

# Sociological Aspects of Homosexuality

A COMPARATIVE STUDY OF THREE TYPES OF HOMOSEXUALS

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LONGMANS

# 10 SOCIOLOGICAL ASPECTS

## A. THE SOCIAL SETTING

In any situation – homosexual or otherwise – there is the individual and his setting. Change either the individual or the setting and a different situation is produced. To study the personality of the homosexual is to study only a part of the situation.

The development of the homosexual condition and the form it takes may depend upon events in the early life of the individual; but it will also depend upon the attitude of society to that condition, and upon the social controls which may limit the condition, or may encourage it to develop in a particular direction. These propositions are true even for those who hold that the genesis of homosexuality is inborn; for those who believe that homosexuality is caused by early environmental influences or conditioning, the statements are self-evident.

So far the emphasis has been placed on changing the individual, and leaving society as it is. But the idea that the doctors can rid the world of homosexuality, as they hope to rid the world of smallpox, is a medical fantasy.

However, it may be that people have concentrated on changing the individual because altering the setting is too big a job. And so it is. There are numerous ways in which the social setting may play a part in the development of homosexuality. Urbanization, segregation of the sexes, earlier maturity due to better health standards, the difference between public attitudes and private actions, the breakdown of old-established taboos, changes in the structure of the family and many other factors can change the development of the homosexual condition. But all these things are basic structural components of society and it is unlikely that they can be changed without making fundamental alterations in the way we live.

One of the main objections to psychoanalysis is that it is difficult, and maybe dangerous, to break down and rebuild the personality of the individual. It is still more difficult and dangerous to break down and rebuild the social setting. Indeed most people would be against such a massive reorganization of this society, except possibly the followers of Marx who believe that social problems can only be solved after capitalist society has been radically transformed.

Not only would it be very difficult to make fundamental

alterations in the social setting, but it is not certain that such changes would be for the better. It is possible that changes which will help solve the problem of homosexuality will create bigger problems elsewhere. It may well be that some of the factors in the social setting that indirectly produce the homosexual condition have very beneficial results in other ways.

The trouble with people who want to reform the world is that they always assume that bad can only come from bad. No doubt in the higher realms of philosophical thought, something which is wholly good cannot produce evil, and something which is wholly bad cannot produce good. But in the real world things are more complicated.

It is the widespread ownership of cars that causes the traffic congestion which costs the country millions of pounds in delays and a large number of deaths and injuries on the road. An example of good causing evil. It has been found that among teenagers in New York, crimes of violence, assault and rape decrease as the rate of drug addiction increases (Clausen, 1961). An example of evil having a by-product that is good.

Here is another rather more complex illustration. One of the reasons for the great shortage of beds in the mental hospitals is that a large number are occupied by patients suffering from brain damage caused by syphilis. Since the introduction of penicillin, there have been very few new cases of advanced syphilis. And yet the records show that there are more cases of syphilitic brain damage in mental hospitals today than thirty years ago. The reason for this is that advanced syphilis used to be a fatal disease and the patient would die within a few months. Now the administration of the antibiotic drugs will halt the disease. It will stop the patient from dying but if the brain damage is already too severe, it will never be possible for the patient to leave the hospital even though the penicillin has halted the spread of the disease. So the hospitals are full of helpless patients and the very success of penicillin has created a difficult social problem.

This point has been emphasized because it is essential to the understanding of the sociological approach. It is difficult to make people see that an evil thing, like robbery, may be the result of something which most people hold to be good. And people are surprised to be told that democracy, or individual liberty, or tolerance, can have unanticipated evil consequences.

For example Kardiner (1954) says there is a recent increase in the number of homosexuals because the feminist movement has stepped up the requirements of masculinity and some men flee from this

competition; such men have 'a tenuous hold on masculinity' and may become homosexual. The reader is not being asked to accept this premise. But suppose it were true, what steps should be taken to stop the spread of homosexuality? Should the campaign for equal rights for women be put in reverse? no!

Bieber (1962) and many others have suggested that the main cause of homosexuality is a dominant mother and an inadequate father. It would not be too difficult to sort out the dominant women and the inadequate men. In order to lessen the chance of producing a homosexual child, should the Government make it illegal for them to marry?

Nowadays the family seems to be the scapegoat for all social problems. Juvenile delinquency, teenage immorality and almost every other unpleasant aspect of our behaviour, real or imagined, is blamed upon the lessening influence of the family. But do the people who hold these views really want to change the fundamental structure of the family? If so, one of the first things they will have to control is mate selection. Is it such a good idea to have a law or test which will select those who can marry, and reject those who are not suitable for parenthood?

All this is plainly unacceptable. The conclusion is inescapable. It is difficult to change the individual and almost impossible to change the situation which produces homosexuality. This is not surprising because homosexuality has been found since recorded history and is present in every modern civilization.

#### B. DEVIANT BEHAVIOUR

There is another way of looking at this. Deviant behaviour of one kind or another is part of the particular social organization we have evolved. It is part of the social cost. As we have seen, to get rid of it we may have to change the social structure, but many parts of the social structure are good and we do not want to lose these parts. The alternative is to accept it. Where the deviant behaviour is harmful, like most other crimes, this alternative is not acceptable. But for other things, like divorce, or cigarette smoking, or road congestion, we may decide that the harm it causes is less than the harm of changing the social structure. Perhaps homosexuality is one of the deviant behaviours that cannot be eradicated without fundamentally changing the social structure.

But this does not mean that there is nothing that can be done. Once it is realized that the homosexual condition is not due to any 'evil' that can be exorcized, then efforts which were previously used

to eradicate the condition can now be diverted to contain or control<sup>1</sup> the problem.

The object should be to prevent the homosexual condition from leading to the deterioration of the individual in other ways. That is why it is necessary to make some attempt to contain the homosexual condition. At the same time it is important to realize that as society is condemning the homosexual, simultaneously it is creating a social problem. The size of the homosexual population depends upon certain pathogenic processes, but the size of the homosexual problem depends upon the attitude of society to the condition.

The power of this social hostility to add complications far beyond the original homosexual condition can be shown by an anthropological example and its equivalent operation in society today.

Anthropologists have found that homosexuality is more often found in the more restrictive communities where sexual customs are subject to formal rules (Mead, 1949; Ford and Beach, 1952). For example, homosexuality was rare in the very uninhibited culture of the Trobriand Islands (Malinowski, 1932) but quite common among the Mohave Indians (Devereux, 1937). This Indian tribe had very strict rules about the type of work a man should do. The men were warriors and fighters, but if a man wanted to stop at home and work with the women, he was allowed to do this, and indeed he was permitted to marry another man and act out the part of the wife as far as this was physically possible.

In modern society the most obvious mincing effeminate homosexuals are to be found, not in London, but in the small provincial towns. This is because in a large city a man can have a private homosexual life unfettered by social pressures from neighbours. But in a small community where everyone knows everyone else, the homosexual's predilections will soon become common knowledge and before long he will have to give up trying to appear normal to his friends and workmates, and there will be no point in trying to keep up any pretence. Indeed as a compensation for the social disapproval he finds, he goes to the other extreme and becomes more and more effeminate – like a Mohave Indian. This is just one way in which the social pressures can cause the personality of the homosexual to deteriorate.

Many of the problems that beset the homosexual are created by the hostility of society. He is compelled to feel ashamed of his sexual desires and it is often suggested that he is mentally ill. If he gives

1. The better word is 'control', but unfortunately this has strong emotional overtones associated with political policies. So we will use the word 'contain' in future.

way to his desires he is filled with guilt, and these feelings are often more destructive than the actual homosexual act. He must conceal his true identity and on occasions he may be required to agree with others and pretend to condemn his own interests and activities. This paranoid split in his life may prove to be difficult to maintain and lead to breakdown. If he openly expresses his predilections, he is said to be so disturbed that he is seeking conflict, scorn and ridicule from his fellow men. He is denied the comforts and companionship of marriage and family life. If he attempts to settle down and live with another man, the difficulties put in the way may make it impossible for the affair to survive. Instead he may have to seek gratification in public and sordid places.

#### C. NONCONFORMIST AND ABERRANT BEHAVIOUR

The previous chapter has detailed the four-stage progression and the introverted minority groups which can interfere with the homosexual's integration within the community. In addition there are the more serious dangers such as blackmail, robbery, assault, suicide, and even murder. All this can be the direct result of social hostility.

In particular the prevalence of suicide among homosexuals has often been underestimated. O'Connor (1948) found that over half the suicides he investigated 'uncovered the factor of homosexual tendencies'. Spencer (1959) suggests that homosexuals 'contribute strongly to the ranks of undergraduate suicides'. In many cases the homosexual reason for a suicide is kept from the coroner by family and friends.

Obviously one of the first tasks is to change social attitudes to homosexuality. A community education programme aimed at changing attitudes towards homosexuality is liable to create anxiety and even manifest hostility toward the people carrying out the programme, unless it is very carefully planned and conducted. But the new techniques of the social scientists have much to contribute to the work of health educators (Schofield, 1964). Sociological concepts have been used in numerous other problem areas such as mental health, social work, town planning and traffic congestion. The same methods and efforts would in the course of time prove successful in combating the social hostility aroused by homosexuality.

Such a plan would not be easy to carry out and progress would be slow. It should, however, be possible to dispel some widely held assumptions, namely that homosexuals are (1) moral degenerates, (2) criminal types, (3) better isolated from the public at large, (4) a

threat to our manhood, (5) the carriers of an infectious disease, and (6) anxious to induce others to share their disabilities.

It may be possible to make some progress along these lines by using the concept of nonconformist and aberrant behaviour as suggested by Merton (1961). Merton suggests that two major varieties of variant behaviour can be usefully distinguished. These differences can best be shown side by side:

<i>Nonconformist</i>	<i>Aberrant</i>
challenges the legitimacy of the social values he rejects	acknowledges the legitimacy of the values he violates
aims to change these moral laws -	tries to escape the punishments for breaking these laws without proposing substitutes
when caught he appeals to a higher morality	when caught he appeals to extenuating circumstances
claims that his actions are the right solutions for him so he cannot be dissuaded from repeating them	claims that he usually conforms and his present behaviour is exceptional
insists that his actions do not injure other people	seeks to satisfy his own interest without considering the effect on other people

Looking back at the three homosexual groups, the behaviour of the HO men is nonconformist, the HC men's behaviour is aberrant, and the HP men are somewhere in between. It is the HC or HP men who represent the stereotype of the homosexual, but it is the HO men, it will be remembered, who represent the vast majority of homosexuals.

Whether or not it will be possible to make people see that the behaviour of the typical homosexual is nonconformist, and not aberrant, the time must come when people will realize the great economic price they pay for their settled and inflexible convictions. No one will expect miracles, but as the homosexual problem is in fact the creation of society and the people in it, sooner or later men and women must realize that they are accountable for the outcome of their collective actions.

#### D. EXAGGERATED IMPORTANCE

The man who involuntarily comes into close contact with the homosexual may have good reason to be annoyed. The man who

furiously rejects a sexual advance from a homosexual may have difficulty in seeing that such a suggestion is a compliment in one way. But this rarely happens; homosexuals have a great fear of being repulsed and hardly ever make a sexual suggestion until they have received some encouragement from the other man.

But many people are apt to respond with hostility even when the homosexual's behaviour has no direct effect on them. Even if they have not been inconvenienced in any way, the homosexual's behaviour in effect repudiates the standards which they value and threatens the social validity of their moral code. So the mere mention of the word gives rise to moral indignation.

But moral indignation will not eradicate homosexuality. As noted earlier, neither changing the individual nor manipulating the social setting will eliminate the condition. No doubt such a statement will be attacked because it is too fatalistic. But it is exactly because we live in an activist society that it is necessary to make such a statement.

We live in an age when people believe that almost everything is subject to human control. Such an activist attitude is good, for it is the means of curbing previously unchecked diseases, reducing the death rate, doing away with acute poverty. But this solid faith in our own achievements and this fear that we may be called fatalistic if we accept that some phenomena are immutable may mean that we err too far on one side.

The relative importance of a social problem depends upon the values attached to it by the people in that society. Sometimes this leads to badly distorted impressions of the social significance of a problem. Thus the problem of witchcraft in the Middle Ages was partly based upon a misjudgement of the power of the witches.

Likewise it is possible that the problem of homosexuality has been overestimated. Large modern societies consist of a variety of social groups or subcultures within which a certain kind of behaviour is accepted; whereas the same behaviour would be considered strange by those outside the group or subculture. Sociological research has shown the existence of a large number of these subcultures each with their own norms and values (Williams, 1951). In fact so diverse are the norms of most large societies that there are probably only a few norms which are accepted as binding on all persons (Clinard, 1962). It follows that almost everyone must take part in some behaviour which would be considered deviant by other members of the same society. Not all these deviations from social norms are subject to disapproval. Exceeding the speed limit on the roads, wearing unusual clothes, getting slightly drunk, are all examples of deviations from



social norms which may not always be condemned. But other deviations are not tolerated.

Some of these deviations from social norms have a disruptive influence, while others are socially harmless. Ideally the degree of tolerance should depend upon the amount of social harm, but unfortunately this is not always the case. Motoring offences do not arouse much disapproval although they are potentially very harmful. On the other hand ideas of right and wrong as regards sexual behaviour have always been the subject of strong convictions without reference to their social effects.

But even the norms of sexual behaviour are not the same throughout one community and vary considerably from one society to the next. The sex code of the lower economic groups differs in many ways from the middle-class sex code (Whyte, 1943). Homosexual behaviour is condemned in Britain and America, but in other countries it is tolerated, and in still others it is only mildly disapproved. For example, in the Middle East homosexuality is accepted with tolerant jocularly (Klausner, 1961). Acts that are criminal under English law are regarded as unimportant in some Scandinavian countries.

But in the English-speaking world homosexuality is considered to be a serious, sordid and intractable problem. Perhaps this is a mistake. Perhaps things would be better if we worried about it less. It would be going too far to say that homosexuality is a social problem because thinking makes it so; for it is not only a state of mind, it is also a state of affairs. But it would be true to say that our efforts could be more fruitful if we sought to contain the problem, instead of trying to eliminate it. These efforts would not reduce the number of homosexuals, but they would reduce the number of problem homosexuals.

# II LAW REFORM

## A. THE MAIN ARGUMENTS

It was not the original intent of this report to have a section on law reform. However, the previous section has shown how a change of social attitudes is essential if progress towards containing this problem is to be made. Furthermore it is clear that little headway will be made with changing attitudes as long as homosexual acts between consenting adults in private are illegal.

Some people think that everything that can be said on the Wolfenden proposals has been said. There have been many books on the subject and the Homosexual Law Reform Society has been conducting a vigorous campaign to persuade the government to implement the recommendations of the Wolfenden Report (1957) at the very least. The main arguments of the Homosexual Law Reform Society are as follows:

1. The law discriminates irrationally against private male homosexuality, while leaving untouched female homosexuality and heterosexual misdemeanours, such as fornication and adultery, whose social consequences are probably more widely harmful.
2. The social consequences of the law are almost wholly bad. Many cases of blackmail and suicides have undoubtedly resulted from it, while it tends to increase rather than diminish homosexual promiscuity, instability and public misbehaviour by denying homosexuals the legitimate chance of establishing discreet permanent relationships.
3. Many homosexuals could be helped to a better adjustment if they felt freer to seek advice without incriminating themselves by doing so.
4. The present law does much to ensure that adolescents and young men who once became involved in homosexual practices will feel it far harder to escape than would otherwise be the case.
5. The lack of any distinction between homosexual behaviour committed in public or in private, or between those above or below an 'age of consent', decreases the protection of the youth.
6. The existing law has been condemned, not only by a 12-1 majority of the Wolfenden Committee, but also by leading religious spokesmen of nearly all major denominations and by a widely representative cross-section of the Press.

## B. OTHER COMMENTS ON THE LAW

Although it is beyond the scope of this report to comment in detail on the arguments in the previous section, there are some items which have been brought to light as a result of this research. It will be seen that all these items support the arguments for a reform in this law.

*The law can be the direct cause of homosexual behaviour.* Once a man comes before the courts he is labelled and tagged. All his future behaviour will be influenced by this event.\* If the case gets any kind of publicity, he will become known as a homosexual (and men who are not homosexual sometimes commit homosexual offences and are put in prison for it), and his chances of marriage and heterosexual adjustment are enormously prejudiced. The effect of appearing in court on a homosexual charge is often calamitous, even if the sentence is not severe. A conditional discharge has been the ruin of a man's career before now. Even men who have been acquitted of a homosexual charge often become the subject of malicious gossip.

The law also fosters the view that once a person has been persuaded to take part in a homosexual act, all hope is lost. Magistrates and judges encourage this view with remarks such as: 'You have ruined the life of this young man.' Despite scientific evidence to the contrary, popular opinion holds that homosexual seduction is ruinous. In all four variant groups in this investigation there are cases of men who claimed they were 'ruined' at school or Borstal, but there were men in the control groups who had undergone similar experiences and had not developed homosexual tendencies.

It was also found that some of the men had a desire to return to prison where their preferred kind of sex is accepted among the inmates and is easier to obtain. For some this desire was largely unconscious, but for at least two of the prison group it was specific and conscious.

The idea of putting a homosexual offender into an all-male environment is plainly absurd. Although some form of incarceration may be unavoidable for the homosexual criminal, it is as well to remember that as far as the homosexual condition is concerned it is most unlikely that he will come through the experience any the better. Therefore it behaves a magistrate or a judge when dealing with a criminal who is also homosexual, to award a prison sentence only as a last resort and only because any other form of disposal is unsuitable. Furthermore magistrates should consider very carefully before sending a youth with an 'educated' accent to Borstal, because this accent will be considered effeminate by the other boys. There

seems to be little doubt that some boys in some Borstals have been forced to take part in homosexual activities.

*The law offers no solution to the problem.* Although many convicted homosexuals are promised treatment in prison, the results of this research show that they do not get it. There are different kinds of homosexuals, and, as noted in Chapter 3, different types of paedophiliacs. It is unlikely that any one form of treatment that can be given in a prison will be suitable for every type.

Sexual offenders are not often recidivists, but no one supposes that exclusive homosexuals give up their activities as a result of arrest, although it is possible that some paedophiliacs may be deterred by arrest and disgrace.

Gibbens (1963) writes: 'Although researches have shown with great consistency that sexual offenders tend to keep to one particular type of sexual behaviour, often of a very partial kind, and very rarely gravitate to more serious types, this fact is strongly resisted by even the informed public.' The law, then, is not required to prevent a homosexual from becoming a depraved sex maniac; it is unlikely to stop him from becoming a homosexual. If, by chance, the homosexual is caught again, the only solution open to the judge is to award a stiffer sentence. But long sentences do not change an individual's sexual orientation; they merely fill the prisons. Neustatter (1961) says that the first requirement is to determine whether an act is socially dangerous, and he fears that repugnance at certain acts may destroy objectivity and result in society penalizing such behaviour out of all proportion to its true harm.

*The law is capricious.* The variation in the sentences awarded for similar homosexual offences has been noted in earlier chapters. In particular it was found that men who were found guilty of homosexual offences in private received longer sentences than those who committed public indecencies because the latter were less likely to admit buggery.

For every homosexual act known to the police there are hundreds that are undetected. Whether a homosexual becomes involved with the legal machinery depends in part only upon his actions; it may also depend upon some influential segment of the community (e.g. the Press, or Parliament, or the local Women's Institute) who become concerned about a particular state of affairs, usually following a widely publicised scandal, and who will bring pressure to bear on the police to 'do something about it'. It will also depend upon the attitude of the Chief Constable in the particular area in which the homosexual resides. Some act as if the Wolfenden Committee were law already, others exhibit a crusading zeal to stamp out all

perversions. In 1955 there was one prosecution for importuning in Manchester; in 1956 and 1957 there were none; in 1958 there were two. A new Chief Constable was appointed at the end of that year and the number of prosecutions for importuning rose to 30 in 1959, to 105 in 1960, to 135 in 1961, and to 216 in 1962 (from the *Observer*, 1 September 1963).

It might also be worth mentioning that homosexuals in lower social classes are much more at risk. They cannot afford to pay for treatment. It is harder for them to leave the family home and perhaps financially impossible for them to live alone in rooms; in fact it is more difficult for the working-class homosexual to resist the pressures from his family to get married. It is harder for him to take up a congenial career where his workmates will not demand proof of his heterosexuality. It is extremely difficult for financial and class reasons for him to set up home with another homosexual. All these things mean he is more likely to permit homosexual activities in public and so get involved with the law. And he will not be able to afford a good lawyer to defend him.

This research has also shown that those who tell the truth are much more likely to be prosecuted. The experienced homosexual who blandly denies everything can often get away with it.

*The law encourages antisocial acts.* The blackmailer, robber and assailant are protected by this law because the victim is frightened to go to the police. In order to avoid these risks, many homosexuals avoid emotional attachments. The advantage of promiscuity to a homosexual is that it is impersonal.

In Chapter 9 it was shown that the legal pressures push homosexuals into introverted minority groups with strong intra-group loyalties that lead to provocative displays of group idiosyncrasies in some cases and occasionally to revengeful and other antisocial attitudes and acts.

It is also said that the law means that a homosexual who possesses secret information becomes a security risk because he is an easy prey to the blackmailer, although the danger of this has been exaggerated. If a man has access to top secret material he has to be 'security cleared'. He has to nominate two referees who know him very well. It is unlikely that they will discover much about his sexual orientation, but once he has had access to secret information, a very careful watch is kept on him. For example the intelligence branch is empowered to look into any rumour they may hear about the man.

In theory only the practising homosexual is open to blackmail. In effect if a man is found to be homosexual he is forced to leave the Armed Services whether he is practising or not. It was well known

that many civil servants in the U.S. State Department were branded as homosexuals during the time of Senator McCarthy without the necessity of providing evidence or proof, and it is still true that a man can be called upon to resign although he has not committed any homosexual acts. This is a reaction to sexual deviation, not to their sensitivity to blackmail. So here the crime is to *be* homosexual, not to perform an illegal act.

This is a serious problem because more and more people are having access to top secret material. It is very difficult to screen a man beforehand because homosexuality is usually a very private aspect of a person's life. Even if all homosexuals could be screened, it would still be a serious waste of talent, for many of them are well suited to responsibility at all levels, including the highest. The solution is to change the law so as to remove the possibility of blackmail.

The problem of the Services is said to cause some difficulty. One of the reasons given against a change in the law is that it would be necessary, but awkward, to have a different law for the Services.<sup>1</sup> But all that is necessary is to have some arrangement to prevent an officer or N.C.O. from taking advantage of his rank to persuade a soldier to have homosexual relations with him. This does not need fresh legislation. All these cases could be dealt with under Section 69 of the Army Act, 1955 (and its equivalent provisions in the Naval Discipline Act and the Air Force Act) – 'Conduct to the prejudice of good order and discipline'.

In fact an officer or N.C.O. who takes advantage of a subordinate could easily be removed from the Service without introducing a criminal charge. The usual practice in the Women's Services when they discover Lesbian activities is to remove the participants under the heading, 'Services no longer required'. This is not a discharge with *ignominy*, nor a medical discharge; thus it is not prejudicial to the girls in civilian life.

According to Gross (1962) when a homosexual is discharged from the U.S. Army, not only is the reason why clearly printed on his discharge sheet, but the civilian police in his home town are notified. In contrast to this, the Newalls (1962) report that when the authorities in Israel come across a case of homosexuality, they send him *into* the army.

1. When Mr Butler was Home Secretary he said: 'The Wolfenden Committee excluded the Armed Forces, as my hon. Friend the Member for Ashford (Mr Deedes) said. Are we to accept its recommendations to that extent? It is very difficult to carry through this reform if we make that big omission.' (*Hansard*: House of Commons 29 June 1960, Col. 1493.)

*The law may be the cause of bad police practice.* In this report there have been allegations of entrapment, false evidence by the police, the use of agent provocateurs, policemen peering through peep holes and hiding in lavatories, as well as genuine mistakes by the police. Furthermore two of the men in prison for homosexual offences in private maintained that the police had pinned the homosexual offence on them because they felt sure they were guilty of non-sexual offences (Section B of Chapter 2).

There is no guarantee of protection for homosexuals who have been robbed or blackmailed. If they complain to the police they may be charged with an offence. In a letter to *The Spectator* in 1960 the Secretary of the Homosexual Law Reform Society wrote: 'More often than ever we are visited by homosexuals who have been robbed, beaten up or blackmailed, or who have received threatening letters. In every case I have to advise the men not to report the crime, since in many cases it is the victim who is prosecuted while no action is taken against the real criminal.'

A barrister writing in a book about the police (Rolph, 1962) has no doubt that the police frequently commit perjury. Not only is it difficult for magistrates to decide when they should disbelieve police evidence, but it is often unwise for a defendant to make allegations against the police without independent witnesses. Where the accusation is a homosexual offence there are unlikely to be any witnesses. Solicitors often advise their clients to keep quiet. Two statements are used time after time by policemen in importuning cases; first that the arrested man took out his penis which was erect, and second that this was seen by a young person who was upset by the sight. Homosexuals who freely admit they were trying to pick up another man strenuously deny that they would ever do such a thing. And yet the same phrases are repeated by one policeman after another until it appears to be almost a formula for getting a conviction for importuning. When it is suggested that some policemen commit perjury, people become indignant and react as if all the police have been accused of dishonesty. The general good name of the police is not being questioned. But it is a mistake to believe that there is no problem of any consequence, although the last Royal Commission (1962) on the police came to this conclusion.

The law is heavily weighted against the honest man who makes a statement, especially if he admits buggery which is usually awarded with much stiffer penalties. The law is also weighted against the man who commits only infrequent acts because he is unaware of the methods used by the police to bring this type of malefactor to justice. Gross (1962) wonders about the psychological effect on the police

who are engaged in such a performance: 'A state professing to have some interest in the moral welfare of its police should give some thought to what peering through holes in a subway washroom does to those who peer.'

Not only is the law capricious but when the police undertake to form a chain reaction by persuading one homosexual to incriminate others, the inspector in charge of the investigation has to make important decisions about which people to prosecute. Coon (1957) writes: 'In most cities the police . . . do not seek to find all those involved. They know they will be taxing the capacity of their courts and will find that too many people are involved who are locally important.' If this is the case, how does the inspector decide whom to prosecute and whom to let go with a warning? As homosexuality is to be found in all social classes, it is possible that in a chain reaction of this sort, some of the people involved will be well known to the inspector in charge and to the Chief Constable. These policemen may have a very difficult decision to make in such a situation.

In the *British Medical Journal* of 27 January 1962 a police surgeon writes: 'In the past 13 years I have been asked by the police to assist them with certain examinations of homosexuals. I found that the request to provide medical evidence for homosexual practices of the passive partner was a major problem. Most of my cases were teenagers or in their early twenties. I could not find any references in my books and had to rely on findings as I went on.'

This police surgeon's trial and error method has led him to the conclusion that one can tell a homosexual because there is 'a certain readiness felt to receive the examining finger' in the anal passage. 'A normal sphincter would resist the insertion of the finger while the anal sphincter in the homosexual dilates almost in a reflex manner.' But if this is what is meant by evidence of homosexual practices, it would seem to rely upon subjective judgement to an extent which would make other forms of evidence inadmissible in a court of law.

The point made in Section B of Chapter 8 that homosexual acts, but not homosexuals, are criminal, is not always understood even by the police. According to Plummer (1963), when a Soho public house was raided in 1953, the police said that 91 were homosexual, but that 'only 22 had been convicted'. It is difficult to understand what legal evidence the police had in order to be able to state that 69 men were homosexual although they had not been convicted.

One of the most disquieting things found in this report is the apparent relationship between effeminate appearance and the likelihood of being arrested for importuning. The implications are that



importuning is used on a known homosexual in the same way that 'being a suspected person loitering' (a misused relic of the 1824 legislation against Wellington's homeless discharged soldiers) is alleged to be used on a known criminal. A related point is that a known male prostitute is liable to be arrested even after he has given up that profession.

The unsupported evidence of the plain-clothes policemen is usually accepted by the magistrates. So fearful is the homosexual of the social repercussions that he can often be persuaded to plead guilty on the promise from the police of no publicity. The policeman is neither authorized to give such a promise, nor is he able to prevent publication of the proceedings in the press.

In some ways the law on importuning may be the cause of more injustice than the law which prohibits homosexual acts between consenting adults in private. Although the use of the word 'persistently' in the original wording of the act suggests that the intention was to protect members of the public from interference or at least annoyance, the interpretation by the courts means that in practice no one except the plain-clothes policemen need be aware of the importuning; and convictions are usually obtained on the sole evidence of the policemen who make the arrest. In such a situation it is not necessary to stress the possibility of perjury, or indeed of provocative actions, on the part of the arresting constables. It is not sufficient to argue that the penalties are comparatively slight, for the disgrace that follows a conviction for importuning can be shattering.

A distinction should be made between soliciting and importuning. In their memorandum on the Street Offences Bill, the Church of England Moral Welfare Council (1959) noted that the majority of homosexuals charged with importuning 'are in fact guilty of soliciting, often of a not very offensive nature, rather than importuning. But little distinction seems to be made between these two different forms of behaviour either in charges or penalties.' With its use of the phrase 'persistently importuning' the law seems to be framed to prevent male prostitution. In fact only a very few of the homosexuals charged with this offence are prostitutes. The great majority are merely trying to find out if the other man is homosexual by the use of words or an enquiring look which would go unnoticed by the man who is heterosexual. If the other man does not respond, the homosexual will go away and seek a sexual partner elsewhere. A homosexual would be stupid to importune persistently and pressingly as he is well aware that the vast majority of men look upon homosexual activities with repugnance.

*The law is unworkable.* Some people have a great faith in the law as an effective means of regulating behaviour. But this is only true within certain limits. If there is too large a gulf between precept and practice, then the law will not work.

The example of this most frequently quoted is Prohibition in the United States. Many people were worried by the problem of alcohol and the prohibition of all drinks was seen as the answer. In the event the would-be social cure was worse than the ailment. The prohibition of off-course betting in this country had to be abandoned for similar reasons.

Some people have suggested that the clients of prostitutes, as well as the girls themselves, should be subject to the criminal law. But if an attempt to patronize a prostitute were made a crime, it would cause more social disruption and inefficiency than the harm caused by the evils of prostitution. Homosexuals also participate in the basic activities of the society, in business, government, home, the church, etc. To disrupt all this by throwing them into jail would be to the detriment of the whole community. This does not happen because most homosexual acts go undetected. But a law which is tolerated only because it is unworkable, and which would cause chaos if it could be made effective, is plainly not a good law.

Most of the sanctions against sexual activities are part of society's effort to harness the sex drive. Sex is only permissible after marriage. But for most homosexuals marriage is undesirable. More often than not the homosexual who uses marriage as a solution to his problem is the cause of much unhappiness to others as well as himself. The only alternative to marriage is abstinence. But this, as noted earlier, is thought to be beyond the powers of most men. Yet the law requires of the homosexual, not just self-control, but total suppression.

*The law underpins the social attitudes.* The consequences of social hostility towards homosexuality has been noted in many sections of this report. It is not necessary to enlarge upon this. It is clear that these attitudes are supported by the present state of the law. A tolerant attitude towards homosexuals is a tolerant attitude towards a particular type of criminal; to excuse a homosexual act is to condone the breaking of the law. Doctors, clergy and social workers who are trying to help homosexuals in distress have to be ever mindful of their own predicament when trying to assist these law breakers.

All the books published on this subject in the last ten years have come out, from their very different standpoints, in favour of a change of this law. From the pastoral and religious viewpoint of Gross (1962), Buckley (1960) and Wood (1960); the scholarly study of Bailey (1955), the medical opinions of Bieber (1962), West (1960),

Berg and Kritch (1958), Chesser (1959, 1958), Allen (1958), de Savitsch (1958), and even Bergler (1959, 1958, 1956); the sociological surveys of Westwood (1960) and Hauser (1962);<sup>1</sup> or the popular journalism of Plummer (1963) and Stearn (1962); for their different reasons and in their different ways, all of them believe that a reform of the law would be desirable. It is unlikely that they are all mistaken.

1. It is difficult to classify Hauser's book under any discipline and he would probably disown any classification allocated to him. He took no account of any of the other books or articles in the scientific journals on this subject as he wanted a new and original approach. He also scorned numbers and statistics, explained nothing about the size of his sample or where he obtained his informants. In the event he has come to much the same conclusions as everyone else, although not in as much detail as some of the specialists.