



'The Greatest Menace Facing Australia': Homosexuality and the State in NSW During the Cold War

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‘THE GREATEST MENACE FACING AUSTRALIA’: HOMOSEXUALITY AND THE STATE IN NSW DURING THE COLD WAR

GARRY WOTHERSPOON

In recent years, the attention of many historians and social commentators has turned to the post-war era in Australia, and in particular to the ‘Cold War’ period. The emerging consensus seems to be of a time of repressive and restrictive state activity, particularly against those who did not conform to an idealised social and political norm, and who were therefore perceived as being a threat to Australia’s stability.¹

Seen from this perspective, one would expect that male homosexuals, seen at the time as a shadowy minority of ‘wilful perverts’, would be the subject of increased social and state harassment. And indeed the evidence from NSW for the period confirms this view. Not only was there increasing police attention paid to those who committed homosexual acts, but there were also changes in the law, both to increase penalties against homosexual activity and to create new ‘crimes’ associated with homosexuality. There were moves to isolate homosexuals in the state’s prisons; there were government-funded enquiries to discover the ‘causes’ of homosexuality (so that a ‘cure’ could be found); and there were also suggestions in Parliament that male homosexuals be put into annexes of the state’s mental hospitals. All of this occurred within a relatively short period of time. At a community level, there was increasing harassment of individual homosexuals, either in the form of discrimination against them, or in the form of violence—the phenomenon of ‘poofter-bashing’.

The purpose of this article is to trace the way in which the machinery of the state was geared up to deal with what was perceived as the problem of growing homosexuality in New South Wales—the homosexual wave that unfortunately has struck this country²—from the late 1940s, and to consider some of the reasons why this occurred. In particular, the role of the police will receive special attention since, it will be argued, the police were a major agent in generating this heightened profile about people with homosexual desires.

* * *

During World War II and in the years immediately afterwards, many moralists and social commentators argued that the war had played havoc with society’s mores and behaviour, leading to moral decline. A typical expression of this view came from the New South Wales Police Commissioner who, in his 1945 report, saw fit to comment on ‘a certain moral looseness . . . inseparable from war-time conditions.’³ Similar but far more explicit views were put forward several years later, sometimes expressed in rather apocalyptic terms. In 1951, the leaders of the major Christian churches in Australia, along with the various representatives of the British monarchy here, issued a ‘Call to the People of

1. See, for example, A. Curthoys and J. Merritt, *Australia’s First Cold War: Vol. 1, Society, Communism and Culture* (Allen & Unwin, 1984); and F. Crowley (ed.), *A New History of Australia* (Heinemann, 1974), 493-502. However, as Curthoys and Merritt note, ‘the resolutions were not always as complete as they appear . . .’; indeed, ‘the direction of social and economic change and the political struggles themselves allowed contrary developments’ (*ibid.*, xiii).

2. Attorney-General Billy Sheahan, *N.S.W. Parl. Debates*, 23 March 1955, 3230.

3. *Report of the Police Department of N.S.W. . . . 1945*, 2.

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Australia' which was read by the chairman of the ABC immediately after the 7.00 p.m. news on Remembrance Day (11 November). It stated, in part, that:

Australia is in danger. We are in danger from abroad. We are in danger at home. We are in danger from moral and intellectual apathy, from the mortal enemies of mankind which sap the will . . . The dangers demand of all good Australians community of thought and purpose. They demand a restoring of the moral order from which alone true social order can derive.⁴

Here the emphasis was on uniting behind a common banner—the restoration of moral order—which would protect Australia from internal and external dangers.

These concerns, of course, were not unique to Australia. In England, the Archbishop of Canterbury, while launching a campaign for 'moral reconstruction', had called upon Britons to return to living 'Christian lives'.⁵ Similarly in America and other allied countries, these concerns over moral collapse received increasing expression.⁶

The main indicators of this moral collapse were seen as being an increase in the rates of such things as divorce, venereal disease, illegitimate births, and in criminality generally, especially sex crimes. While raw data in some of these areas does at first glance indicate an increasing trend, when it is indexed against population growth the picture is far more ambivalent: indeed in general there is little evidence to support the view that trends in an accepted range of social indicators show a rapid and dramatic change in the social fabric of NSW, which by implication was taken to mean a 'moral collapse' of society.⁷

There was one indicator, however, that did unequivocally show an upward trend, particularly in the immediate post-war period, and that was the general crime rate in New South Wales, as the following figures indicate:

No. of Charges—Males

<i>Period</i>	<i>(Annual Average)</i>
1935-39	124,413
1940-44	128,712
1945-49	166,555
1950-54	239,498

Source: Derived from Mukherjee, *et al.*, *Source Book of Australian Criminal & Social Statistics 1900-1980*, p. 45.

Within the increases in crime in general in the post-war period, there were some areas which recorded quite dramatic increases—drunkenness and traffic offences, for example, and also robbery with violence, and petty larceny. And the police perspective saw the war, once again, as being a major causative factor: 'Having regard to the fact that never before in the history of the State have social conditions been so extremely complicated by reason of the war,

4. Quoted in M. Hogan, *The Sectarian Strand* (Penguin, 1987), 1-2.

5. Quoted in J. Costello, *Love, Sex and War 1939-1945* (Pan, 1985), 356.

6. *Ibid.*, 355-363.

7. Figures for the various 'social indicators' can be found in either the *Official Year Book of N.S.W.* (various years), or in S. K. Mukherjee, E. Jacobsen and J. R. Walker, *Source Book of Australian Criminal and Social Statistics 1900-1980* (Australian Institute of Criminology, 1981). As far as V.D. was concerned, there was a continuing campaign to wipe it out in the period immediately after the cessation of hostilities. See, for example, the two column half-page advertisement in *SMH*, 4 January 1946, 8.

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that many thousands of young men and women are seeking re-adjustment to civil life after serving with the Forces, and considering not only the relatively sudden cessation of the war and relaxation of war tension but the many social and economic difficulties existing in the immediate post-war period, it is perhaps scarcely surprising that the crime figures should reflect some of these unfortunate but unavoidable features'.⁸

For the next few years, the Police Department's Annual Reports noted the fluctuations in the overall crime rate, while highlighting some areas of increase. Fairly quickly, and reflecting these previously mentioned concerns about the moral decline of society, it was the 'sexual offences' that came to receive emphasis. 'Sexual offences of all kinds increased from 434 during 1946 to 489 during 1947, an increase of 55 cases or 12 percent.'⁹ By 1949 the focus was becoming even more specific: while 'sexual crimes of all kinds totalled 505 for 1949, . . . [a] rather unsavoury feature is that of this increase of 34 cases in respect to sexual offences, 31 is in respect of increases in unnatural sexual crimes'.¹⁰ Further details of some of these 'unnatural' offences were given: '. . . in respect of unnatural sexual crime (indecent assault on a male person, sodomy and bestiality) there were 132 cases for 1947, 158 in 1948 and 189 in 1949'.¹¹ In that same year, the Police Annual Report introduced a new section, *Vice Suppression*, which included, apart from gaming, betting and liquor sales, a long section on 'other forms of vice'.

These concerns, initially vocalised by the police, were taken up by the media and from the late 1940s increasing publicity was given to the apparent rise in 'sex perversion' and homosexuality in Australian society. An article in *Truth* in mid 1948 crystallised the way these concerns were being expressed: 'The increasing number of sex perverts in Sydney . . . is causing grave concern not only to the public at large but also to the judges who are charged with the responsibility of administering justice.'¹²

By the end of that year the newspapers were noting 'a police war on sex perverts' and quoting police sources as showing a sharp increase in homosexuality and sex perversion.¹³ And reports on its increase continued over the years, generating much public hysteria.¹⁴

This hysteria drew responses from several sections of the community. For example, in 1949 the Country Women's Association, at their annual conference, 'decided to seek heavier penalties for sex crimes'.¹⁵ Likewise the medical profession became involved, offering a range of suggestions, from stronger sentences to better psychiatric help, establishing a bureau to keep records of all sex offenders, and providing alternative institutions to deal with these sorts of offenders.¹⁶

The net effect of all this was clearly to target people with homosexual desires as an undesirable group within society, a group which indulged in perversions,

8. *Report of the Police Department of N.S.W. . . . 1946*, 3.

9. *Report of the Police Department of N.S.W. . . . 1947*, 3.

10. *Report of the Police Department of N.S.W. . . . 1949*, 4.

11. *Ibid.*

12. *Truth*, 20 June 1948, 7.

13. *Daily Telegraph*, 15 December 1948, 10.

14. See, for example, *Daily Telegraph*, 15 December 1948, 10—'police war on sex perverts'; *SMH*, 23 March 1949, 2—editorial on 'Prevention of Sex Crimes'; *Sunday Telegraph*, 15 January 1950, 12—request to establish a sex offenders bureau; *SMH*, 2 March 1950, 6—magistrate's complaints about sexual offenders; *Sun*, 1 August 1951, 11—'sex perversion . . . the greatest social menace in Australia'; *SMH*, 19 April 1952, 5—'alarming rise in Male Sex crimes'; *Daily Mirror*, 9 November 1954, 3—'dramatic rise in homosexuality in Australia'.

15. *SMH*, 10 September 1949, 5.

16. See, for example, *Sunday Telegraph*, 15 January 1950, 12; *Sun*, 1 August 1951, 11; *Daily Mirror*, 9 November 1954, 3.

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and whose members were responsible for a growing amount of crime in the community.¹⁷ Homosexuals had long been a persecuted minority in many western societies, and historians have recently drawn attention in particular to the homophobia evidenced in Anglo-Saxon countries.¹⁸ A range of interpretations for this phenomenon have been put forward, and a common point of many of them is the overlaying of the Judeo-Christian ethic with English puritanism, which created a sour brew, particularly censorious of any forms of non-reproductive sexuality (especially outside monogamous matrimony). From this perspective, homosexuality was doubly damned, and English law reflected the condemnation.

The original English laws relating to homosexual acts had been put on the statute books as part of Henry VIII's campaign of transferring power from the Roman Catholic Church—in this instance away from the ecclesiastical courts to the state's judicial system. Hyde argues that there was no cogent reason for the English buggery laws to be enacted: they just came on the books as part of the forced transfer of power.¹⁹ These laws, with occasional amendments, remained on the statute books for over three hundred years, and were in force in 1788 when the Anglo-European invasion of Australia occurred.

Not only were English laws transferred to Australia, but English attitudes and perceptions came too. The early years of Australia's white history give clear evidence of the continuance of this homophobia and the continued persecution of (male) homosexuals.²⁰ A nice illustration of this is given in the statute law itself. The 'abominable crime of buggery' was the only offence in the law of NSW to carry such a pejorative adjective. Yet homosexual acts, among adults, are essentially 'victimless' crimes, although this perception was not acceptable to community standards in Australia in the late 1940s and early 1950s. In that period homosexuals were still seen very much in the terms that had been defined by the Christian churches. There may have been more known about them than there had been half a century before—the scandals relating to S. A. Maddocks, Commissioner for Motor Transport, and to Lord Beauchamp, former Governor of NSW, had ensured that.²¹ But this greater knowledge was still set within the parameters of criminality and immorality. The view of King George V—I thought men like that shot themselves²²—was indeed not an uncommon one, although the quality of discussion was altering in educated lay circles. But public perceptions were certainly not favourable, and as the public hysteria about sex crimes—particularly those associated with homosexuals—mounted in NSW,

17. Occasionally, as an extra slur, the 'foreignness' of homosexual activity might be implied, as it was by the chief of the Sydney Vice Squad who noted that 'perversion offences are very prevalent among certain foreign elements in the community'. *SMH*, 19 April 1951, 5.
18. See, for example, Louis Crompton, *Byron and Greek Love: Homophobia in 19th Century England* (University of California Press, 1985); Jeffrey Weeks, *Sex, Politics and Society: The Regulation of Sexuality since 1800* (Longman, 1981); Jeffrey Weeks, *Coming Out: Homosexual Politics in Britain from the Nineteenth Century to the Present* (Quartet, 1977); A. Gilbert, 'Conceptions of Homosexuality and Sodomy in Western History', *Journal of Homosexuality*, vol. 6, nos. 1/2 (Fall/Winter 1980/81); R. Trumbach, 'London's Sodomites: Homosexual Behaviour and Western Culture in the 18th Century', *Journal of Social History*, II (Fall, 1977).
19. H. Montgomery Hyde, *The Love that Dared Not Speak Its Name* (Little, Brown & Co., 1970), chapter 2.
20. See R. Hughes, *The Fatal Shore* (Collins/Harvell, 1987), and G. Wotherspoon, 'A "Sodom" in the South Pacific: Male Homosexuality in Sydney 1788-1809', in G. Aplin (ed.), *A Difficult Infant: Sydney Before Macquarie* (University of NSW Press, 1988).
21. Maddocks' case made headlines in 1937 when he was caught with a police decoy in a car. Beauchamp's divorce proceedings, in 1931, in which details of his homosexuality emerged, also received wide coverage, and the material was covered again at his death in 1938.
22. This is not an apocryphal story: it is reported in such diverse sources as Beverley Nichols, *The Sweet and Twenties* (Weidenfeld & Nicolson, 1958), 101, and Ted Morgan, *Somerset Maugham* (Cape, 1980), 549.

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so too did pressure on the government to do something about what the then Superintendent of Police, Colin Delaney, chose to call 'the greatest social menace' in Australia.²³

One initial step was taken in 1951. It was an amendment to that part of the Crimes Act relating to homosexual offences. In the NSW criminal code, Sections 79-81 of the Crimes Act (prior to November 1951) had stated:

79. Whosoever commits the abominable crime of buggery, or bestiality, with mankind, or with any animal, shall be liable to penal servitude for fourteen years.²⁴

80. Whosoever attempts to commit the said abominable crime, or assaults any person with intent to commit the same, shall be liable to penal servitude for five years.

81. Whosoever commits an indecent assault upon a male person of whatever age, with or without the consent of such person, shall be liable to penal servitude for five years.

The amendment in 1951 was to Section 80, and inserted the clause 'with or without the consent of such person' after 'with intent to commit the same'. This appears to have been to bring it in line with Section 81, which has a similar clause. The apparently minor amendment went through in an 'omnibus' amendment bill to the Crimes Act, and there was no discussion as to the significance of the added phrase.²⁵

It was probably no coincidence, however, that it was initiated in the wake of a major spy scandal with homosexual overtones in England earlier that year. Two British diplomats, Guy Burgess and Donald Maclean, had defected to the Soviet Union in March 1951. It was known in official circles that both were homosexuals,²⁶ and the American government 'made representations to the British to weed out all known homosexuals from Government service as bad security risks, as was already being done in Washington.'²⁷ Given the close links between the Australian and British security establishments,²⁸ it seems probable that similar policies were being pursued in Australia.

In Britain, as in America, the campaign 'was extended to the pursuit of all homosexuals, whether they were in Government employment or not'.²⁹ The Home Office in England instigated a new drive against 'male vice', and this gathered pace over the years from 1951 to the mid-1950s, under the enthusiastic goading of the Home Secretary (Sir David Maxwell Fyfe), the director of Public Prosecutions (Sir Theobald Mathew), and the Metropolitan Police Commissioner (Sir John Nott-Bowes).³⁰

A similar campaign certainly appeared to be under way in NSW. By late 1954—in the wake of yet more major homosexual scandals in England, this time involving a peer and his cousin, Lord Montagu and Michael Pitt-Rivers; a journalist, Peter Wildeblood; the novelist and playwright Rupert Croft-Cooke; and several Royal Air Force personnel—and with the police constantly reporting an increasing incidence of homosexual offences, far more detailed amendments

23. *Sun*, 1 August 1951, 11.

24. This section has been amended in 1924 (No. 10 of 1924) to make the period a statutory fourteen years. Prior to 1924, the period of servitude had been 'for life or any term not less than five years'.

25. Perhaps it reflected some problems arising from the terminology of 'assault' if both parties were consenting?

26. See Hyde, *op. cit.*, 213.

27. *Op. cit.*, 214.

28. See in particular F. Cain, *The Origins of Political Surveillance in Australia* (A & R, 1983), especially chapters 7 and 8.

29. Hyde, *op. cit.*, 214.

30. *Ibid.* See also Weeks, *Sex, Politics and Society*, chapter 12.

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were proposed to the Crimes Act, to deal with the 'homosexual wave'. Although Billy Sheahan, the Attorney-General, saw fit to disclaim, in a Parliamentary debate, that the legislation 'has been inspired by, dictated by or directed by any outside organisation', it was clearly police pressure that led to the amendments. In fact, under further questioning, the Attorney-General did admit that it was Commissioner of Police Delaney who had expressed concern about the lack of suitable punishment for homosexual 'crimes': indeed, in Sheahan's own words, 'the Police Commissioner holds the view that remedial legislation is an urgent necessity to combat the evil'.³¹

These legislative changes were very wide-ranging in their assault on the civil liberties of men with homoerotic desires. Firstly, a new series of crimes relating to homosexuality were created (Sections 81A and 81B of the Crimes Act). For example, under Section 81B, it would now be a crime if a male was caught 'soliciting' or 'inciting' or 'attempting to solicit or incite' another male to commit, or be a party to, any of the crimes outlined in Sections 79, 81, 81A of the Crimes Act. In this there was clearly some repetition, since Section 80 already dealt with attempts to commit—or even *intent* to commit—the crime noted in Section 79 (that of buggery). But what the police wanted was an 'umbrella' clause to make their task easier.

This new Section 81B was seen as necessary because of a Supreme Court decision of 1953 which had rejected the use by police of S.4(2)(o)(ii) of the Vagrancy Act (1902). Police had been using this provision—which stated that, if a person, 'being a male person did in a public place . . . solicit for an immoral purpose'—to arrest males whom they considered were soliciting for a homosexual act. The Supreme Court decision had rejected this use of the Vagrancy Act, since the original purpose of this section was clearly related to men acting as pimps for female prostitutes.

While the new S.81B, although poorly worded in view of the existing S.80, may have been thought to be necessary, it is hard to see how the new S.81A could be regarded as necessary, since it also covered ground already spelt out in S.81 or in the new S.81B. But S.81A now dealt with the matter in far more detail and specificity.³²

Secondly, the amendments contained a quite appalling abuse of civil liberties. A new Section 379A allowed that 'in an indictment of an offence under section 79, 80 or 81 of this Act *a count may be added for an offence under section 81A of this Act*'. Likewise a new Section 379B stated: 'In an indictment for an unnatural crime, or an attempt to commit the same, *counts may be added under both section 379 and section 379A of this Act*'. Thus it was now possible to add extra charges for any one offence.

Thirdly, the penalties for a range of homosexual offences were dramatically increased. For example, while charges under the old S.4 of the Vagrancy Act had a maximum sentence of six months jail, the new Section 81B—its nominal replacement, as the Attorney-General explained—had a twelve months' prison term attached. These increased penalties also applied under other parts of the legislation.

Fourthly, the imposition of these higher penalties meant that many of the offences were now indictable, and so were moved to the higher courts, rather than remaining in the jurisdiction of the magistrates' courts. While in theory there ought not to be any specific *legal* disadvantage in this, there were certainly a range of other disadvantages, ranging from financial (extra costs etc.) to social (far greater publicity).

31. *N.S.W.P.D.*, 23 March 1955, 3223.

32. This new clause was in fact almost identical with the so-called Labouchere clause introduced in England in 1885.

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Finally, the legislation contained provisions for the suppression of details of the cases coming before the courts. Sheahan, in introducing this provision, argued that 'there has, for the last fifty years at least, been a provision empowering judges [in the divorce jurisdiction] to direct that portions of evidence be not published and it is proposed to insert a similar power in the Crimes Act referable to sex offences'.³³ While Sheahan suggested that this new provision could only be for the public good—details of these offences have been published that are repulsive to many people, particularly parents of adolescent children—there was on the other hand much concern about this clause expressed at the time from several quite different perspectives. Part of the concern related to the loss of *rights* of the individual being tried (and thus the possibility of a miscarriage of justice).³⁴ Another view centred on the fact that 'the publicity accompanying such cases acts as a deterrent to others', and so should not be restricted.³⁵ There were yet other reasons for concern. As one lawyer member of the State Parliament noted, newspaper publicity about cases often worked 'as a means of finding witnesses who might be able to present another side of the picture'.³⁶ And indeed, much of the concern at this time was specifically related to this point, and arose from the commonly held view that repression of some details was simply to protect the police, particularly where cases of police decoys and agents provocateurs were involved (a point that will be considered later).

Increasing legal penalties and erosion of civil liberties were not the only official moves against homosexuals. If the major purpose of the various legislative changes was to facilitate the segregation of homosexuals from the general population, this was also mirrored by actions of the authorities to segregate homosexuals in any 'captive' population already under the state's control. This policy is most clearly seen with regards to the prison population in New South Wales.

There appear to have been two strands of reasoning behind this activity. The first was simply a perception that homosexuals ought to be segregated, to stop them 'perverting' other members of the prison population. The second strand represented a far more humanistic approach, and reflected at base a desire to separate out those with homosexual desires for a variety of reasons that were seen as legitimate at the time: to give them treatment, or to study them with a view of discovering the 'causes' of their condition, and thus to 'cure' them.

It is difficult to know when the policy of segregation actually began. Sheahan, still Attorney-General in 1955, admitted that 'in the penal system these offenders are segregated so that they may be cured of this disease and malady, which needs corrective medical treatment. One gaol has been set apart for this purpose . . .'.³⁷ Yet the gaol chosen for this purpose, at Cooma, seemed to reflect little in the way of humane conditions or to have been designed to encourage sympathetic treatment. As one prison chaplain poignantly described it: 'In southern New South Wales there is a town that during the winter is

33. *N.S.W.P.D.*, 23 November 1954, 1874.

34. See *SMH*, 17 November 1954, 2, editorial; and also the views canvassed in parliamentary debates: *N.S.W.P.D.*, 23 March 1955, 3248-50, 3252.

35. *N.S.W.P.D.*, 23 March 1955, 3250. This view, by R. Askin, was supported by lawyers K. McCaw and V. Treatt.

36. *N.S.W.P.D.*, 23 March 1955, 3252. Indeed, the publicity had been critical in a case earlier that decade. It was newspaper reports of the Douglas Annand case that brought forth a series of independent witnesses whose evidence conflicted with that of the police on what had happened outside the toilet where Annand was arrested, and then later on what had happened outside the police station where he was charged. It was perhaps this independent evidence that helped the appellate judge determine that the police were liars, and so uphold Annand's appeal.

37. *N.S.W.P.D.*, 24 March 1955, 3293.

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constantly swept by cold winds that are born amongst the snows of the mountains. When it rains, the water seems like drops of melting ice. The rain, pushed by the wind, finds every crack in a building, and every hole in clothing . . . [T]he prison is on the outskirts of the town . . . [and] on the top floor those who were known homosexuals had their cells . . .'³⁸

While it is not known whether this policy of segregation of homosexuals had been of long standing, it seems likely to have been of relatively recent origin. Indeed, it could well have been part of that programme of 'modernisation' of the prison system, noted in 1957, that had been implemented 'over the past seven or eight years by the Attorney-General and Minister of Justice Mr. R. R. Downing . . .'³⁹ One should note, however, that whatever politicians and prison authorities might claim to be doing, isolation and containment seem more appropriate descriptions of this process than 'modernisation', with its implications of humane 'treatment'.

While it was also argued that part of the reason for isolating homosexuals was to provide facilities for them to be studied, this aspect appears to have only emerged much later. Indeed what is interesting is what we would now see as the general confusion that surrounded the issue, in the perception of the problem, and in motives and methods.

The range of reasons given by those who supported the attempt to study homosexuality indicates not only this confusion. While Sheahan had argued that the isolation would permit study, to discover causes, to 'cure' (a medical model emerging), other members of Parliament thought that the purpose of the segregation should simply be rehabilitation (a variation on the criminal model).⁴⁰ The discussion among parliamentarians also indicated clearly the broad range of misconceptions about homosexuality that were prevalent at the time. They were grappling with a 'problem' they didn't really understand, although they all thought they did. For example, the discussions indicate a variety of ideas on what were seen as the 'causes' of homosexuality, which ranged from chemical imbalance to social problems, to psycho-sexual factors. Dr Parr, the member for Burwood, who was arguing for a more humane approach — and who said that as a medical practitioner he had had some dealings with homosexuals — saw the 'cause' of homosexuality as being largely due to the break-up of the family,⁴¹ although he hedged his bet by suggesting that there might be a chemical causation.⁴²

Other supporters of segregation, and even of the study of homosexuality, appear to have had a less reasoned or humanitarian concern. This strand is perhaps exemplified by the argument of another member of Parliament, A. A. Alam, who claimed that the sentence for those convicted of homosexual acts 'should be an indeterminate one. They should be kept in confinement, in the interests of the community, until they are cured'.⁴³ Likewise Alam's views on the reasons for homosexual activity hardly inspired confidence. He noted that there was also an increase in homosexual activity in West Germany and then likened that state to a Mohammedan country: 'one of the reasons of course is that in countries which by reason of their religious beliefs are non-alcoholic, the people go to other extremes'.⁴⁴

In the parliamentary debates, Parr criticised the government's approach

38. Brian D. Burton, *Teach Them No More* (Australasian Book Society, 1967), 118-9.

39. *SMH*, 9 March 1957, 5.

40. See, for example, the various arguments canvassed by the Member for Burwood, Dr Parr: *N.S.W.P.D.*, 24 March 1955, 3293.

41. *Ibid.*, 3291.

42. *Ibid.*, 3292.

43. *Ibid.*, 29 March 1955, 3338-9.

44. *Ibid.*, 3338.

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of simply increasing legal constraints and enforcing segregation. He suggested that if homosexuals were to be isolated as the government wanted, it could be an opportunity to do something more positive for them: 'Could they not be examined by a group consisting of a psychiatrist, an educationist, a minister of religion, a psychoanalyst and an endocrinologist . . .'.⁴⁵

Sheahan attempted to take the force out of Parr's arguments by claiming that the Minister of Justice and Sheahan himself had already had 'under consideration the appointment of a committee to examine the incidence of homosexuality in this State and to determine the means that should be taken to effect cures'.⁴⁶ Such consideration cannot have been very far advanced, however, for it was to be over three years before the committee's membership was even announced, and its composition was almost as Parr had urged.⁴⁷

The various announcements about the funding of the committee to study homosexuality, and its composition, once again highlight the confusion in the public mind surrounding the issue of homosexuality. While the thrust of the police campaign and the public hysteria had been about the moral decay of society and the growth of degeneracy, the statement by the Minister of Justice, Downing, in announcing funding for a study, contains a series of statements which are clearly contradictory. For example, he noted the government's policy of segregating prisoners, 'otherwise there is always danger to other prisoners'.⁴⁸ Here the implication is that homosexuals are a degenerate minority, waiting to pounce on others. Yet in the same statement he admitted that 'many of these offenders before the Courts are persons who have held responsible positions and were otherwise of unblemished character'.⁴⁹

The government-funded study was to look at problems of homosexuality in society as well as in gaols, and apart from the state-provided finance for this project, money from the University of Sydney (via the Norman Haire Bequest) was also used.⁵⁰ The holder of the Haire Fellowship in 1958 and 1959 was Dr J. E. Lyttle, and his work included interviewing and group sessions with homosexual prisoners at Long Bay Gaol, occasional visits to Cooma Prison for the same purpose, therapy sessions, and the study of ways to help integrate homosexuals back into the community.⁵¹

It was to be five years before the committee's work was done. Even before it started, however, the Wolfenden Committee in Britain had released its report, recommending decriminalisation for private homosexual acts. Yet although the imminent release of the NSW committee's report was announced early in March 1963, it was never to see the light of day.⁵²

45. *Ibid.*, 24 March 1955, 3293.

46. *Ibid.*, 3295.

47. The psychiatrist was to be the Professor of Psychiatry at Sydney University, W. H. Trethowan; the endocrinologist was Dr D. W. J. Hensley, Senior Lecturer in Bio-Chemistry at Sydney University; there were two ministers of religion [who had other useful attributes]—the Reverend R. C. Weir, an Anglican chaplain who was also a member of the Civil Rehabilitation Committee, and Father John Roche, a Catholic priest who was a former RAN Chaplain; the social sciences were represented not by an educationist but by a senior field officer in the Prisons Department, Mr M. F. D. Hayes, also secretary of the Post-Graduate Committee of Social Work. The final Committee member was the Deputy Controller of Prisons, J. A. Morony. See *SMH*, 1 July 1958, 4.

48. *SMH*, 24 January 1958, 4.

49. *Ibid.*

50. See Registrar's File 16279 (Norman Haire Bequest), Faculty of Medicine, University of Sydney.

51. Report to Registrar, University of Sydney (File 16279, as above).

52. It has been reported that the two academics on the committee became convinced that homosexuality was not necessarily a sickness, nor that it should be 'treated'. Thus the committee split, with the academics questioning the whole purpose of the exercise. See L. Watson, 'The Anti-Gay Laws, Irrationality and Public Policy Making', *Seminar on Victimless Crime* (NSW Department of Attorney-General and Justice, 1977), 107.

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As mentioned earlier, when the government introduced measures to restrict reporting on cases of 'sex crimes' there was much concern expressed in newspapers, by opposition politicians, by lawyers, and by other sections of the community about the implications of this. While the government argued that it was in the public interest, contrary views were expressed, both over the possible miscarriage of justice and the removal of the deterrent effects of publicity. A far greater concern was that the measure, as a *SMH* editorial put it, was aimed at 'reducing the checks on the proper administration of justice' in the state.⁵³ Furthermore, one major problem area in the administration of justice in New South Wales was the police force itself. Many of the questionable aspects of police activity are clearly illustrated in their enforcement of the laws relating to homosexual acts in New South Wales in this period, and nowhere more clearly than in their use of agents provocateurs to obtain convictions.

In arguing for the provision regarding the suppression of details of cases involving 'sex crimes', Sheahan claimed that 'the detailed reporting of events involved in these cases impairs the enforcement of the criminal laws'.⁵⁴ What the Attorney-General had in mind here is not clear from his speech; but it is no flight of fancy to suggest that it was the police agents provocateurs and their role in homosexual 'crimes' in this period that the Attorney-General might have wanted to shield from scrutiny.

While there were continual denials by police that they were involved in this sort of activity—which in effect would have acknowledged that they themselves were the instigators of the 'sex crimes'—there is a wide variety of evidence that such activities did occur. It is worth noting here two important features associated with the 'soliciting' or 'inciting to commit' aspects of homosexual 'crimes'.

First, unlike most crimes, these crimes involved the police as *participants*—it was they who were 'solicited' or 'incited'. Thus they were not in a neutral position, a third party called in to investigate what two (or more) other parties might have done. To use modern terminology, they were themselves 'agents' in the crime.

Second, these 'crimes' have an important effect on the criminal statistics, and on the statistical measure of police efficiency in the state. Unlike crimes such as robbery or murder—where the police have to 'solve' the crime to catch the criminal—the crimes relating to 'soliciting' or 'inciting' are no sooner 'committed' than they are solved—simply by arresting the person who, according to police, committed the crime. While one would like to argue that police probity was such that they would not be tempted to move from being a 'passive' agent to becoming an active one—an 'agent provocateur'—this assumption cannot be made. There were a large number of scandals involving police in this period, and even the *Police Association Monthly Newsletter* saw fit to complain of senior police officers 'using a form of intimidation to boost the number of arrests . . .'⁵⁵

It is also relevant to note how often Sydney police themselves were actually being 'solicited' or 'incited' for homosexual acts in this period, and in such a diversity of places, ranging from parks, to public toilets, to hotels—and at most unusual times.⁵⁶ While these cases might indicate evidence of policemen

53. *SMH*, 17 November 1954, 2: editorial.

54. *N.S.W.P.D.*, 23 March 1954, 1873.

55. *SMH*, 22 March 1957, 4. The original story had just appeared in the *Police Association Monthly News*.

56. For example, in 1950, cases came to light of a policeman being solicited in a lavatory in the middle of Centennial Park (*SMH*, 2 March 1950, 6), of a doctor being charged with soliciting a policeman in Waverley Park (*SMH*, 16 March 1950, 6), and of a man charged with soliciting a policeman in Green Park in Darlinghurst (*Sun*, 18 June 1950, 11; *Daily Mirror*, 18 March 1950, 2, and 25 March 1950, 3). These were all well-known Sydney 'beats' of the time.

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'loitering with intent', there is great difficulty in uncovering the extent of this activity. Here the problem lies with the unwillingness of many people charged with homosexual offences to draw any publicity to themselves. Contesting police evidence, and going to higher courts, were acts guaranteed to attract the harsh light of publicity.

Part of the difficulty related directly to contemporary community attitudes to homosexuals, and these attitudes were held not only by the general populace, but also by some of those legal officers whose role it was to ensure 'justice'—magistrates and judges. As one Appeals Judge noted, when quashing a conviction for a homosexual offence, these were the sort of cases 'where the very making of the charge causes instant prejudice against the person charged'.⁵⁷

Lower courts often reflected this prejudice, letting it interfere with their ability to deal with the material in a detached manner. As the above-mentioned Appeals Judge noted of one magistrate, '[b]ecause of his prejudice, he was unable to come to the conclusion that the appellant had established his innocence'.⁵⁸ Indeed the Appeals Judge went on to note that the magistrate had attempted to clothe his prejudice in legal reasoning; yet, as the Judge noted, the magistrate gave 'reasons that I cannot follow, that I cannot understand'.⁵⁹

Under such circumstances, then, it is quite understandable that many people charged with homosexual offences chose the course of action that guaranteed minimum publicity. So they would often plead guilty or, even if pleading not guilty, would rarely contest a verdict of guilty. Indeed it was only occasionally that someone charged by the police with homosexual 'crimes'—in which the police themselves were involved as 'agents'—would fight back in the courts, with all the attendant publicity. However, there were some notable cases—usually involving a public figure—and almost invariably the closer scrutiny of the higher levels of the legal system meant that police evidence was found to be untrustworthy. Often the police themselves were found to be more than just passive 'agents'; many were indeed 'agents provocateurs'. Three cases illustrate this clearly.

The first case was that of Douglas Annand, a Sydney designer who had been three times winner of the Sulman Award for murals. He was arrested by police at Chatswood Park toilet, and charged with soliciting one of them for immoral purposes. Despite character evidence from such notables as retired General Sir Leslie Morshead, and Director of the Art Gallery of NSW, Hal Missingham, he was convicted on the evidence of three policemen. At his appeal not only was his conviction overturned, but the Judge chose to comment that the police sergeant's evidence was a 'wicked lie . . . I disbelieve the whole of his evidence'. Indeed, the Judge suggested that the police supporting evidence was put together 'in collaboration', rather than reflecting the individual policemen's recollections. It was clear in this case, as the Judge noted, that the police themselves were the real 'agents' in the commission of the crime, and the arresting police sergeant was suspended.⁶⁰

The next case related to the visiting Chilean pianist, Claudio Arrau, who was charged with offensive behaviour. It was alleged that he went into and out of a toilet in Laing Park in the city, late one night, and winked at one (of two) policemen who were there. This case in particular highlights the ways in which prejudice can affect minorities, and indeed how 'crimes' can be invented. In this case, Arrau was found guilty, but on appeal the Judge, although he thought the offence might be legally proved, dismissed the charge without conviction,

57. *SMH*, 31 July 1953, 5: comments by Judge Nield.

58. *Ibid.*

59. *Ibid.*

60. *SMH*, 31 July 1953, 5.

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since he thought it of a 'comparatively trivial nature'.⁶¹

The final case relates to the well-known pop singer Johnny Ray who, late in 1959, was charged with accosting and soliciting a policeman. Whereas in the two previous cases, of Annand and Arrau, the initial conviction was by a magistrate (only overturned by an Appeals Judge), in this case it was a jury trial, and Ray was simply acquitted—the police evidence was not accepted as reliable.⁶²

Also, in several of the major cases, because the police were found to be liars (and in one case found to be indulging in 'brutality'), such was the outcry that police were suspended, and a vast amount of damaging publicity generated.⁶³ In these cases the spotlight was turned from those who were accused of homosexual crimes to those who were the accusers and to the methods they used.

The closer scrutiny by the higher courts was not, however, the only source of evidence of police involvement as agents in sexual crimes. Even a sociologist working in England at the time, preparing reports on a range of 'social problem areas' for the British Home Office, could note simply in passing that the decoy system, utilising 'good-looking young C.I.D. officers is still used in Sydney, Australia'.⁶⁴ Recent academic work has also started to uncover more details of this.⁶⁵

With such recurrent exposes, it is little wonder that there were frequent expressions of disquiet about police methods, particularly in the light of an admission by a member of the government, when introducing the bill to extend penalties on homosexual acts, that 'in a great many cases of soliciting there is no overt act sufficient to identify itself with the offence. In seeking to attract his victim's attention the pervert makes use of gestures and signs which, if used by a person with no such evil designs, might be for any number of innocent purposes'.⁶⁶ If this was the considered opinion of a leading member of the government—as it was also the considered opinion of the chief law officer in the state⁶⁷—it was virtually offering carte blanche to opportunistic police. If it was impossible to distinguish homosexuals from non-homosexuals, it was perhaps up to the police to make the first move to encourage the homosexuals to 'give themselves away'. But who then instigated the crime?

It would seem that in the Cold War period in Australia, those with homosexual desires found themselves at the receiving end of an intense campaign to stamp them out, a campaign which included new laws, increased legal penalties, diminished civil liberties, isolation in public institutions, and being made the subject of government studies. In many of these processes, the role of the police was critical, not only at the level of enforcing the laws, but also in pushing for new laws, for harsher penalties, and for greater police powers. In some of these processes—as with the enforcement of the law—this involvement of police was to be expected: after all, that was their function. However, a closer scrutiny—and some extra evidence—suggests that the police were far more 'instrumental' in what was occurring, rather than just being instruments of the law.

In the late 1940s, the Kinsey Report on *Sexual Behaviour in the Human Male* was published. It is perhaps no accident that the increased concern, on

61. *SMH*, 19 June 1957, 5.

62. *SMH*, 4 December 1959, 3.

63. See, for example, *SMH*, 26 August 1954, 2 (editorial); *SMH*, 14 June 1958, 2 (letters); *SMH*, 18 June 1958, 2 (letters). For further discussion of this see L. Watson, *loc. cit.*, 106.

64. R. Hauser, *The Homosexual Society* (The Bodley Head, 1962), 48.

65. A detailed study of this aspect appears in Watson, *loc. cit.*

66. R. Maloney, *N.S.W.P.D.*, 29 March 1955, 3317.

67. The Attorney-General, Sheahan, made a similar statement when introducing the bill in the lower house.

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the part of society's moral watchdogs, about the levels of homosexual activity in our society came at the same time as was published the first documented evidence of the levels of this activity. Putting the question another way: was the Kinsey Report on male sexuality partly the trigger for the police response? It certainly triggered responses from other groups in our society.

The Kinsey Report evidence contains another clue as to what might have been occurring. If, as Kinsey indicated, there were certain levels of homosexual activity in society, why should these suddenly have started to accelerate, as the reports by the New South Wales Police Commissioner argue they did, from the late 1940s? Might it not be due more to the activities of the police themselves, rather than to any real changes in social behaviour? If this were true, then the Australian experience would closely mirror that of England. As Jeffrey Weeks notes, the so-called wave of homosexual activity there was confined to several metropolitan areas, and appears to have resulted directly from increased police activities.⁶⁸

As to reasons why the police in New South Wales may have become increasingly inclined to turn their attention to a shadowy minority in society, there are several that deserve consideration. First, the police may simply have been mirroring society's fears and phobias, and responding in a way which their position made possible. Second, and here Weeks' example of England is relevant, there may have been particular individuals at the top of the police hierarchy who were fervently anti-homosexual, and so encouraged both overt and clandestine pursuit of homosexuals.⁶⁹ In the case of New South Wales there is clearly such an individual. Colin Delaney was Chief Superintendent of the Vice Squad in Sydney in the late 1940s; he became Police Commissioner in 1952; and he was a rabid homophobe. In 1952 he declared that the two greatest threats facing Australia were homosexuality and communism. Late in that decade, despite the Korean War, and communist insurgency in Malaya and in Borneo, he was apparently more agitated about homosexuality than about communism — indeed he argued that by then the former was a worse problem than communism: homosexuality was 'the greater menace facing Australia'.⁷⁰

There is evidence of even more compelling pressures. It is evident that, from the late 1940s and through to the end of the 1950s, the police force in New South Wales was under threat. There was a clear public perception that it was unable to control crime efficiently in New South Wales, and the escalating crime rates reflected this.⁷¹ Also, the series of cases involving the arrest of well-known public figures for homosexual offences backfired on the police, revealing publicly their brutality and untrustworthiness. A series of other scandals over the decade — including the disappearance of a very large sum of money from within Police Headquarters — further damaged their public image.⁷² Morale was low, and recruitment was difficult. One response was to mount public relations campaigns.⁷³ Other responses could well have been to seek a scapegoat, particularly a scapegoat that was a despised minority in the community. And

68. Weeks, *Sex, Politics and Society* (Longman, 1981), 240.

69. *Ibid.* Weeks cites the cases of Sir Theobald Mathews, an ardent Roman Catholic, who was appointed Director of Public Prosecutions in 1944; and Sir John Nott-Bowes, appointed Metropolitan Police Commissioner in late 1953, 'under the aegis of a fervently anti-homosexual and moralistic Home Secretary, Sir David Maxwell-Fyfe'.

70. *SMH*, 11 June 1958, 5.

71. See also Mukherjee, *et al.*, for details of this growth in crime.

72. For example, in 1951 Delaney had to deal with outspoken criticisms of the police force's inability to stop a wave of violent robberies and murders (*SMH*, 18 October 1951, 3); in 1953, 21 police were either charged or discharged from the force (*SMH*, 30 April 1954, 6); and in 1956 nearly £100,000 disappeared from the CIB office (*SMH*, 12 April 1956, 7).

73. See, for example, *SMH*, 21 October 1954, 1; *SMH*, 8 March 1955 13; *SMH*, 13 January 1956, 4; *SMH*, 20 December 1957, 4; *SMH*, 6 September 1958, 7.

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as pointed out earlier, the advantage to the police of homosexual crimes, particularly the vast majority of them (which involved the police themselves) was that they bolstered the statistics which implied police efficiency, while at the same time justifying the police claim that degeneracy was rising, and only more police, tougher laws, and wider powers could control it.

* * *

In the Cold War era in New South Wales, male homosexuals found themselves used as scapegoats on several levels. In a society trying to reconstruct a mythical past, peopled by conformist nuclear families living happily in the suburbs, homosexuals clearly did not fit. At the same time, a rising social perception that society had entered an undesirable state of moral decline left homosexuals vulnerable—they were seen as a threat to this society. A police force reflecting these social concerns chose to target them, while a homophobic Police Commissioner, trying to manage a force that was publicly perceived as inefficient and corrupt, clearly signalled to his force that it was open war on homosexuals.

Such active police involvement clearly raises the wider question as to who was initiating policy in this area, and has implications for any interpretation of the state's role as a regulator of sexuality. Needless to say, this campaign waged against male homosexuals during the Cold War destroyed the lives and careers of many Australians, whose only 'crime' was that they experienced—and acted upon—the love that dared not speak its name.

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