Wolfenden's Witnesses

Homosexuality in Postwar Britain

Brian Lewis

Genders and Sexualities in History

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Palgrave Macmillan's *Genders and Sexualities in History* series aims to accommodate and foster new approaches to historical research in the fields of genders and sexualities. The series will promote world-class scholarship that concentrates upon the interconnected themes of genders, sexualities, religions/religiosity, civil society, class formations, politics and war.

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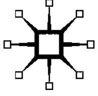

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For Edgar

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Note on Style

The memoranda and transcripts of interviews in the Wolfenden Papers consist of typed pages, all typed up by a team of stenographers, each deploying slightly different standards. Apart from the correction of an occasional obvious typographical error, I have retained the original spelling, grammar, punctuation, capitalization, underlining and (so far as possible) spacing. I have used ellipses (...) to indicate where text has been omitted.

Part I

Introduction

Introduction

In May 1954 Gilbert Andrew Nixon, 37, a company director of a firm of manufacturing chemists from West Kirby, Cheshire, killed himself with cyanide in a gaol cell. He had just been sentenced to 12 months' imprisonment at Somerset Assizes at Wells on a charge of gross indecency. Fourteen other men, some with Taunton addresses, had also pleaded guilty to committing or attempting to commit unnatural acts and acts of gross indecency; nine of them received prison sentences, ranging from one to four years. During the Second World War Nixon had received the Military Cross in Sicily and had recently retired as a lieutenant-colonel from the Territorial Army. 'It is a terrible thing', said Mr Justice Oliver in passing sentence, 'to see a man like you with a gallant military record standing as you are.' As recorded in *The Times*,

> The Judge said that it was an appalling thing for him that an ancient, historic, not very large town like Taunton should at one single Assize exhibit as many cases of homosexual crime as in the ordinary way he met with in a whole year. The answer, as he saw it, was not that the population of Taunton was more debased than other groups of the community, but that once that vice got established in any community it spread like a pestilence and unless held in check threatened to spread indefinitely.[1]

Gilbert Nixon's tragic end caused only a ripple in the national press. But it came amidst a period of intense introspection about homosexuality and the law among those hankering for reform and those, like Mr Justice Oliver, who wanted the 'pestilence' eliminated. (The two groups were not mutually exclusive.) On 24 August 1954 the Conservative government of Winston Churchill appointed a Departmental Committee on Homosexual Offences and Prostitution. Its remit was to consider and recommend changes to the laws relating to homosexual offences and prostitution, and to consider the treatment of those convicted of homosexual offences. This would involve and necessitate a thorough investigation into the causes and consequences of sexual deviancy. Chaired by John Wolfenden, the Vice-Chancellor of the University of Reading, the committee met on 62 days over the next three years; 32 of those days were devoted to the 'oral

examination' of 'witnesses', mostly at the Home Office in Whitehall, partly at the Scottish Home Department, St Andrew's House, Edinburgh.[2] This volume provides a selection from the memoranda submitted by those witnesses and from the transcripts of the interviews themselves, all housed at the National Archives at Kew. It covers solely the homosexual concerns of the committee's remit; Julia Laite's companion volume deals with the prostitution.

The Wolfenden Report came out in 1957. It has long been recognized as a landmark in moves towards gay law reform. What is less well known is that the testimonials and written statements of the witnesses provide by far the most complete and extensive array of perspectives we have on how homosexuality was understood in Britain in the middle decades of the twentieth century. Those giving evidence, individually or through their professional associations, included a broad cross-section of official, professional and bureaucratic Britain: police chiefs, policemen, magistrates, judges, lawyers and Home Office civil servants; doctors, biologists (including Alfred Kinsey), psychiatrists, psychoanalysts and psychotherapists; prison governors, medical officers and probation officers; representatives of the churches, morality councils and progressive and ethical societies; approved school headteachers and youth organization leaders; representatives of the army, navy and air force; and a small handful of self-described but largely anonymous homosexuals.

This introduction gives a concise overview of the history of the committee and of the report, and maps out the major debates surrounding homosexuality in the 1950s. Part II, the meat of the collection, includes a representative range of the differing perspectives before the committee, contextualized and annotated. Part III highlights excerpts from the Wolfenden Report itself as a logical culmination of the committee's three years of information-gathering and deliberation.

*

When Sir David Maxwell Fyfe, the Home Secretary, brought the twin evils of prostitution and homosexuality before the cabinet table for discussion in February 1954, he thought that he had a growing and increasingly visible problem on his hands. The Conservative government craved an ordered society of gendered conformity, enhanced fecundity and contented domesticity, but the postwar reality appeared instead to have thrown up a host of social problems requiring urgent solutions.[3] For example, as John Wolfenden later reminisced, there was increasing alarm in official circles about the 'shamelessness' of prostitutes on the streets of London (their numbers and visibility especially embarrassing during Queen Elizabeth II's coronation in 1953, when the city was on show) and about an apparent increase in homosexual behaviour. The policing of both of these problems was no longer fit for purpose: the police had resorted to pulling in working girls in rotation (the prostitutes would be fined—in effect, taxed—and then return to the streets), and the policing of homosexual offences varied wildly across the country and had included some recent high-profile cases. All of this was serving to bring the law into disrepute.[4]

The greater visibility of homosexuality was critical in generating what a number of scholars have characterized as a moral panic.[5] There had been a considerable spike in England and Wales over the previous quarter of a century in cases known to the police of buggery, gross indecency and indecent assault—from 622 in 1931 to 6,644 in 1955—and in prosecutions for the same offences: from 390 in 1931 to 2,504 in 1955. The more than threefold rise since the end of the war was especially alarming.[6] A number of prominent individuals had found themselves before the courts in 1953 on homosexual charges, including the actor Sir John Gielgud (fined for persistently importuning in a public lavatory in Chelsea),[7] the Labour MP for Paddington North, William Field (ditto, in public lavatories in Piccadilly Circus and Leicester Square)[8] and the writer Rupert Croft-Cooke (sentenced to nine months for indecent acts with sailors picked up in the Fitzroy Tavern, near Tottenham Court Road).[9] The conviction in March 1954 of Lord Montagu of Beaulieu, his fellow landowner Michael Pitt-Rivers and Peter Wildeblood, the diplomatic correspondent of the *Daily Mail*, for private and consensual offences, and after highly questionable police methods, caused particular disquiet.[10] Croft-Cooke wrote darkly of a sexual McCarthyism, and the story became ingrained of a witch-hunt against homosexuals orchestrated in high places.[11] As Patrick Higgins, Matt Houlbrook and others have pointed out, the reality is more prosaic: lower-level decision-making in a small number of Metropolitan Police districts and among certain provincial forces accounts for most of the rise in statistics.[12] But the bulk of commentators at the time discounted the potential impact of more vigorous policing, preferring to believe that more prosecutions meant more offences committed—that homosexual practices were on the rise. It was difficult to pinpoint any one culprit, but the dislocation of families and the alleged breakdown of communal moral values because of the war featured prominently in most explanations.[13]

Just as worrisome for the government was the impression that more people were *talking* about homosexuality. The popular press in the late 1940s and early 1950s was jettisoning its former reticence about reporting in any but condensed and opaque terms on acts of sexual deviancy. The *Sunday Pictorial* featured a three-part series on ‘Evil Men’ in 1952, making it clear that these sick individuals were organizing in a degenerate sexual underworld and had designs upon *your* children.[14] More soberly, a serious newspaper such as the *Sunday Times* was calling for reform, picking up not only on the unsatisfactory spectacle in the courts but also on many decades of medical, scientific and religious questioning about sexual inversion. Its leader of 1 November 1953 argued, on the one hand, that ‘the law that makes intercourse between males as such an indictable offence is neither enforceable nor consonant with current ethical standards’, but also, on the other, that, ‘It is not, in the long run an uncontrollable phenomenon. If, for some, perversion is an inherent and deep-rooted psychopathic state, for a far greater number it is a tendency which can be resisted, sublimated, or never awakened.’[15]

One of the most significant of these recent intellectual sallies upon which the editorial built was an article in 1952 by a Church of England clergyman, Derrick

Sherwin Bailey, followed by a report in 1954 commissioned by the Church of England Moral Welfare Council, both of which concluded that at least some homosexuals were born that way and—so long as they left the children alone and didn't frighten the horses—they should not find themselves up before the magistrate for whatever they chose to do behind closed doors.[16] Another was the 1952 study *Society and the Homosexual*, by the homosexual psychologist and sociologist Michael Schofield, writing under the pseudonym of Gordon Westwood, which sought to recast homosexuality as a psychological condition largely determined in early childhood rather than a deliberate, morally perverse choice.[17] A third was the 1953 novel *The Heart in Exile*, by a Hungarian expatriate, Adam de Hegedus, writing under the pseudonym of Rodney Garland, which pleaded for tolerance for the middle-class homosexual.[18]

Maxwell Fyfe did not favour a relaxation in the law for homosexuals. Yet, in presenting to his cabinet colleagues the arguments for an official inquiry, he recognized the 'considerable body of opinion which regards the existing law as antiquated and out of harmony with modern ideas'.[19] His first concern was clearly the prostitution problem, but he believed that the government could not strengthen the law and penalties against streetwalkers without the backing of a Royal Commission's authoritative findings. And, given the noise surrounding homosexuality, he reasoned that launching a thorough inquiry into prostitutes while ignoring the other sexual deviants would be scarcely credible. Churchill's preferred method of dealing with the unwelcome chatter was to curtail press freedom to publish the details of criminal prosecutions for homosexual offences, to prevent a repetition of the sensational coverage of the Montagu trial, but Maxwell Fyfe was able to persuade the cabinet that a dispassionate inquiry, which might educate the public, was preferable to censorship.[20]

In the event, the cabinet agreed to a Home Office departmental committee rather than a full-scale Royal Commission. This would have the advantage of allowing possibly reticent witnesses to speak off the record and in private.[21] With the exception of a small minority of MPs, such as Sir Robert Boothby, there was no strong parliamentary pressure for the decriminalization of homosexual offences, and the public remained largely hostile, so Maxwell Fyfe and the cabinet were not pushing for a progressive agenda here.[22] Their aim was to control the threat that marginal sexual figures posed to public morals and decent family values, however that might best be done. And this opened up the prospect that a more liberal variation on the state regulation of sexuality might prevail if this seemed to be the optimal way to achieve these goals.

*

The Home Office brought together a committee of 15 members. John ('Jack') Wolfenden (1906–85) was a safe pair of hands to act as chairman. A grammar school boy who won a scholarship to Oxford, started his career as an Oxford philosophy don, then became the headmaster of Uppingham and Shrewsbury Schools, he had been appointed to the vice-chancellorship at Reading in 1950. He

was establishing his reputation as a diligent public servant and chair of councils and committees; a knighthood duly followed in 1956.[23] In common with the rest of the committee, throughout the proceedings and in his memoirs Wolfenden was adept at preserving a façade of impartiality and innocence on the question of homosexuality.[24] His knowledge—their knowledge—was ostensibly based purely upon professional experience (in his case predominantly as a headmaster in boarding schools[25]); family secrets or personal desires remained necessarily hidden. But if, as seems likely, he knew about the ostentatious homosexuality of his brilliant son Jeremy, this was disingenuous.

As an astonishingly self-aware 18-year-old, fresh from Eton and living in London, Jeremy Wolfenden wrote in 1952, in a statement anticipating many of the themes that the committee was going to encounter,

> I am a queer; so much is physically evident. But I have a lot more important things to do than waste my time hunting young men . . . I may end up with an undemanding and unsensational ménage with a single boy-friend; I may end up unsatisfied except for an occasional Sloane Street tart . . . I may, I suppose, turn to heterosexuality; but if by a pretty mature (physically) eighteen, I am not attracted by girls either physically or emotionally or aesthetically it seems unlikely.[26]

Jeremy's biographer, Sebastian Faulks, claims that Jack Wolfenden must have known about his son's sexual tastes for at least two years before he accepted the chairmanship of the committee, which invites speculation about an unacknowledged motivation for taking on the challenge. According to Jeremy, his father wrote to him, 'I have only two requests to make of you at the moment. (1) That we stay out of each other's way for the time being; (2) That you wear rather less make-up.'[27]

Home Office civil servants and Wolfenden selected a cross-section of the Establishment to make up the rest of the committee: representatives of the legal profession, medicine, government, education and religion; attempts at some kind of balance from England, Scotland and Wales; and three token women, mainly to contribute to the prostitution side of the mandate.[28] James Adair (1886–1982), OBE, was a solicitor, a former procurator fiscal (public prosecutor) for Glasgow and Chairman of the Scottish Council of the YMCA.[29] Mary Cohen (1893–1962), OBE, was vice-president of the Scottish Association of Mixed Clubs and Girls' Clubs.[30] Dr Desmond Curran (1903–85) was consultant psychiatrist at St George's Hospital, London.[31] The Rev. Canon Vigo Auguste Demant (1893–1983), theologian and social commentator, was Regius Professor of Moral and Pastoral Theology at Oxford.[32] Kenneth Diplock (1907–85), QC, the Recorder of Oxford, was appointed a judge of the Queen's Bench Division, with the customary knighthood, in 1956.[33] Sir Hugh Linstead (1901–1987) was a barrister, a pharmaceutical chemist and the Conservative MP for Putney.[34] Peter Francis Walter Kerr, 12th Marquess of Lothian (1922–2004), farmed estates in the Borders and subsequently held junior positions in Conservative administrations.[35] Kathleen Lovibond (1893–1976) chaired

the Uxbridge Juvenile Magistrates' Court, was appointed CBE in 1955 and became Mayor of Uxbridge in 1956.[36] Victor Mishcon (1915–2006), the son of a rabbi, was a Brixton solicitor and a Labour member (and chairman) of the London County Council.[37] Goronwy Rees (1909–79) was the Principal of the University College of Wales, Aberystwyth.[38] The Rev. R. F. V. Scott (1897–1975) was the minister of St Columba's Church of Scotland, Pont Street, London.[39] Lady (Lily) Stopford (1890–1978) was an ophthalmologist and magistrate; she was married to Professor Sir John Stopford, Vice-Chancellor of the University of Manchester.[40] William Wells (1908–90), barrister and Labour MP for Walsall and then Walsall North, was appointed QC in 1955.[41] And Dr Joseph Whitby (1900–60), a former national bridge champion, was a general practitioner in north-west London with wartime psychiatric experience.[42]

Two members of the committee did not see it through to the end. The Presbyterian minister, the Rev. Scott, resigned in March 1956 on his appointment as Moderator of the General Assembly of the Church of Scotland; he could no longer spend so much time in London.[43] Goronwy Rees was forced out a month later. He was the most colourful and curious appointee to the committee. Born into a Welsh-speaking family, the son of a Calvinist Methodist minister in Aberystwyth, he flourished as a student at Oxford.[44] Here he gravitated towards the 'aesthetes' among the undergraduates: those who devoted themselves to poetry and the arts, spent their vacations soaking up the supposed decadence and sexual hedonism of Weimar Germany and who were—or affected to be—homosexual.[45] In spite of falling in love 'with a very beautiful and wild young man' in his second year,[46] he claimed that he himself was heterosexual, and he went on to marry and have a family. (Given his involvement with homosexual coteries at university and also during the war years, he at least was no innocent about gay lifestyles and identities at meetings of the Wolfenden Committee—and it was he who arranged for some homosexuals to appear as witnesses.) It was also at Oxford that he was seduced by Marxism and met the Cambridge Apostle and spy Guy Burgess, who became a close friend. Burgess recruited him for some low-level intelligence-gathering for the Comintern—spying that probably did not extend beyond the Nazi-Soviet Pact of August 1939. During the years when he was nurturing his family and making his living variously as a journalist, novelist, wartime officer, industrialist and college bursar, he remained close to Burgess—and when Burgess and Donald Maclean defected to the Soviet Union in 1951, Rees was interviewed by MI5. None of this prevented his appointment at Aberystwyth in 1953 and to the Wolfenden Committee a year later. Only when he recklessly provided material for a sensational series of articles on Burgess in the *People* in 1956 (anonymously, although his identity was swiftly revealed by the *Daily Telegraph*)—partly for the money, partly to exorcise his guilt for his previous support of communism—did his position become untenable. Wolfenden and Sir Frank Newsam, Permanent Under-Secretary at the Home Office, had no doubt that—since Rees had made it clear that he had been best friends with such a notorious and promiscuous homosexual and traitor as Burgess—any report that advocated homosexual law reform with

his signature attached would be irreparably compromised. He was compelled to step down.[47]

*

More than 200 witnesses and organizations presented written evidence to and/or appeared before the committee.[48] The majority, reflecting a mid-century sense of what constituted expert opinion and which voices should be privileged, were invited to contribute at the suggestion of committee members or of the Home Office, though some submitted statements or other written materials unsolicited.[49] The usual, but not invariable, procedure was for a memorandum to be circulated around the committee and then for a follow-up interview with the author(s) to take place. As the excerpts below reveal, the range of opinions varied between those (mainly in the law enforcement community) who favoured continued criminalization of gay sex and those (mainly in medical, religious and ethical ranks) who tended to believe that homosexuality was a psycho-medical, not a legal, problem, that it was either innate (as sexologists such as Havelock Ellis would have it) or acquired at some stage during childhood development (possibly through early seduction) or a form of arrested development (the sub-Freudian perspective). Biology, hormones, dysfunctional families, degenerate societies: all might be to blame.[50] In addition to the multifarious attempts at discovering aetiologies, there is much fascinating information in the Wolfenden archive about possible treatments and about the policing of public sex and of cottaging (gay sex in public lavatories)—even a set of instructions on how to conduct physical examinations for sodomy in the Royal Navy. There are also many case studies of homosexuals and how they lived their lives. The focus is on men since the law was silent on consensual sex between women, but occasionally some of these expert commentators shared their thoughts on lesbians as well.

The final report recommended that homosexual sex between consenting males over the age of 21 in private be decriminalized, drawing a very firm public/private distinction, and that street prostitution be more strictly regulated. The latter was acted upon swiftly, but it took another decade for the gay sex suggestions to be enacted, in the Sexual Offences Act of 1967.[51] Despite this stuttering start, those who favour a liberal, progressive narrative have seen in Wolfenden a step in the right direction—the acknowledgment that homosexuals existed for reasons quite often beyond their control, that they deserved sympathy rather than censure and that they had the right to a private sexual life beyond the reach of the law. The Wolfenden Report may have been patronizing, condescending and limited (in that it recommended an unequal age of consent and the stricter policing of public sex), but it was, for its time, as enlightened and rational a pronouncement as one could expect from Official Britain, and it paved the way for all that followed: decriminalization, gay liberation and the raft of twenty-first-century reforms culminating in gay marriage. Critics of Wolfenden see something quite different: an attempt, in Foucauldian terms, to call 'the homosexual' into being in order better to control

him. They allege that Wolfenden allowed only a very limited tolerance of a certain type of respectable, domesticated, masculine homosexual at the expense of all other varieties of sexual or gender expression, that the report crystallized a strict hetero/homo binary that ill favoured sexual and gender fluidity. They assert that the committee aimed to perpetuate the moral stigma against homosexual conduct and to eradicate it as far as possible beyond the hopeless class of congenital inverts, and that this identification or invention of a corralled, essential homosexual minority entailed the systematic denial of the universalizing reality of same-sex desire running through everyone.[52]

There is much to be said for all these variations on a critical theme, even if the normalizing, assimilationist intent behind Wolfendenian discourse could be and was subverted in practice. But this is to anticipate. In the early months of the committee's deliberations there was a widespread perception that the problem of homosexuality needed to be squared up to in a manly fashion. 'Homosexuality is no new phenomenon, but it is still not openly discussed', wrote J. Tudor Rees and Harley V. Usill in their introduction in 1955 to *They Stand Apart: A Critical Survey of the Problems of Homosexuality*. 'Is it not time that it was brought into the light of day for investigation with a view to its eradication? . . . 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 the moral codes of law?'[53] The Wolfenden Committee's *raison d'être* was to provide an answer.

Part II

The Witnesses

1
Law Enforcers

Introduction

Since the Wolfenden Committee's mandate was to consider whether legal changes were necessary, the first document outlines the state of the law in 1954. This Home Office memorandum [i(a)] describes the three principal statutes that could ensnare men committing homosexual acts in England and Wales: sections 61 and 62 of the Offences Against the Person Act of 1861 (sodomy and attempted sodomy); section 11 (the Labouchère Amendment) of the Criminal Law Amendment Act of 1885 (gross indecency); and section 1 of the Vagrancy Act of 1898 (persistent soliciting and importuning). (By the time that the Committee reported in 1957, the Sexual Offences Act of 1956 had consolidated and replaced much of this legislation.) The second memorandum, from the Scottish Home Department [i(b)], points out that only the 1885 statute applied to Scotland as well. Instead, unlucky males committing sexual acts with other males might fall foul of the common law or of provisions in the Immoral Traffic (Scotland) Act of 1902 and the Criminal Law Amendment Act of 1912.[1] The third document, courtesy of Sir John Nott-Bower, Commissioner of the Metropolitan Police [i(c)], provides more detail about the offences, about the potential penalties and about the statistics of arrests, charges and sentences for 1953 in London—including additional ways of targeting homosexuals: municipal by-laws for gross indecency and the use of the Metropolitan Police Act of 1839 to clean up indecent or disorderly conduct in pubs.

The statements from Maxwell Fyfe's Home Office, from Nott-Bower and from the Director of Public Prosecutions (DPP), Sir Theobald Mathew [i(e)], all clearly called for the laws against homosexual acts to remain.[2] They pointed to the significant increase in numbers of offences in recent years and—although Nott-Bower gave some credence to the notion that greater police activity in certain districts was part of the explanation[3]—tended to believe that the growth in homosexual practices was real. If a glance at the Scottish figures, which had changed little over the same period, gave them pause, they failed to register it.[4] Instead, they argued that the deterrent against a great and growing threat to individual and community values needed to be maintained, in spite of the acknowledged pressure for reform. Wolfenden's witnesses were unanimous in declaring a need to protect the young

from the depredations of homosexual corrupters and seducers and to preserve public order and decency from revolting displays; but the reformers argued that the law should not interfere with moral issues and that sex between consenting adult men in private should be allowed. The Home Office and the DPP insisted that only rarely did 'genuine' homosexuals, who conducted their relations in private and discreetly, end up before the courts, so no change in the law was necessary. It was to be a repeated refrain: the curious argument that the law as it stood might be rather harsh to 'respectable', monogamous homosexuals, but that these people need not worry because it was rarely applied to them. Any relaxation of the law to take account of this, on the other hand, would only encourage the expansion of the deplorably corrupting and promiscuous varieties of homosexual practice.

One such variety was importuning and/or sex between men in public lavatories (cottaging). Nott-Bower provided some information about this in his report, but it was Police Constables Darlington and Butcher of the Metropolitan Police who really went into detail in their interview before the committee [i(d)], describing how they and other plain-clothes officers working in tandem observed cottaging over prolonged periods.[5] Their accounts were notable for descriptions of the different types who populated the lavatories (from office workers to 'mincing' male prostitutes) and for contrasting sexual geographies (lunchtime importuning was popular in the old-fashioned, dimly lit urinals of Mayfair and Soho, evening cottaging in the newer, white-tile, well-lit conveniences of Chelsea). Their appraisals of conventional thinking regarding homosexuality are striking: 'to accuse a man of importuning male persons is very nearly as serious as accusing him of murder, and it is the most awful thing that could happen to a man.' But PC Butcher was at pains to stress that no innocent man need ever fear using a public lavatory lest his actions be misconstrued ('To prove a charge of persistently importuning it must mean persistent importuning'), and this was backed up by Nott-Bower in his interview.[6] But a number of Wolfenden's witnesses provided evidence or hearsay suggesting that the police often took short cuts because they knew their word would be accepted by the magistrate, or they accepted bribes, or—as the memorandum from the Council of the Bar put it [ii(b)]—the police and magistrates made mistakes that could ruin a man. A stench of police corruption hung over the proceedings, and even Jack Wolfenden 'thought it prudent to avoid public lavatories in the West End' while they lasted.[7]

If homosexuals could expect little sympathy from police and prosecutors, the opinions of lawyers, judges and prison officials were more mixed, even if a conventional language of horror and disgust about the moral evil of homosexual conduct permeated nearly all the discourse, pro- or anti-reform. The Law Society was against reform [ii(a)], but the Bar Council was divided as to whether consenting, adult, private, homosexual acts should be decriminalized. R. E. Seaton, speaking against change [ii(c)], posited the widely held 'seduction thesis', that every homosexual was a potential danger to youth. Confirmed homosexuals were very often attracted to boys, he continued rather more eccentrically, since boys were the nearest thing to women. Deterring the threat of homosexual contagion, he argued, was enough to justify the preservation of existing legislation. R. Ormrod

countered by pleading for the separation of law and private morality and brought in examples from other times (ancient Greece) and places (continental Europe) where the toleration of homosexual practices did not produce a deluge. He, like many others, thought that the current laws incited blackmail.[8]

Ormrod recommended an age of consent of 21; the Magistrates' Association preferred 30 [iii(a)]. A narrow majority of its council (but not the membership) favoured reform; many other practices were, after all, also dangerous and undesirable evils, they maintained, and yet these escaped criminal sanction. The magistrates' recommendation for such a high age of consent rested on the belief that homosexuals could be divided into true inverts (whose chances of cure were slight) and those suffering from arrested development (who were treatable, given time—and so should not be written off prematurely as incorrigible).[9] As Peter Wildeblood's fictionalized character Sir Geoffrey Weston, QC, put it sardonically, 'The magistrates, bless their dotty hearts, took the line that they should punish people for being queer under that age, and let them off if they were over thirty, because if they were still doing it then they were past redemption'.[10]

Most of the individual metropolitan magistrates who submitted memoranda [iii(b–f)], however, were staunchly opposed to reform.[11] Sir Laurence Dunne, Chief Metropolitan Magistrate, for example, posited a version of what the committee came to call 'A Rake's Progress': that appetites were progressive; that if homosexuals were allowed to do what they wanted with adults in private, they would become sated and turn to youths or boys to spice up their jaded sex lives [iii(b)]. In his interview with the committee, J. P. Eddy, QC, former Stipendiary Magistrate of East and West Ham, emphatically supported this general line: '[Homosexuality] lives, I believe, on corrupting youth, because I believe that, in general, an adult homosexual is not particularly attracted by an adult homosexual. He wants youth: he wants boys.' Both he and Dunne, in a defiant display of English superiority, cared not that they did things differently elsewhere and that in many European countries homosexual acts were legal: 'We do not take our morals from the Continent.'[12] Chief Constable C. C. Martin of the Liverpool Police made a similar point about foreigners with the surprising observation, 'I do not think the moral standards in other countries are anything like they are in this country, except probably Canada and Fiji'.[13]

The psycho-medical model—that homosexuals needed psychological treatment and not prison—was fervently supported only by Claud Mullins, who had pioneered such approaches during his time on the bench in the 1930s and 1940s [iii(d)]. In his interview, Paul Bennett, Metropolitan Magistrate at Marlborough Street, was scathingly dismissive of this approach: 'The poor fellow needs treatment... It is the same excuse with shoplifters. They are all ill, every one of them. They are ill: their doctor says so. Here is the certificate.'[14]

The opinions of the Sheriffs-Substitute, Recorders and High Court Judges were similarly sharply divided [iii(g–k)]. Lord Goddard, the Lord Chief Justice, was not alone in being able to countenance the thought of decriminalization but only if this generosity did not extend to the revolting and depraved crime of buggery [iii(j)]. He would, in effect, retain the provisions of the 1861 Act but strike the

words 'in private' from the Labouchère Amendment. (This was a matter that was going to concern the committee to a considerable extent: since the existing legislation prescribed harsher penalties for buggery, ought this distinction to be reflected in the committee's recommendations?) Richard Elwes, the Recorder of Northampton, was interestingly different in that, in sharing two case studies with the committee, he made clear his repugnance for the Labouchère Amendment and regarded mutual masturbation, in public or private, as either trivial or not an offence at all [iii(h)]. But his touching faith that sodomy was not involved in either case, that the instances were isolated and that the men involved would go on to lead exemplary heterosexual lives appears to be remarkably naïve.[15]

In the memoranda from those involved in the correctional services [iv], especially the prison doctors, we begin to see a more sophisticated discussion of aetiologies—a plethora of different ways in which to render the homosexually inclined population manageable by breaking it down into ever-smaller categories. Dr W. F. Roper, Senior Medical Officer at HM Prison Wakefield, provided a particularly elaborate scheme of classification [iv(b)]. In their interviews Roper and Dr Matheson, Senior Medical Officer at HM Prison Brixton, subdivided the queer population still further according to sexual practices. 'The more fastidious man will not commit buggery', Roper asserted. For Matheson, 'I think the bugger is a worse type of person than the homosexual who goes in for mutual masturbation or something like that, and it does strike me too that the bugger is the worst. Just as in schizophrenia the schizophrenic who starts playing with his excreta you feel that he has gone down very, very far and is very, very ill, so with the bugger.'[16]

Other points raised in the memoranda of the correctional services included frequently expressed reservations about the wisdom of locking up homosexuals in all-male institutions if reformation were the objective; the doubtful efficacy of treatment (satisfactory 'adjustment' to one's condition, rather than a conversion to heterosexuality, was the best that therapy could hope to achieve); and the potential benefits of doses of oestrogen to dampen troublesome libidos. In his interview Frank Foster, Director of the Borstals and Young Persons' Division of the Central After-Care Association, added some rather different thoughts. Let people have homosexual intercourse, he said, 'whenever they can get their doctor to certify that they are sexually impotent'. This would serve the greater cause of sublimation:

> I do know homosexuals who are living a fully constructive life in the community—and we all do, I am sure—who are in no way giving way to any physical side of their homosexuality at all, and I do know too heterosexuals—head mistresses, head masters, people in all walks of life who live a perfectly chaste life and give a contribution to the community, and surely it is perfectly—yes, natural—that the homosexual should be asked—we realize your position, it carries an additional responsibility—to make a sacrifice to the

> community. Heterosexuals make this sacrifice with perfectly good adjustment and without any obvious frustration. We should extend it and say: 'If you would make the same sacrifice, not voluntarily as they do, but for the sake of the community... [*sic*]'.[17]

Since celibacy was probably beyond most men, the rationale for having 21 as the age of consent, as so many advocated, was often based on concerns about the susceptibility to corruption of 18- to 21-year-olds undergoing National Service. The memoranda from the armed forces [v] echoed these fears—arguing that a change in the law would sap the will of young men to resist homosexual advances and that discipline in the ranks (not to mention the moral fibre of the nation) would be undermined. These submissions listed the rules and regulations outlawing homosexual practice in the army, air force and navy, and suggested that—in spite of Guardsmen in London providing sexual services for money or gifts—the problem (including lesbianism) was under control and that no changes were advised. And, although many of Wolfenden's witnesses were quite insistent that most men who had sex with men were not of the 'flaming pansy' type, the Admiralty Fleet Orders [v(b)], which prescribed in excruciating detail how to do a physical examination of suspected homosexuals, instructed doctors to look for identifiable types as corroborative evidence: their general appearance, their feminine gestures, their use of cosmetics and the like.[18] This basic confusion about who the homosexual was—essential and marked in his features or 'as normal as you and me' except for his distasteful desires—was to be a persistent theme in much of the evidence presented in committee room 101 of the Home Office.

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i. Police and Prosecution

(a) HO 345/7: Memorandum Submitted by the Home Office

HOMOSEXUAL OFFENCES

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I. The Present Law

2 The following offences known to English law may be regarded as "homosexual offences":–

(a) Sodomy; (b) Attempted sodomy; (c) Assault with intent to commit sodomy; (d) Indecent assault on a male person by a male person;	Offences against the Person Act, 1861. Sections 61 and 62[19]
(e) Acts of gross indecency between male persons; (f) Procuring acts of gross indecency between male persons;	Criminal Law Amendment Act, 1885. Section 11.[20]

(g) Attempting to procure acts of gross indecency between male persons;	
(h) Persistent soliciting or importuning of males by males for immoral purposes.	Vagrancy Act, 1898. Section 1.[21]

There are no provisions in English law under which homosexual acts between women constitute criminal offences.[22]

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II <u>The extent of the problem</u>

10. There are no reliable means of assessing the prevalence of homosexual activities. The only reliable statistical evidence available relates to the number of indictable offences which come to the notice of the police and the number of persons convicted of such offences . . .

. . .

12. The figures indicate that since the end of the war there has been a considerable increase in the number of indictable offences. The increase, which is between four- and five-fold over pre-war figures, may not correspond exactly to the actual increase in the prevalence of such offences, but there can be little doubt that the prevalence of such offences has increased substantially and the increase is of such an order as to give cause for concern. The reasons for the increase are not known.

III. <u>Proposal that the existing law should be amended</u>

13. There is a considerable body of opinion which regards the existing law as antiquated and out of harmony with modern knowledge and ideas. There seems to be general agreement that the criminal law, in dealing with homosexual, as with heterosexual, acts, ought to provide effectively for the protection of the young and for the preservation of public order and decency, but it has been suggested that the law should confine itself to those objects and that unnatural relations between consenting adults in private, which are not criminal in many other countries, ought not to constitute criminal offences. The proponents of this view maintain that what consenting adults do in private is a moral issue, and that the criminal law ought not to concern itself with such acts unless they can be shown to affect society adversely; it is also represented that even if homosexual acts between men can be said to have anti-social consequences, these consequences can be no more anti-social than those resulting from homosexual acts between women, which the criminal law ignores; and that they are no more anti-social than fornication and adultery, which undermine the fundamental unit of society—i.e. the home and family.

14. While it is true that the criminal law extends to acts committed by consenting adults in private, there is reason to suppose that the number of prosecutions in respect of acts occurring in these circumstances is small, and that such prosecutions will usually be found to relate to cases in which there are unusual

or aggravating circumstances. This is borne out by an enquiry into sexual offences recently conducted by the Cambridge University Department of Criminal Science, which covered all sexual offences reported to the police in 1947 in 14 police areas.[23] The cases investigated included those of 982 persons convicted of homosexual offences. 253 of these were convicted of indictable offences and 729 of non-indictable offences. The 253 indictable offences involved 402 male victims or accomplices, the great majority of whom were young people under the age of 16; only 11% of them were 21 years or over. There was only one case in which an adult was involved in an offence committed with another adult in private, and this was a case which came to the knowledge of the police when one of the two persons involved attempted to commit suicide. The non-indictable homosexual offences . . . are, by their nature, offences which occur in public places (mainly in parks and urinals) so that a public nuisance is involved.

15. Until the passing of the Criminal Law Amendment Act, 1885, acts of indecency between males committed in private were not criminal save in so far as they constituted offences against section 61 or section 62 of the Offences against the Person Act, 1861, or the common law . . .

. . .

The "Labouchère amendment" has been criticised on the score that its application to acts committed in private provides opportunities for blackmail. While there is no doubt that money has, from time to time, been extorted from men by means of a threat to expose acts of gross indecency, it is probable that the blackmailer relies on his victim's fear of social exposure rather than his fear of criminal proceedings. It is known, for example, that blackmail connected with homosexual acts takes place in countries where the acts are not criminal offences; so, also, in this country blackmailers sometimes extort money by means of a threat to expose sexual conduct which is not criminal (e.g. adultery).

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31. It has been suggested from time to time that there are frequently medical or psychological causes contributing to homosexual offences, and that treatment should be remedial rather than punitive. The Home Office and the Prison Commission are aware of the importance in many of these cases of psychological factors, and recognise the importance of treatment in appropriate cases. Visiting psychotherapists have been appointed at certain prisons, and prison medical officers submit to the Prison Commissioners, for transfer to those prisons, the names of any prisoners serving sufficiently long sentences whom they think likely to benefit by psychotherapy. There is also a scheme under which prisoners serving sentences too short for treatment to be undertaken at one of the prison psychiatric centres, but nevertheless thought to be suitable for such treatment, can be seen by visiting psychiatrists from the regional hospital board, and as a result of such visits treatment is often started with a view to continuation by the same psychiatrist after release. The Prison Commissioners also have in mind the building of a special establishment for mentally abnormal, but not certifiable, prisoners, and some of

those who would go to such an institution would no doubt be prisoners convicted of homosexual offences.

32. The problem cannot, however, be solved merely by substituting psychiatric or other treatment for punitive methods. Psychotherapy is not something which can be imposed and brought to a successful conclusion against a person's will. Many homosexual offenders are consciously or unconsciously unwilling to submit to treatment which may succeed in modifying their desires. There is also the consideration that the deterrent effect of punishment is important, whether the question is considered merely from the point of view of what is best for the offender or is considered from the wider point of view of what is best for the protection of society. It is suggested that the problem must be looked upon as one in which neither the considerations of therapeutic treatment nor the considerations of punishment can be disregarded. There must be effective methods of punishment and custody for the protection of the public, but the application of these methods should not exclude the use of therapeutic treatment in all suitable cases.

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(b) HO 345/7: Memorandum Submitted by the Scottish Home Department, October 1954

HOMOSEXUAL OFFENCES

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I. The Present Law

2. The following are "homosexual offences" at Scots law:–

(a) Sodomy	Common Law[24]
(b) Attempt to commit sodomy	
(c) Indecent assault on a male person by a male person	
(d) Lewd and libidinous practices and behaviour (if the practices or behaviour are homosexual)	
(e) Acts of gross indecency between male persons	Criminal Law Amendment Act, 1885, section 11
(f) Procuring acts of gross indecency between male persons	
(g) Attempting to procure acts of gross indecency between male persons	
(h) Persistent soliciting or importuning of males by males for immoral purposes	Immoral Traffic (Scotland) Act, 1902, section 1 and Criminal Law Amendment Act, 1912, section 7.[25]