# HOMOSEXUALITY

By the Right Honourable J. G. Gorton

*Delivered at a meeting of the Medico-Legal Society held on 23rd March 1974, at 8.30 p.m. at the Royal Australasian College of Surgeons, Spring Street, Melbourne. The chairman of the meeting was the President, Dr. Peter Jones.*

I should start by telling you that, when we had the debate on this topic in the House of Representatives, there was no division on Party lines at all. We had those who took a view which was opposed to my own and those who took a view which was not opposed to it at all.

What I thought I would do tonight would be to put before you what I have already put before the House because I cannot do better than that. I do not think any of you will remember it or have read it and, anyway, if you do, it is what I would be likely to put before you because it is what I put before the House. I do hope that we will not have, from anywhere in this Society, a belief that there is some reason for anyone putting it forward, that there is some sort of motive behind it. There is not. There is not any motive, and although that was put forward in the House of Representatives it is not so and I say so now.

I move that, in the opinion of this House, homosexual acts between consenting adults in private should not be subject to criminal law.

This is one of those rare occasions, one of those all too rare occasions, when the Parliament can act as it was theoretically intended to act, that is, to act as a collection of men representing sections of the community and to listen to a case and to make up their minds as to what is right without the constraints of Party or of faction.

The proposition which is before you is that we should say that homosexual acts between consenting adults in private should not be punishable by the criminal law. The operative words which we should all have clearly in mind are "consenting adults" and "in private". The motion says nothing about homosexual acts committed with minors. It says nothing about homosexual acts which are the results of constraint. It says nothing about public soliciting in the streets or creating a public nuisance. It having

said nothing about that, those acts which are offences will, if this motion is carried, continue to be offences. Therefore, agreement with the motion leaves the offences as they are.

We are concerned with one question and one question only, and that question is—and I repeat it—should homosexual individuals who are adults, who both wish a homosexual relationship with each other, who do not flaunt it but who act in private, withdrawn from the public gaze, be dubbed criminals and subject to punishment by the criminal law? I suggest that they should not be treated in that way. If you agree with such a suggestion, it is in no way approving homosexual acts. It is in no way condoning homosexual acts. It is merely asserting that such acts, under such conditions, ought not to be subject to prosecution and long terms of imprisonment.

I have noted a number of arguments which have been advanced against the proposition which I have put to the House. I think the House should have these propositions against my ideas put before it and should judge these propositions and answers which I suggest can properly be made to them.

In the first place, I have been informed that in moving such a motion or in suggesting such a course of action I am acting contrary to God's law. I don't know that I am qualified to interpret God's law. I have no hot line to the Almighty, but I do know what those who are spokesmen for the relevant churches and the major churches in England and Australia, who are presumably interpreters of God's law, have to say on this matter.

The original Wolfenden Committee in the United Kingdom—the United Kingdom Parliament passed the resolution which I want this House to pass—was advised from the Roman Catholic Church by a body set up under Cardinal Griffin, in full agreement with the Wolfenden Committee's report, that what I suggest this House should do should be done. At the moment, I am dealing with whether it is against God's law, but the point I make is that Cardinal Griffin did join the Committee. I do not know the situation in Australia. I do not believe that the Roman Catholic Church has taken a position on it. I think it is neutral. However, I do know that in the *Catholic Weekly* of 4th October this year there is a strong and compelling argument printed as to why what I am suggesting to the House should be done should be done. I do not wish to suggest to the House that that is the opinion of the *Catholic Weekly*, but I suggest that, if the *Catholic*

*Weekly* puts such a case prominently in its paper, it is clear the Church is not opposed to it.

The Presbyterian Church has considered the matter and I should like to quote what Douglas Cole, the Convenor, had to say about that debate. He said, "The Assembly declared"—that is, the Presbyterian Assembly—"that, while it believes that homosexuality is productive of personal moral disintegration rather than any true personal well-being and happiness, it nonetheless supports the Wolfenden Report that homosexual behaviour between two consenting adults in private should no longer be a criminal offence and that the appropriate authorities should be advised accordingly."

In commenting on this, the following relevant words were used: "Many would agree with one of the central contentions of the Wolfenden Report, that it is not the function of the law to intervene in the private morality of citizens. Nor is it the duty of the Church to try to impose Christian or any other religious standards upon people by means of law. The present law encourages blackmail and may also encourage the seduction of children by those who would otherwise prefer adult contacts but who imagine that child seduction is less risky." Lord Jowitt testified that, during the time he was the British Attorney-General, of all blackmail cases, 95% had a homosexual origin. In conclusion, the spokesman for this Church quoted the words of W. D. G. Cole to ask: "Is the Church a fellowship of reconciliation, of love and accepting forgiveness, or is it made up of self-righteous pharisees gossiping and judging and rejecting? Does it surround the sinner with hostility and threaten him with harm, or does it welcome him into the community of those who know themselves to stand in need of forgiveness, who cannot cast the first stone because they too fall short of the demands of a righteous God?"

This aspect has been put succinctly in the old jingle that some members of this House may have heard, about people who compound the sins they are inclined to by damning those they have no mind to.

The Church of England in its report on homosexuality in 1971 reached the same conclusion. It said, "We recommend that the special offences sodomy and attempts to commit sodomy, which carry high penalties, be repealed and that the present provision of the Victorian Crimes Act which renders criminal those homosexual acts committed in private between consenting males of 18 years or over should be repealed." I should add here that I

believe that the Church in N.S.W. has reached a different conclusion. I was referring to the Church in Victoria.

I suggest to the House that if argument is advanced as considering this matter against God's law, those speaking for the major churches in Australia do not agree with that contention but rather, I would think, agree with me. I cannot imagine it to have been a function of God's law to commit people who are built differently in some way from ourselves to live a twilight life of guilt and fear.

I have heard it advanced as a suggestion why this should not be done that there will be an upsurge in homosexuality if the resolution is translated into law. Country after country in Europe, country after country throughout the world has changed its laws from those which used to apply 600 years ago, and there is no evidence from any one of those countries that there was any upsurge in homosexual activity as a result. There being people who are strongly opposed to this suggestion, that evidence would have been forthcoming if that evidence had been in existence.

We have been told that this has been a law for 600 years and indeed it has. It used to be subject to death under early British law. As late as 1861 in Britain, the law made it not only a punishable offence, a gaolable offence, but laid down the minimum term of imprisonment for it must be ten years. Because a law has been in existence 300, 400 or 500 years, is anybody to argue that therefore that is necessarily a good law? If it was, we would still be hanging people for sheep stealing, or transporting them for stealing a silk handkerchief.

The question is posed, what will happen in the armed services if this is done? Will discipline not be completely destroyed? There are two answers to that. One is that the services are able, and always have been able, to write their own laws and note their own offences. If in effect this were to be found in the services to be destructive of discipline, the services can themselves, even if we pass this resolution, take the action necessary to overcome that. There is perhaps another answer which in the House of Lords debate was advanced, and that is that homosexuality between females is not an offence now. Does anybody suggest, therefore, that the women's services have no discipline and are completely destroyed because they are not subject to this law?

It has been suggested that personal abhorrence can persuade many people to object to passing such a resolution; that because

a person himself shrinks almost in horror from the concept of a homosexual relationship applying to himself; that because he finds it disgusting, therefore it is reasonable to punish it by civil law. I call to my assistance on those objections arguments which were used in the House of Lords debate, which are much better and much more cogent than words which I could use myself. The words were these:

"Surely no one sincerely believes that everything which he personally feels to be unpleasant or disgusting should, for that reason, be a crime. The fundamental point at issue here is not whether we can or cannot stomach the thought of this or that type of sexual behaviour. It is whether or not we believe that true morality and the best way of qualifying personal responsibility is to be found through freedom or through compulsion, and whether or not we believe that the present law on the subject does more harm than good. According to those who have carefully gone into the matter, including representatives of the churches, it does much more harm than good. We have always been careful over the years to get rid of the confusion between the ecclesiastical idea of what is a crime and the State's idea of what is a crime. Lord Goddard, nonetheless, says we must draw a distinction between conduct which may be held by some to be sinful and conduct which ought to be held by the State to be criminal. The third point to which I would draw your Lordship's notice—and it is an argument which seems to me to be quite irrational—is that based on the revulsion which people feel at the behaviour of the homosexual. Many who want the law changed share this revulsion."

That is the distinction which I seek to draw now.

There is one other argument that has been advanced, and that is, Why change the law? It is not usually applied. It is only infrequently applied, therefore leave it as it is. I would regard that argument as immoral and, indeed, as a completely wrong argument from the point of view of any member of Parliament. It is immoral because it seeks to shelve the question and to say a man is subject to this sort of threat but the threat is rarely carried out, so I can salve my conscience by just letting it go because it is rarely carried out. But it is wrong from the point of view of a parliament or anybody with a vestige of interest in the legal position because it is clear that a bad law is a law which is not applied, which has fallen into disuse. A bad law is a law which is not applied. It must be bad, and a law which is applied in a

discriminatory way, sometimes applied and sometimes not, must be a worse law. A law which is sometimes applied and sometimes not, and which gives an opportunity for blackmail, must be the worst law of the lot. Yet this is precisely the law as it stands at present. It is occasionally applied, not often. It gives great opportunity for blackmail and it gives the opportunity for some police bashing because, quite often, the victim who is bashed knows that complaint might lead to a charge against him under the law as it stands. All this, in my view, must completely counter the suggestion that the law should be left as it is because it is rarely applied.

I may say that in some parts of Australia it is rarely applied but in other parts of Australia it is applied quite distinctly. It was applied in the Australian Capital Territory. It is applied in South Australia. But while you have a law on the statute books which is rarely applied, then it must be a bad law.

Having dealt with the reasons that have been advanced against this proposition, I now want to deal with the reasons for it. First, I believe that it is unjust and wrong to dub as criminals people who in some way are built differently from ourselves, who may not be able to help themselves, who in many cases, I believe, live lives of desperation and pain because of the way in which they were constructed. Sometimes, indeed, such people commit suicide because of the way they have been constructed.

It is wrong and unjust, in my opinion, to impose on top of that the threat of gaol, the threat of being dubbed a criminal. Do not forget that every person sitting in this House is not just going to cross the floor or to sit in his seat and that will be the end of the matter. What happens here will affect not thousands or tens of thousands but quite possibly hundreds of thousands of individuals, taking them over the years. It will leave them, of course, with the social condemnation which this country has for them. I am not interested in trying to remove social condemnation from them. All I am interested in trying to do is remove criminal prosecution from them. It will leave them with that desperation of which I spoke and on which the honourable member for Hunter agreed with me.

I do not know that there is much more for me to say on the matter. I have sought to indicate to this House the arguments which can be advanced against those who say that this is wrong. Everyone sitting here ought to consider himself at this moment as a judge. He ought to say to himself, "If I were sitting and before me was brought a man who had been convicted of, in private,

committing homosexual acts with some other adult who wanted him to, would I, if I had to make the law, send that man to gaol? Would I happily do that?" If honourable members would not do that, it is equally wrong to vote that the law should continue as it is, because they are then acting as judges to say that this man should be sent to gaol.

Basically, this is a matter for each individual. It is not a matter to be decided on a motion. It is a matter to be decided on justice. It is a matter which, in the ultimate, is what this Parliament is all about because every action we take, however important in the national field, has one ultimate justification—the welfare of the individual citizen of Australia. That is what we all want and this is an occasion on which we can make up our minds and cast our judgments as to whether, because something has continued for a long period, it should continue still; as to whether unfortunate people should have their lot made yet more unfortunate, as to who would be hurt or harmed by private action.

Let us put out of our mind what is sometimes in mind, the thought of people walking hand in hand down the street, or arms around each other or in other ways acting in ways which we ourselves find objectionable. Let us think instead of the thousands of men who are not like that, who could not be discovered at an ordinary glance at the population, who hurt no one, harm no one, and yet have this hanging over them.

I think that has presented a case which could now be discussed from the floor, and I would be very happy to try and answer any questions which may be thrown from the floor on this particular debate, but let me say this: what has been done has been done and affects the A.C.T. and the Northern Territory. It has got to be expanded if it is going to be good. If it is good—I think it is, others may think it is not—it has got to be expanded by State governments. That is the thing to be decided. That is the thing which you, I think, should have a great say in deciding.

MR. DOUGLAS GRAHAM:

We are all grateful tonight for the presence of Mr. Gorton and we are grateful for the address that he has given to the Society. It has been illuminating, constructive and stimulating.

In opening the proceedings tonight, I have taken the view that perhaps the better course would be to adopt a neutral stance because the paper itself takes a strong stance in one direction.

Looking through the history of debate on this subject, one starts with the attitudes of the early Jews. It seems that in the pre-exilic days homosexual behaviour was simply regarded as a crude form of debauchery while in later days capital punishment was insisted upon by that race. The attitudes of the Greeks, often made use of in the course of debates on this subject, seemed to be indefinite and variable.

The history of English law on this subject has many conflicting features. The earliest statutory provision dealing with homosexuality was passed as late as 1534. Henry VIII enacted that it was necessary to make provision for more condign punishment of these unseemly practices and did so by providing for death without benefit of clergy, forfeiture of property and corruption of blood eternally.

Back in the reign of Edward I, Britton recorded that the punishment for sodomy was burning alive; and Fleta, writing at about the same time, said that the punishment was burying alive. Nevertheless, Henry found it was necessary to pass his law.

Another curiosity of historical research is that medieval penitentials seem to have treated sodomy and bestiality rather more lightly than mere masturbation, especially if it took place among the members of the clergy. Nevertheless, it is fair to say that the researches of Fleta and Britton have been treated with some doubt by Sir James Stephen, and he suggests that the practices of sodomy and bestiality were punishable only in the ecclesiastical courts; and it is probably fair to add, having embarked upon this small amount of research, that Henry's law was as much concerned with questions of ecclesiastical and civil jurisdiction as it was with mere punishment of matters thought to be wrong at the time.

It is interesting to follow this up because, in the first year of his reign, Henry's son passed a law immediately repealing the law against homosexuality passed by his father, but the following year he found it necessary to re-introduce it. Queen Mary, by the very first Act that she passed in her reign, again repealed the law against sodomy and bestiality. Fortunately, perhaps, Queen Elizabeth ended this chapter of unfilial behaviour by reviving her father's law in all its strictness. And the story goes on in its strangeness when one looks at the life of James I of England who was a notorious sodomite and about whom it was frequently said that "Elizabeth was king, now James is queen."

English law did not change very much from the time of Queen

Elizabeth until the first of Peel's Acts in 1828 which removed the problems about forfeiture of property and corruption of blood, but the penalty of death remained for all these forms of anti-social behaviour. Finally, in 1861, as Mr. Gorton has mentioned, the Offences Against the Person Act removed the capital penalty so far as the United Kingdom was concerned.

In Victoria, a less lenient view was taken. The Act of 1828 to which I have referred continued in force when the colony of Victoria was established, and when the first Crimes Act of the State of Victoria was passed in 1864, which otherwise borrowed heavily from the English Act of 1861, it was felt appropriate for the circumstances of the colony that the death sentence should be retained for various aggravated forms of sodomy and bestiality.

I have had the opportunity of looking at the figures published by the Victorian Government Statistician. They are not very revealing except so far as they show no difference between the period before 1949 when the capital penalty was finally repealed and the period after that. And as a matter of interest, the last death sentence in Victoria for this offence was passed as late at 1948; the prisoner concerned was not executed but mercifully his sentence was commuted to 15 years in gaol followed by detention indefinitely at the Governor's pleasure.

The point which I am seeking to make in opening this debate is concerned with the variability and changeability of community attitudes towards homosexuality and towards specific offences. Something that I encountered in looking into this matter was the form of indictment used by the law in the period following the statute of Elizabeth which used language much more appropriate for an inflamed address by a prosecutor rather than an indictment. This language is interesting because it perhaps suggests that the minds of the people did not run with the force of the statute. It was over-emphatic, to say the least. If I may be permitted to read that form of indictment shortly:

> The prisoner is charged that he feloniously did make an assault and then and there feloniously, wickedly, diabolically and against the order of nature had a venereal affair with X and there and then carnally knew the said X and there and then feloniously, wickedly and diabolically and against the order of nature and with the said X did commit and perpetuate that detestable and abominable crime of buggery (not to be named among Christians), to the great displeasure of Almighty God,

to the great scandal of human kind, against the form of the statute in such case made and provided and against the peace of our Lord the King, his Crown and dignity.

The standard works of reference in use in criminal practice in Queen Victoria's time indicate that Her Majesty was likewise unpleased.

English law has taken a stern attitude towards homosexuality as such for 400 years or more, and I am speaking of the English criminal law as such and nothing else; that law has forbidden homosexual acts as such, regardless of consent. Mr. Gorton referred to the Wolfenden report. There is a very interesting appendix to that report which sets out in summary form the legislative proscriptions against homosexual contact in most European countries. In Germany, it appeared, according to that appendix, that homosexual contact was proscribed in the same way as it was in the United Kingdom and was and is now in the Australian States, but it was interesting to see that in Belgium, Denmark, Greece, Italy, the Netherlands and Sweden, homosexual activity as such did not constitute a crime, although there were, of course, appropriate laws for the protection of the young and for the prevention of sexual assaults of all kinds.

So, Mr. President, I would say this: that the legislative wrangles amongst the children of Henry VIII, the comparison of the laws of European countries both help to illustrate what this evening's paper has already emphasized and what, no doubt, further discussion will show: that this subject attracts a great diversity of views. Any legislative provision, whether stern or liberal, is bound to provoke dissent, dissatisfaction and a move to change. If I could say this, in passing: perhaps it can never be asserted with too much conviction that the present law or any law, one's own attitude or anybody else's is necessarily right.

MR. JUSTICE NORRIS:

I am interested in the case made by our speaker this evening and in the observations that Mr. Graham has made. But I think there are certain facts which are not before us in regard to the law, so far as the law in Victoria is concerned at any rate and, I think, to some extent the law in England, which ought to be before us.

In the first place, while one would be inclined to agree with Sir James Fitzjames Stephen, Buggery, until the reign of Henry VIII, was always a matter merely for ecclesiastical censure. One

ought not to lose sight of the fact that ecclesiastical censure, at any rate perhaps until the eighteenth century, was a matter of very considerable moment and not to be lost sight of; but that when Henry VIII made buggery a capital offence, he was transferring what was a sin into the realm of secular crime.

The next thing that ought to be borne in mind is this: with regard to the crime of buggery in Victoria, it was proposed in 1864 or thereabouts in the Victorian Parliament to make the crime of buggery a capital offence. It was pointed out in Hansard, where debates were not very fully recorded in those days, that in England buggery had ceased to be at any rate a capital offence but was punishable by a very long term—I think life imprisonment. In Victoria there was a distinction introduced which still remains between buggery with violence and simple buggery. I was concerned with a case of buggery with violence and I was concerned to see what constituted the ingredients of that crime. I found it was not a crime in England as such and that of course both parties to the act of buggery are equally guilty in a case of simple buggery. I discovered that the Victorian Parliament, on being apprised of the fact that simple buggery in England was not a capital offence, nevertheless resolutely made buggery with violence a capital offence and imposed a lighter penalty for buggery without violence. Neither is now a capital offence, but the distinction between the two is retained.

It is then necessary to turn, because the motion which the right honourable gentleman proposed in the House of Representatives covered things far beyond buggery; it covered the crime which is known as commission of an act of gross indecency with another male person. That became a crime in England only in the third quarter or the early part of the fourth quarter of the nineteenth century, and the most prominent of the early victims, if I may so call it, of that crime was, of course, Oscar Wilde. He was not charged with buggery. He was charged with committing acts of gross indecency, and I think it is necessary to bear that distinction in mind. What the real basis of the distinction is, I am not at present informed of. I regret to say I have not read the Wolfenden report, though I gather it deals with both buggery and the act of gross indecency.

There is, I think, one other thing to be said about the matter and that is this: that while in my experience—and I have had a very considerable experience in crimes both of buggery committed with males, females and with animals as a judge, and

a considerable experience in the case of crimes of gross indecency, as a judge, and my experience is that judges have always treated the crime of buggery and acts of gross indecency committed between adult consenting males, at least in recent years, with very considerable leniency, certainly in the case of first offences and often enough in the case of other offences. The thing that always worries one about these crimes is a matter with which the motion which Mr. Gorton proposed to the House of Representatives and which is the subject of his address here tonight is not concerned, and that is the matter of paederasty, crimes committed against minors. Now, I do not know what the relationship is between the matter which it is sought to remove from the category of crime (and I think there is a good deal to be said for removing it from the category of crime) and paederasty; and as a matter of interest to myself, I should be very grateful if those members of the medical profession who are here tonight who have any knowledge of this matter could tell us something about the relationship between the man who is guilty of homosexual behaviour with adult consenting males and the man who debauches or perhaps is debauched by young boys. I think that is a matter which this Society should be enlightened upon before it forms any views on the matter which the speaker has addressed us on tonight.

MR. GORTON:

I just wish to briefly cover one or two of the points you made, but the question of paederasty does not come into this, as you said. It has nothing to do with it. This resolution could be accepted and the question of paederasty could then go on and be discussed. I thought I had better make that clear.

JUDGE COLEMAN:

With great respect to the right honourable speaker, I am not entirely certain that he is right in saying that the question of paederasty does not come into this. It may well be true that on the particular piece of legislation which was proposed, no question was raised of avoiding or setting aside the law as to homosexual acts between male persons and those under sixteen; but in amending the law, the right honourable speaker would be the first to concede that Parliament is setting a standard. Now, it may well be that it was a pity that legislation of this kind, making what was a sin into a crime, was ever passed. There may

be many views about that, but those views, I suggest, have no great relevance to the question of whether or not what has been recognized as a crime ought now to be regarded as elicit.

In making it a crime, Parliament, for good or ill, spoke for the feeling of the community, that something which was wrong ought to be made criminal. It is simply not possible for Parliament to avoid the contrary inference, that when they now make something which was criminal licit, they are accepting the proposition that it is all right. Whether they are right about that or whether they are wrong, I do not propose to say. But what I do suggest is that Parliament, in approaching this matter, cannot avert that particular inference. It is at least open.

The next thing is that what is referred to as the permissive society, has taken a somewhat less Draconian approach to these sins, crimes or whatever they may be; the fact is that there is some evidence in this community of overt campaigns for the recruitment of young people to what I shall call, in a neutral way, deviant behaviour. I think I am right in saying that at least some of our medical confreres would accept the proposition that at a certain stage of adolescence it is possible for the adolescent to be attracted one way or the other into what this society presently nominates as normal behaviour or into what this society presently nominates as deviant behaviour. There is also evidence that young children—young boys in particular—are now much more prone to prostitute themselves in this way.

I thought this legislation was just as much designed to protect youngsters against themselves as it was against older people. However, be that as it may, and having got that beef off my chest, it is also perhaps too easy to confuse the functions of the courts in this sphere. The courts have two functions: (1) to determine the guilt or innocence of the accused; (2) to determine what is an appropriate punishment to be inflicted on the individual accused. In determining the first question, the courts simply apply the law of the land, which is the same for everybody in this community. Whether everybody has the benefit of the legal services of the community is a quite different question from whether or not the law treats them as equal. On the second aspect, the treatment of the convicted person in relation to punishment is a purely individual matter. It is individual in that the judge who deals with this applies himself personally to the particular case of the accused man personally and determines what, in his view, the community demands should be done in a given case.

So far as my experience in the general administration of the criminal law, which is spread in many aspects over quite a long time now, condign punishment has not been awarded to those who have been prosecuted for and convicted of homosexual behaviour between consenting male adults in private. Indeed, prosecutions are rare indeed. It might be interesting to this society to know that the last flock of prosecutions of which I am aware under this heading concerned a person who had set himself up to put homosexuals in contact with one another and had invited personal publicity by doing so. By the insertion of advertisements in newspapers, by circulating it by word of mouth and thereby attracting the attention of police officers who, no doubt, had much better things to do with their time and would much have preferred not to have thrown under their noses—but what are they to do?

Now, that particular flock of prosecutions resulted in pleas of guilty of something like ten or twelve different people and of all of them some—if I may say so, the unfortunate few—were released on bonds to be of good behaviour. Most of the others came up for sentence in the later part of the month and were given fourteen days' imprisonment, which meant they went free because their sentence dated back to the first of the month. This is not actually condign punishment, but the mere fact that the law or the judge, if you like, exercises a particular discretion as to punishment and, in appropriate circumstances, says "The community doesn't want this man gaoled so I won't send him to gaol" does not, in my respectful submission, necessarily mean that the law itself is wrong.

Since the campaign which has been carefully maintained over the last few years has been mounted, it is perfectly plain to anyone who reads their newspapers, and assuming that the reports in newspapers are accurate, we are faced with people belonging to C.A.M.P., or whatever the society is, volunteering to visit schools, to speak to adolescents in what may well be a difficult situation for them, to persuade them that this is licit and not merely licit but acceptable, appropriate and enjoyable. In my opinion, that is not the present state of mind of this community. It may be that the minority is right, but the minority have not yet convinced me, for what that is worth.

But that has gone on. Now, this is dangerous and it is for this reason that I rose to my feet to say that, with the very greatest respect to our right honourable speaker, it is deluding oneself to

say, whatever be the rights or wrongs of this legislation—I know nothing about that—it is deluding oneself to say that, in repealing this legislation, one is not concerned with the question of paederasty. It is as much a delusion as those observations which were made when the legislation to which Mr. Justice Norris referred was passed. It was described then and there in Parliament as the blackmailer's charter, and that is an emotive phrase, a phrase with a good deal of emotion, and I am perhaps not devoid of it myself in this sphere. But whether the blackmailer gained his charter from the fact that that action was now branded as illegal, or whether the blackmailer gained his charter from the attitude of society to the homosexual, must remain an open question.

DR. BALL:

In 1960-61, I was involved in some research in this area in Toronto at the forensic clinic. If you take out the middle area where a late adolescent has a relationship with a younger adolescent and look at the situation where a pre-pubescent boy or girl has a relationship with an adult person, the paederophilia is a different kind of situation than that to which the motion refers. In general, the paederophiles are the most reviled of the homosexual world and have a pretty bad time when incarcerated with them in gaol. The aetiology of this whole range of human behaviour is certainly obscure. There are many theories. It may be there are biological factors which relate to this. Maybe, for example, a small proportion of us are destined by biology to behave in a homosexual way. On the other hand, you can argue that early environment, perhaps together with our given biology, can predispose us towards, or prevent us from, becoming homosexually active. I prefer to think that most of us are born and then the process of becoming heterosexual is a learning process in which we determine our choice of sexual development, but this is a fairly complicated area. But the whole point is that this is essentially learnt and there may be failures in this learning for a whole variety of reasons. I think it is essentially determined in earliest years and what happens in puberty is essentially a continuation. Seduction *per se* does not lead to homosexuality but may make manifest that which is already there. Seduction of a non-predisposed person does not predispose them to become homosexual.

There are a few things I wanted to raise for discussion. His Honour talked about the general abhorrence which the hetero-

sexual members of the audience have towards homosexuality. This may simply refer to the excellence of our earlier training in that we moved from a bi-sexual orientation to a heterosexual orientation and have obtained a very adequate aversion to the thing we are not supposed to have.

I should point out that there is clear evidence from psychosis and brain damage patients and so on that, when a person at some stages in life, is, shall we say, deranged—and my medical colleagues, I hope, will forgive me for the use of this term—but if one becomes deranged, one may develop very strange sexual ideas.

I think it is also very easy for us to generalize from the patients or the offenders we have seen. I suggest that this is essentially the tip of the iceberg and that these are essentially failed homosexuals. The vast majority of them we never see, and they are perfectly normal citizens living out normal lives and no nuisance to anyone, and many are very admirable people.

I think it is also very easy for us to look at homosexual behaviour in a very derogatory way. I suggest that what often happens is that the kind of homosexual behaviour we see in some of our patients and in some of our offenders is compared with that presented in novels or cinemas. And I suggest that in the majority of these, heterosexual behaviour is cheap and nasty and only a small proportion will be anything like the cinemas or the women's novels.

I think it is fair to compare the average heterosexual against the average human. I suggest that at least some human relationships are as deep, warm and meaningful as the most romantic that we can think of in the most romantic heterosexual literature and experience.