to many men in the higher age-groups, who are often persistent offenders.

In all age-groups there is a proportion of inadequate persons who may possibly be heterosexually inclined but who indulge in homosexual conduct because circumstances are conducive to it. Convicted homosexuals are found in all the age-groups, as will be seen from the following table. It should be remembered that a higher proportion of the lower age-groups are tried in lower Courts and are not shown in this table.

Table 5. Ages of persons convicted of homosexual offences at Assizes and Quarter Sessions in 1953.

Offence	Total found guilty	Under 14	17–17	17–21	21–25	25–30	30–40	40–50	50–60	Over 60
Unnatural offences	305	—	11	54	40	42	73	58	20	7
Attempted unnatural offences	293	—	2	21	26	49	77	62	34	22
Indecency with males	659	2	11	79	94	86	161	121	72	33
Total	1,257	2	24	154	160	177	311	241	126	62

This set of figures was selected because it represents more serious offences tried at higher Courts. The fact that the age-group 30–50 represents 43 per cent of the number convicted does not necessarily mean that this age-group is the one at which the

* Petty sessional Courts cannot normally impose a sentence of imprisonment of more than six months.

incidence of homosexuality is highest. The extent to which homosexuality is practised in private is unknown.

ACTION BY THE COURTS

The sentencing methods of the Courts show as wide a variation when dealing with homosexual offences as with other categories of crime. The same type of offender may be treated quite differently in different Courts.

In 1953, out of the 1,257 persons found guilty of these offences at Assizes and Quarter Sessions, 510 were sentenced to imprisonment, corrective training or preventive detention:

Imprisonment:	
6 months or under	93
6 months and under 12 months	134
1 year and under 2 years	132
2 years and under 3 ,,	57
3 ,, ,, ,, 4 ,,	28
4 ,, ,, ,, 5 ,,	32
5 ,, ,, ,, 7 ,,	19
7 ,, ,, ,, 10 ,,	10
Corrective Training:	
4 years	1
Preventive Detention:	
5–7 years	1
7–10 ,,	2
Over 10 years	1

Of these 510 individuals, 165 were convicted of unnatural offences, 166 of attempted unnatural offences and 174 of indecency with males. The Criminal Statistics give the length of sentences, but since some are consecutive sentences for two or more crimes of a similar nature, it is not possible to compare sentences given for one type of homosexual offence with those given for another. This is one of the weaknesses of the official Statistics, for a comparison of sentences is useful in that it makes possible an assessment of the attitude of the Courts to the various offences concerned. For instance, it would be interesting to

know whether the legal distinction between various homosexual acts which is reflected in the maximum penalties laid down, is equally reflected in the sentences actually imposed.

Courts of Summary Jurisdiction, including Juvenile Courts, generally deal with less serious cases than those tried by the higher Courts, and use a far wider range of what may be termed remedial, as opposed to punitive, measures. This use of remedial measures may arise from the fact that persons under 21 account for more than 25 per cent of the homosexual cases dealt with summarily. The following table is adapted from several given in the Criminal Statistics for England and Wales for 1953.

Table 6. Results of proceedings regarding homosexual offences in 1953, dealt with summarily in Magistrates Courts.

	Persons under 17	17–21	21 *and over*
Total number of persons charged	130	58	531
Cases withdrawn or discharged	5	3	45
Sent to Institute for defectives	4	3	3
Found guilty	121	52	483
Absolute discharge	4	1	2
Conditional ,,	19	8	35
Probation Order	80	24	106
Attendance Centre	1	—	—
Remand Home	1	—	—
Approved School	12	—	—
Fine	4	13	154
Imprisonment:			
Up to 1 month	—	—	5
1–2 months	—	—	8
2–3 ,,	—	1	41
3–6 ,,	—	4	97
Otherwise disposed of (Remitted to higher Courts for sentence)	—	1	35

A considerable number of Servicemen convicted at Courts Martial are sent to the civil prisons to serve sentences of imprisonment. No statistics are published to show the number convicted of homosexual offences, or the length of sentences imposed for these offences.

PROPORTION OF HOMOSEXUAL OFFENCES INVOLVING ADULTS ONLY

In preparing its evidence for the Departmental Committee on Homosexuality and Prostitution, the Howard League for Penal Reform sought to obtain some indication of the proportion

of homosexual cases involving consenting adults in private, as distinct from those in which either the defendants or complainants were juveniles or adolescents under the age of 21. An analysis was made from the short summaries compiled by the Chairman of a Quarter Sessions giving the ages, nature of the charges, occupations of the defendants, ages of the complainants, and brief details of the circumstantial evidence in all homosexual cases appearing before him in the years 1952, 1953 and 1954.

Out of a total of 448 cases tried by this Court in these three years, 46 were concerned with homosexual offences. All these were charges of indecent assault or gross indecency, the majority being committed in public conveniences, streets, commons or other places open to the public. Sixteen of these cases involved juveniles under the age of 16, nine cases involved youths between 16 and 21, and twenty-one were offences committed between men of 21 and over. Of twenty men sentenced to imprisonment, eight were involved in offences between adults only. It was not possible, however, in the time at the disposal of the League, to get accurate information on how many of the eight cases involved homosexual conduct in private.

In one of the training prisons in 1954 (in which a higher proportion of sex offenders are found than in most prisons), it was estimated that more than 40 per cent of the homosexual offenders serving sentences at that time were involved in offences with adults only. Included in these were a number of men committed by Courts Martial. Again, it was not possible to obtain even an estimate of how many cases involved homosexual conduct in private.

In an endeavour to get a more general picture, press cuttings covering all homosexual cases reported in national or provincial papers between October 1954 and February 1955 were examined. 321 individuals were charged during the period covered by these reports. Of these cases, 52 involved public indecency, exposure or solicitation without actual sexual contact with other males, and of the remainder, 92 individuals were charged with homosexual offences with adults only. The press cuttings proved insufficiently full, however, to allow any valid estimate to be made as to the number of offences which occurred in private.

In none of these three limited surveys has it been possible to obtain the information really required. If they served no other

purpose, they did at least show how extremely hard it is to get, from any published or easily available sources, information useful in deciding penal policy. However, the surveys were not entirely without value. The very fact that all three seemed to confirm that *only* between 30 per cent to 40 per cent of convicted homosexuals were engaging in sexual relations with other male adults is a comment on the nature of homosexuality and the immaturity with which it is often connected.

In view of the increasing attention paid to the psychological factors which cause homosexual conduct, it would have been interesting to be able to trace the use made by various Courts of psychiatric evidence. Many of the press reports referred to were incomplete, but, with this proviso, there was mention of such evidence being called only in 43 cases.

Many of the individuals involved in charges concerning adults only had been traced indirectly as a result of the confession of an associate who had been detected in one offence and had then admitted homosexual practices with a number of other men. This type of evidence probably accounts for a large proportion of the offences listed as known to the police.

Suggestions are sometimes made that homosexuality is, in a sense, an occupational disease, or is more prevalent amongst certain social groups. It may therefore be of interest to look at the occupations of the 321 individuals concerned in the survey based on press cuttings:

Occupation	%
Shop and clerical workers	16%
Artisan (factory workers)	15%
Transport and Post Office	11%
Unskilled Labourers	10%
Armed Services (civil cases)	10%
Hotel and Domestic Servants	7%
Students, Trainees and Schoolboys	6%
Schoolmasters	4%
Agricultural Workers	4%
Ecclesiastical	2%
Mentally deficient	2%
Independent means	2%
Unclassified	11%

Schoolmasters and clergymen were responsible only for 4 per cent and 2 per cent respectively of the total. But no general

conclusions may be drawn from this. It is possible that persons wealthy enough to have private flats or houses may have homosexual relations which do not come readily to the notice of the police. Conversely, it is a reasonable assumption that many poor homosexuals are driven to have sexual relations in places accessible to the public, and are therefore more often caught. Once again, the lack of information regarding the prevalence of homosexuality, and its relation to social class and occupation, must be stressed.

PSYCHIATRIC TREATMENT OF HOMOSEXUALS IN PRISON

The Home Secretary stated recently that the number of homosexuals receiving psychiatric treatment in prison was as follows:

Year	Number
1951:	25
1952:	26
1953:	27

This is a very small percentage of the homosexuals who were actually imprisoned during these three years. It is true that many of them, for various reasons, are not suitable for treatment, and also that psychotherapy in prison presents special difficulties. Nevertheless, the figures given by the Home Secretary are remarkably low. This somewhat disquieting fact might well be remembered by Judges and Magistrates before they address remarks to offenders which might falsely raise hopes regarding the possibilities of psychiatric treatment in prison.

SUMMARY

All the foregoing shows the need for more information and more research by Universities and other qualified bodies into a subject about which many theories are voiced but distressingly few facts known. Carefully used, social statistics can be a most valuable tool in obtaining that accurate knowledge which alone can lead to an unbiased view of controversial subjects.

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APPENDIX ONE

ABSTRACTS FROM THE HOUSE OF LORDS DEBATE 19TH MAY, 1954*

SHOULD THE LAW BE CHANGED?

Earl Winterton: The question of whether the law should be changed in favour of homosexuals is obviously most important, but it is not more important than the investigation of the cause of this great rise in criminal vice and, above all, the moral issue of how a further rise can be prevented. Further, I would submit that the presentation of the case for a change of law displays lack of logic in some respects, unproved assertions in others, and, at least in the case of the Church of England Moral Welfare Council pamphlet, one most regrettable contention is contained in the following statement:

". . . There is ample evidence from the personal histories of those with whom we have been in touch that homosexualism is a problem and often a tragedy to those afflicted with it. As a social problem it is not, as a rule, so far-reaching and devastating in its third-party consequences as ordinary pre-marital or extra-marital sexual relations."

My comment is this. Fornication and adultery are evils; but I completely contest the view that they are more evil and more harmful to the individual and the community than the filthy, disgusting, unnatural vice of homosexuality.

It is said that unnatural vice among women is not punished, and that it is therefore illogical and unfair to punish it among men. My comments are that two wrongs do not make a right. It seems to me to be carrying the principle of sex equality too far.

. . . the existing law is the 'Blackmailers' charter'. I wonder whether this is really so. Is a homosexual more liable to blackmail than men or women who break the law in certain other directions—for example, a street bookmaker or prostitute? Is he more likely to be blackmailed than a man in a responsible position who keeps a mistress surreptitiously?

Another point made by the advocates of change is that in many countries there is no law against homosexualism between adults. I would submit that this argument is only valid if the absence of the law

* At the request of certain of the speakers, slight changes have been made in the text as it appears in *Hansard*. The alterations are shown in italics.

in countries with a moral outlook similar to ours has reduced the number of adult homosexual offences against juveniles. One of the contentions made in connection with this matter is that by permitting what I may call adult homosexuality it reduces the danger of attacks upon children. I discussed the matter with an eminent legal authority, who told me that there was no ground whatsoever for saying that it was true that adult homosexualists did not attack children. Not long ago, in a certain village not far distant from where I live, I came across a distressing case of two men who were sent to prison for homosexuality between themselves and who also corrupted five or six boys in that particular village. It is like a number of other assertions which have been made of which as yet there is no proof.

Earl Jowitt: When I became Attorney-General (twenty-five years ago), I became oppressed by the discovery that *the number of persons being subjected to blackmail was far larger* than I had ever realised. It is the fact—I do not know why it is the fact, but it is the fact—that at least 95 per cent of the cases of blackmail which came to my knowledge arose out of homosexuality.

Never let us make the mistake of thinking we should attempt to make the area covered by our criminal law co-extensive with the area covered by *the moral* law. For instance, take the case of adultery, which I certainly think is a great evil in this country today. No one would suggest that we should once more make adultery a criminal offence. It is not that we desire to condone or support adultery or anything of that sort; it is just that we realise that the criminal law and the moral law are two wholly different concepts, and we must not confuse the one with the other.

The Lord Bishop of Southwell: English law, as it stands at present, regards these offences with quite exceptional severity. . . . I am sure that it is a highly debatable question whether sin could, or should, rightly be equated with crime. There are many sins of which, clearly, the law cannot possibly take cognisance: it is impossible to send a man to prison for unclean thoughts, for envy, for hatred, for malice or for uncharitableness. On the other hand, there may be things for which a man may be sent to prison which are not in any real sense sins at all. I venture to think, without any suggestion of condoning these offences, that we may have to ask ourselves seriously whether making this particular kind of moral wrong-doing a crime may not be only aggravating the total problem. And, in the present state of public opinion we are on very dangerous ground there, because one of the results of the immense volume of social legislation in recent years is that the popular mind tends to equate right and wrong with legal and illegal. People tend to say: "The law does not forbid it, so it is all right." It would

be most disastrous if it could ever be said: "You see, after all, there never was any harm in it, for the Government have now said that it is not illegal any longer and even the Church seems to think it all right."

On the other hand, I think it is a big question whether the moral welfare of society is rightly served by making this particular kind of sexual offence a matter of criminal procedure for the law. . . . If the law is going to take cognisance of these offences among consenting parties, what is the ground for differentiating between male and female perverts? . . . If the law protects a boy from assault by a man, why does it do nothing to protect a girl from assault by a woman? Obviously in all these cases the offender must be restrained and punished, and, if possible, reformed. Almost nowhere, I think, in the whole field, is the relation between retribution and rehabilitation so difficult and so delicate as at this point.

. . . after all, even the most perfected legal system will be dealing only with the breakdowns and the failures—the long-term solution will be found only in that moral and spiritual re-education which is the most urgent need—and, as many thinking people believe, the most consciously felt need—of our time, and in the rebuilding of family loyalty, because I am certain that behind an immense number of these cases of homosexuality there still lie unsatisfactory or broken homes. Here as always, the most potent form of exorcism of evil will be found to be positive and creative.

Lord Vansittart: I would add a word about any suggestion of legalising homosexuality provided it did not corrupt the young. That seems to me to approach the civic courage of Dogberry—"If he will not stop, let him go on!" I should like to point out that there is one serious objection to this that anyone acquainted with the ways of the world must surely know. The customers of lust, if I may put it that way, are always searching for younger material and paying for it. If we smooth the *path* of the adult evil-doer, we automatically increase the prospect of the perversion of the young.

If we look over our shoulders to the downward slope of the twentieth century—and what we are discussing today is only one aspect of it—I think we shall be able to measure the inevitable descent of the second half unless we pull up.

Lord Ritchie of Dundee: It so happens that my work takes me into a number of rather varied walks of life, and I should like to say a word or two upon the subject of public opinion. In doing so, I want to make it clear that I am referring only to the situation with regard to the private actions of adult people. I believe that the public generally would be glad to see an end of prosecutions of this sort. . . . I should like to give one instance of what I should call an overriding reason

why an end to them would, I believe, be welcomed. There can be no question amongst any of us that the protection of youth is the overwhelming objective. The conclusion, however, is unavoidable that the publicity which these proceedings cause may do far more harm to young people than any good that can come from the proceedings themselves.

Lord Brabazon of Tara: General legislating can go too far, and it becomes sometimes quite illogical—you might as well condemn an hermaphrodite to penal servitude for life. My noble friend below me (Lord Vansittart) spoke about yielding to temptation. Surely to the normal man there cannot be any yielding to temptation because there is no temptation.

The trouble with the whole of this subject is that there is abnormality; consequently, it is more a clinical question than one for legislation. We shall not change people's habits by threatening them with penalties. What we must do, if we are to diminish the increase in homosexuality, is to look into the far more complicated question of breeding, environment, education and that sort of thing.

I am proud of the Church of England Moral Welfare Council's Interim Report, and I hope that when the investigation is being made by the Committee which is to be set up, laws will be passed along the lines recommended by the Council.

Lord Chorley: There are so many aspects of criminal law, in this country and other countries, in which we are making very little progress, from the point of view of reforming and dealing with the criminals, simply because we have no adequate method of handling them after they have been found guilty.

At a recent Quarter Sessions in my own county, we had a case of a wretched tradesman with an admirable record, who had been interfering with small girls. There was nothing we could do with him, as the law stands, except send him to prison. That is so with many of these cases where homosexual acts are concerned. It is much more a medical question than a criminal question, and the Courts which have to handle the cases have no satisfactory methods of dealing with men of this kind—I am talking now about the really inverted people, not the perverted people. . . . The inverted type must be dealt with—it is fair and just that he should be dealt with—as a psychological case and not as an ordinary criminal.

IS PRISON A SOLUTION?

Earl Winterton: Is it or is it not true that prison is no deterrent? Is it also true that homosexuals, being admittedly peculiar and in many

cases vain creatures, glory in the prison sentence as a form of advertisement? I submit that both propositions are doubtful. I should like to put before your lordships what I believe to be an historical fact. There was a considerable amount of homosexualism at Oxford University in the early 'nineties. It may be said that the *fontes et origines mali* were Oscar Wilde and his associates. . . . I, and one or two other Members of your Lordship's House were at Oxford in the early 1900's. I think they will confirm that then, ten years after this horrible series of attacks had occurred at Oxford, this vice was never, to our knowledge discussed or practised. In the Oxford of our day it was wholly taboo, and such undergraduates as had practised unpleasant sexual vices at their public schools concealed and were heartily ashamed of the fact. What caused this change? In the opinion of some well-calculated to judge, it was the conviction of, and sentence upon, Oscar Wilde. I admit that both were regarded at the time, and are still regarded today, by some learned in the law, as having been harsh and unfair. To put it more accurately, the new law was regarded as harsh, and the sentence on Oscar Wilde as unfair. But it frightened Oscar Wilde's imitators and, I think, acted as a moral purge.

The other point which is made is, I admit, a strong one: that the sending of homosexuals to ordinary prisons spreads homosexualism there. Surely the obvious answer to that point—if it be agreed, as I hope it is, that it is necessary to send at any rate some homosexuals to prison, those who attack juveniles—is that in future there should be special prisons and special treatment for them.

The Lord Bishop of Southwell: From such knowledge as I have of actual cases, I should say that there is little to suggest that a prison sentence succeeds in reforming an offender.

IS AN 'IRRESISTIBLE URGE' AN ACCEPTABLE EXCUSE?

Earl Jowitt: I do not accept for one moment the doctrine of the irresistible impulse. The psychologists have told me that they are quite unable at present to distinguish between an impulse which is irresistible and an impulse which has not been resisted. I hope we shall hear nothing more about this. I suppose it is a fact that these unhappy people have temptations of a nature or kind which do not attack the ordinary man. But the ordinary man has his temptations, too, and he has to learn to resist his temptations. So it seems to me that the people who are cursed in this way must also resist their temptations. That is the least we can expect of them.

Earl Winterton: I suppose the advocates of change would regard as the strongest argument of all, what I would describe as the 'irresistible

urge' theory. Its supporters would contend that, because of heredity, environment, physical condition or mental outlook, some men just cannot help being homosexual. The theory, though its supporters would deny it, is really based upon Freudian ideas. Those ideas have done some good but they have also done immense harm to the modern world. And I would add, with respect, that they are largely antagonistic to Christian doctrine. If homosexualism is a form of obsessive, uncontrollable mania, then presumably it is on a par with kleptomania. But no one has definitely suggested that every convicted kleptomaniac should be free from fine or prison sentence. Medical psychiatric treatment, it is true, is sometimes given them in lieu of imprisonment, but so it is to homosexuals. No one either has ever suggested that a married nymphomaniac who has an 'irresistible urge' to go to bed with other men beside her husband should be absolved in the Divorce Court from the consequences of her adultery. I submit . . . that the 'irresistible urge' argument is being carried to dangerous lengths by the advocates of penal reform generally. We are rapidly reaching the point when it is being contended that no criminal is really responsible for his acts because of an 'irresistible urge', and that therefore prisons should be abolished.

The Lord Bishop of Southwell: Public opinion at the present time is deeply concerned about the whole matter, and well it may be, because the increase in unnatural offences is an ominous warning of something going radically wrong in the moral foundations of the social order. And historically . . . this always seems to be a sign of a demoralised or decadent culture. Where people cease to believe effectively in what has hitherto been a communal religion, and when there is scepticism and cynicism about the meaning and value of life itself, people get driven back upon themselves, and introversion very easily brings perversion with it. It is a warning which cannot be ignored, and it is one more bit of evidence to show that once a people lets its ultimate convictions go, then there can be no stopping half-way, and the whole moral bottom is in danger of falling out of a society. As St. Paul said about this very point a long time ago, once the creature is confused with the Creator, once people cease to believe in God and, therefore in ultimate moral obligations, everything begins to go bad on us, and natural instincts and affections become unnatural and perverted.

Therefore, what I venture to say, first of all, is that fundamentally, behind all these legal and social implications of the problem, it is a moral and religious problem, and the long-term solution can be sought only in those terms.

Society—our society, at any rate—reacts very violently against it, because it feels, and rightly feels, that such practices are injecting poison

into the bloodstream. But, all the same, we must not allow our judgment to be clouded by passion on this subject, and heaven forbid that I should in any way seem to minimise the gravity of the problem before us! But further medical and psychological knowledge may lead us to a more enlightened or, at any rate, to a different approach to the whole question, and to yield to a clamour for vindictive action or for even harsher punitive measures may easily defeat our ends.

We have to disinfect our minds of the idea that the state of being a homosexual or an invert is necessarily, in itself, something morally reprehensible. It is something which happens to a man, like colour-blindness or paralysis or anything else. It is probably due to wrong-doing on the part of other people, though I think it exists in some cases just because some people are, through no fault of their own, and there is nothing reprehensible in being in that condition. Rather does it make a demand from us for sympathy and understanding; and society, through all its agencies, ought to be co-operative in trying to help people so frustrated and so conditioned, whether men or women.

Certainly the Church, like nearly everyone else, would vehemently repudiate what I might call the 'behaviourist' plea—the suggestion that a man in this condition is not a free and responsible moral agent, so that he simply says: "I am made that way; I cannot help it." And here the specifically religious contribution, surely, is the reminder that, by the Grace of God, a man can triumph over his disabilities and turn even the most crippling limitations into achievement. These forms of unnatural association are, of course, morally evil and sinful in the highest degree, because they are a violation of natural law, or, as the Christian would say, of the purpose of the Creator also when he created man in His own image created them male and female.

Lord Ammon: The noble Viscount, Lord Samuel, in a memorable speech a short time ago in which he mentioned this matter, referred to the possible dangers of a revival of the sins of Sodom and Gomorrah, which have been the disaster of other nations. In the course of that speech the noble Viscount made reference to a certain school of so-called scientists whose dangerous doctrine had done more, and does more, harm to the youth of the country than anything else; that is to say, the doctrine that we are not ourselves responsible and that, to a certain extent, these things are irresistible. In my youth they used to call things of this sort sin; now they call them complexes. A humorous illustration of that was given on the public platform a short time ago. A retired schoolmaster had found it necessary to take disciplinary action towards a lad who was perpetually late. The boy brought his mother up the next day to say that he had a complex against getting up early, and therefore ought not to be held responsible for it. That is

very much the sort of excuse that has been brought forward today for many of the sins committed and for much of the wrong-doing that goes on. I do not think that it can all be met by legislation. I believe that, to a large extent, it is due to the great decline in moral and spiritual beliefs and practices. Only a revival of those, so far as I can see, is likely to bring about an effective and lasting reform.

APPENDIX TWO

ABSTRACTS FROM THE HOUSE OF COMMONS DEBATE, 28TH APRIL, 1954*

SHOULD THE LAW BE CHANGED?

Sir Robert Boothby: The basic laws dealing with this problem are enshrined in the ecclesiastical doctrines of the Middle Ages, and are really derived from Jewish law with the inevitable emphasis on reproduction of a race struggling for survival many centuries ago. Solomon could have a thousand wives, but homosexuality was punishable by death. It is significant that no laws, however savage, have in fact succeeded in stamping out homosexuality; and that in France, where they have the Napoleonic Code, which is far less severe than the laws of this country, there can be no doubt at all that the problem of homosexuality is far less intense than it is in this country. Indeed, it is arguable that heavy penalties have increased the morbidity, sensationalism and exhibitionism by which it is so often characterised.

All the laws relating to this subject were enacted before any of the discoveries of modern psychology. I do not rate modern psychology too high, but I think it has significance. I am not at all sure that, with all his bias, Professor Freud will not go down in history as a very considerable figure; and be regarded as one of the great men of our time in centuries to come. I believe, in any event, that the existing laws are outmoded, and that they do not achieve the objective of all of us, which is to limit the incidence of homosexuality and to mitigate its evil effects.

The duty of the State, as I see it, is to protect youth from corruption, and the public from indency and nuisance. What consenting adults do in privacy may be a moral issue between them and their Maker, but in my submission it is not a legal issue between them and the State. The law must make adequate provision for the appropriate punishment of seduction or attempted seduction of youth—perhaps more appropriate punishment than exists today—of violence in any shape or form, of importuning and of acts of public indecency committed in public. But there, in my opinion, the law should stop; and I believe that if it did, we would at once get a vast improvement in the existing situation,

* The words in italics indicate changes from the versions as appearing in *Hansard* and have been made at the request of the respective speakers.

which to anybody who knows anything about it must give cause for the gravest anxiety and apprehension.

Sir H. Lucas-Tooth: . . . the adequacy of the existing law is *a question* of very great complexity. The view has been expressed . . . that the existing law is antiquated and out of harmony with modern knowledge and ideas. . . .

I think there will be general agreement among Hon. Members in all parts of the House that the criminal law in this respect ought to provide effectively, at all events, for the protection of the young and for the preservation of public order and decency. I am sure there will be unanimous agreement on that score. The question is whether the law should confine itself to securing these two objects, or whether it should be amended so as to permit unnatural relations between consenting adults in private. That is the problem which has been posed this evening. . . .

The Cambridge Department of Criminal Science has been carrying out an exhaustive inquiry into sexual offences. . . . The survey covered all sexual offences reported to the police in 1947 in 14 police areas. It shows that 986 persons were convicted of homosexual and unnatural offences. Of those, 257 were indictable offences involving 402 male victims or accomplices, as the case may be. The great majority of those victims or accomplices were under the age of 16. Only 11 per cent of the whole were over 21, and there was only one conviction involving the case of an adult with an adult in private. Virtually the whole of the non-indictable offences occurred in public places, and, again, only one offender in the non-indictable class was convicted for acts committed in private.

These figures show that the result of the law, whatever its intention may be, is not so very different from what my Hon. Friend the Member for East Aberdeenshire (Sir Robert Boothby) has eloquently pleaded, but I must leave to Hon. Members the arguments which could be based upon that result.

IS PRISON A SOLUTION?

Mr. Desmond Donnelly: The next point is the obviously serious matter that if we are to treat people for this sort of offence, prison is the very worst way to treat them. I believe it only makes the situation much worse. Sensitive people are taken there and placed with criminals guilty of a completely different crime against society—if one is to call this a crime against society; and this action by itself creates an additional social problem, because people who would not otherwise come into contact with homosexuality are thus indoctrinated.

Homosexuals who go there are brought into contact with normal

criminals and are indoctrinated with their kind of criminal life. An additional problem is created in that way. We are not facing the problem created by the fact that we are pushing people into gaols, and in circumstances which go a long way towards making the whole thing worse.

Sir Robert Boothby: We are all agreed that what are called infanto-homosexuals should be segregated unless and until they are cured; as, indeed, must all those who commit offences against children and young people of either sex. But to send confirmed homosexuals to prison for long sentences is, in my opinion, not only dangerous, but madness. Our prisons today, in their present overcrowded condition, are factories for the manufacture of homosexuality. Anybody who knows anything about them will confirm this. It is absolute madness to send these people to our ordinary prisons, and put them quite frequently in a cell with others, and sometimes even in a dormitory together. Everybody who knows what happens in our prisons will realise the effect on ordinary criminals, and that the thing spreads. I cannot believe this is the right way to handle the problem.

Sir Hugh Lucas-Tooth: . . . what medical science can do for those prisoners who are willing and able to be helped by psychological treatment is done today. I will recapitulate very briefly the main headings of what we are trying to do. Visiting psychotherapists have been appointed at certain prisons. Prison medical officers elsewhere submit to the Prison Commissioners the names of any prisoners serving substantial sentences whom they think are likely to benefit by treatment from such psychotherapists with a view to transferring prisoners to a prison where the treatment will be available.

There is a scheme for prisoners who are serving sentences which are too short for transfer to be effective, to be seen by visiting psychiatrists from regional hospital boards, and the treatment is often started with a view to continuation after release from prison. Finally, the Prison Commissioners propose to build a special establishment for mentally abnormal prisoners, and sexual cases and homosexual cases would certainly be included among those.

We do what we can for those who can benefit, but those who can benefit are a minority. Psychotherapy cannot be imposed upon an unwilling person. It is essential, if it is to be effective, that the person should have a good intelligence and a genuine desire for a cure. Where these conditions exist great benefit can result from treatment and if complete normalcy cannot be restored at any event a considerable measure of adjustment can be achieved. But there are many offenders who are unwilling or not sincere in their desire to be cured, and for them psychological treatment is useless.

APPENDIX THREE

Extracts from a Report of the Joint Committee on Psychiatry and the Law appointed by the British Medical Association and the Magistrates' Association.

THIS Committee is of the opinion that those charged with sexual offences should be dealt with in the Courts by a procedure that in some respects differs from that which is used for the generality of accused persons. The principle reason for this is medical.

The main object of all Courts must always be the protection of the public. The Committee is convinced that, in regard to sexual offenders, punishment without treatment is not likely to have a beneficial effect; indeed, it can make these offenders worse, and thus more likely to repeat their offences. In a high proportion of cases imprisonment without treatment may have consequences to the community even more dangerous than to the offenders themselves.

Despite the differences of medical opinion that exist it is clear that some (and probably many) sex offenders come under one of the following headlines:

(*a*) *Mental Illness:* i.e., the conduct is related to the mental illness.

(*b*) *Character deviation* (including many persons who are mentally normal apart from their sexual abnormality):
- (i) True perversion.
- (ii) Minor perverse traits, which are much more amenable to treatment than true perversion.
- (iii) Apparent perversion: these cases are due largely to environmental causes and are amenable often to medically guided social remedies.

(*c*) *Intelligence and moral defects:*
- (i) Gross defect of intelligence as compared with average.
- (ii) Slight defect of intelligence as compared with average.
- (iii) Moral defect with or without accompanying defect of intelligence.

(*d*) *Physical abnormality:*
- (i) Disease, e.g., of arteries in the brain and other causes leading to a mental deterioration.
- (ii) Development, e.g., glandular changes.

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