

“In what way are gay men actually harmful to society?” Exploring the evidence on the feasibility of amendments to the Sexual Offences Act 23 of 1957

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Abstract

Prompted by a perception that a gay sub-culture developed in the major urban areas of South Africa, and that this formed a threat to state security and to the established mores of society, the Minister of Justice, PC Pelsler, appointed a Parliamentary Select Committee in 1968. The essence of the task given to the Select Committee was to provide clarity to the Department of Justice about a definition of homosexual acts as well as the causes, manifestations and extent of these practices. In addition, the Committee had to ascertain whether South African society was ready to decriminalise sodomy and “unnatural” sexual practices. A major concern was whether gay men were a danger to minors. The Committee received numerous written submissions and held regular meetings to hear oral testimonies, which covered a wide spectrum of opinions and issues. Representatives of the South African Police and the Afrikaans churches vehemently opposed homosexuality and homosexual activities. Ministers from the English churches pleaded for tolerance but with very specific preconditions. The position of the lawyers, psychiatrists and psychologists was clear: that homosexuality was not a threat, could not be “cured” and should be accepted. The investigation resulted in widespread debate, revealing facets of the moral dynamics of white South African society in the 1960s. Inter alia, issues such as the right of the state to make laws on morality and intrude on the privacy of individuals, diverse interpretations of the Bible, the level of intolerance for the “other” and the apparent difficulties to enforce any amendments to the Act - as far as homosexuality was concerned - were raised.

By emphasising these issues, the intention of this article is to give an indication as to what extent gay white men were tolerated. To realize this, a discussion of the context of a very strong conservative government that underpinned the activities of Select Committee was essential. The upshot was that the deep-rooted conservatism of the state prevailed, finding expression in harsher and specific measures in the Immorality Amendment Act of 1969. The strong arguments from some church representatives, as well as the medical

and legal fraternities, were discarded. Clearly the time was not yet ripe for liberalising sexuality in South Africa.

Research for this article relied on the extensive testimonies before the Select Commission as published in its final report. In addition, relevant submissions in the Gay and Lesbian Archive at the University of the Witwatersrand helped to form a comprehensive picture and made qualitative analysis possible.

Keywords: Sexual Offences Act 23 of 1957; Submissions; Testimonies; Homosexuality; Homosexual practices; Legal; Religious; Psychiatrists; Psychologist; Theologians; Hegemonic masculinity; Control; Cure; Punitive legislation.

Introduction

In 1968, The South African Parliament set up a Select Committee¹ to consider an amendment to the Sexual Offences Act of 1957.² During the first half of the year it held numerous meetings to hear evidence and make recommendations for legislation to “control”, “correct” and even “cure” white homosexual men.³ The report of this investigation was until then the only serious policy-making initiative to come from the government on the question of homosexuality,⁴ and occurred during a period of hegemonic state domination of all aspects of South Africans’ lives.

Politically, the state could rely on an overwhelming majority in Parliament, backed by a strong military and police force, and opposition, particularly of the black un-enfranchised majority, was forced underground. Economically, the mostly Afrikaner supporters of the National Party for the first time

1 The nine white male members of the Select Committee were JJ Engelbrecht, JT Kruger, T Langley, L le Grange ML Mitchell and drs A Radlof, WLDM Venter and EL Fisher. S Frank was the chairperson. Government of the Republic of South Africa, *Report of the Select Committee on the Immorality Amendment Bill, S.C. 7 – ’68* (Pretoria, Government Printer, 1968), p ix.

2 Three sections of the Act (10, 14 and 20) criminalised “indecenty”. Homosexual acts were put on a par with “indecenty”. Hence Section 20(A) provided that “acts committed between men at a party and which are calculated to stimulate passion or to give sexual gratification is prohibited.” This section created a legal paradox. The intention of the act was not to prohibit acts performed in private. Thus it was legal to be homosexual but behaviours associated with homosexual practices were illegal. See G Isaacs & B McKenrick, *Male homosexuality in South Africa. Identity formation, culture and crisis* (Cape Town, Oxford University Press, 1992), pp. 148-150.

3 For the purpose of this article the term “gay men” will mean “white homosexual men”.

4 TF Jones also discusses the activities of the Select Committee but specifically focused on the role played by the psychologists and psychiatrists. TF Jones, “Averting white male (Ab)normality: Psychiatric representations and treatment of ‘Homosexuality’ in 1960’s South Africa”, *Journal of Southern African Studies*, 34(2), pp. 397-410.

experienced unbridled prosperity.⁵ During the 1960s the ideology of Afrikaner Nationalism pervaded the social, cultural, legal and religious arenas. Gevisser aptly describes how the Nationalists applied the conspiracy-rhetoric as a control mechanism in all of these arenas:⁶

Nationalist control over South Africa was consolidated through the construction of bogeymen, and to the black conspiracies, communist conspiracies, English conspiracies, Jewish conspiracies, could now be added 'queer' conspiracy.

The state's control over the sexual activities of its citizens was more than just controlling sexuality. Mixed with its racist policies it sought to limit the practice of inter-racial sexual intercourse and thus retain white political dominance.⁷ This was indicative of the state's intention to control the whole of society.

M Epprecht reminds us of the context of the 1968 Select Committee, which had also been commissioned just after "increasingly assertive African nationalism in the 1950s and 60s, (which) tended to narrow tolerance of any liberal values, let alone de-stigmatize homosexuality".⁸ Although this threat of the liberation struggle abated due to harsh measures to quell it, other issues were presenting themselves. Morally, the spectre of decay in the fibre of society, as defined by a strong conservative component of white citizens, was seen as a major threat. According to Du Pisani, the decay manifested itself in liberalism and homosexuality, "two primary manifestations of masculine 'deviance' in Afrikaner society during the apartheid years."⁹ This view was strengthened by international events, specifically in the United States of America (USA) where the hippie movement preached "free love," and in the United Kingdom (UK) where the Wolfenden Committee's report¹⁰ on gay rights confirmed the

5 A Grundlingh, "Are we Afrikaners getting too rich? Cornucopia and change in Afrikanerdom in the 1960's", *Journal of Historical Sociology*, 21(2/3), June/September 2008, p. 148; K du Pisani, "Persepsies van manlikheid in die Afrikaanse gemeenskap, 1935-1995", (Paper, 16th biannual conference of the *South African Historical Society*, July, 1997), pp. 9-11.

6 M Gevisser, "A different fight for freedom: A history of South African lesbian and gay organisation – the 1950s to the 1990s", M Gevisser & E Cameron, *Defiant desire. Gay and lesbian lives in South Africa* (Braamfontein, Ravan Press, 1994), p. 31.

7 TF Jones, "Averting white male (Ab)normality...", *Journal of Southern African Studies*, 34(2), p. 398.

8 M Epprecht, "What an abomination, a rottenness of culture: Reflections upon the Gay Rights Movement in Southern Africa", *Canadian Journal of Development Studies*, 20, 2001, p. 1093.

9 K du Pisani, "Puritanism transformed: Afrikaner masculinities in the Apartheid and post-Apartheid period", R Morrell, *Changing men in Southern Africa*, (Pietermaritzburg, University of Natal Press, 2001), p. 167.

10 In 1965 the British House of Lords approved a bill to decriminalise consensual adult sodomy. This decision was based on the recommendations of the 1957 Wolfenden Report, advising decriminalisation. The House of Commons eventually ratified decriminalisation in 1967. SA Rosen, "Police harassment of homosexual women and men in New York city, 1960-1980", *Columbia Human Rights Law Review*, 12, 1981, p. 167.

existence of a tolerant society – albeit only in legal terms.

Against this background the article focuses on a specific enquiry into homosexuality over a period of six months in 1968. It investigates the evidence – either through written submissions to, or oral testimony - before the Select Committee from various sections of white South African society. These offer windows into white perceptions of homosexuality¹¹ in the late 1960s. This analysis suggests a link between homosexuality as a perceived or imagined disaster and the persecution of gay men. In addition, the article addresses the various and nuanced degrees to which the evidence supported or disagreed.

The role players in this discussion are members of the Select Committee, the medical profession, theologians, the police, psychiatrists and psychologists and anti-amendment activists represented by the Law Reform Movement (LRM).¹²

Apart from the factual content of the evidence, on a broader level the article explores issues such as the right of the state to legislate on morality - implicitly against minorities - as well as the complexity thereof; conservative versus more liberal interpretations of the Bible;¹³ the reliability of the medical profession's views; the authority of the police and the state and the motivation for more “open-minded” people to challenge this authority. The issue of whether legislation should be passed when trailing behind public opinion, or whether it should lead public opinion, also receives attention.

Although there are isolated exceptions to the rule, in mainstream and progressive histories on South Africa, until recently sexuality as a site for political struggle simply did not feature. When harsh legislation is talked about, the Police Act and the Terrorism Act were mentioned, but the Sexual Offences Act, which allowed for jail sentences for men who did nothing more than kiss in public, is invariably overlooked.¹⁴

11 When reference is made in this article to homosexuality, it refers to gay white men. The Select Committee's report focused on white, gay men, not lesbians or black homosexuals.

12 This was an ad hoc action group set up by gay professionals to raise money to pay attorneys to prepare evidence and lead the case against the proposed legislation before the Select Committee. M Gevisser, “A different fight for freedom...”, M Gevisser & E Cameron, *Defiant desire. Gay and lesbian lives in South Africa* p. 32.

13 The intent is not to get too involved in legal and religious arguments but only to focus on how they featured in the submissions and oral testimonies presented before the Select Committee.

14 G Retief, “Keeping Sodom out of the laager: the policing of sexual minorities in South Africa”, M Gevisser & E Cameron, *Defiant desire...* p. 100.

Aims of the Select Committee

On 22 January 1966 the police raided a private gay party¹⁵ in one of Johannesburg's rich suburbs, Forest Town.¹⁶ This triggered submissions from the South African Police (SAP) to the Minister of Justice, PC Pelser, requesting that the relevant sections dealing with homosexuality in the Sexual Offences Act of 1957 be amended to enforce stricter control over homosexuality. According to Major FAJ van Zyl,¹⁷ "It became apparent that all levels of society practise homosexuality on a scale which was hitherto considered unthinkable."

While a range of 'unnatural' offences were illegal according to the common law, only "public"¹⁸ male homosexual acts were illegal offences. Until now it was impossible to define the limits of unnatural sexual offences as the adjective 'unnatural' involved a value judgement. It therefore had little if any objective content. The government, and specifically the Department of Justice, wanted a clear definition of homosexual acts and to fully understand their causes and manifestations. In order to solve this public/private dichotomy, to gain clarity on the meaning and prevalence of homosexuality in the country, and convinced of the urgency of the matter, Pelser decided that a select government committee should be set up¹⁹ to investigate the feasibility of amending the Sexual Offences Act of 1957. Encouraging Parliament to approve, Pelser pontificated with a curious blend of quasi-religious rhetoric and psycho-social babble:²⁰

And who can deny that this was also the cancer that afflicted the Biblical Sodomy? No, Sir, history has given us a clear warning and we should not allow ourselves to be deceived into thinking that we may casually dispose of this viper in our midst by regarding it as innocent fun. It is a proven fact that sooner or later homosexual instincts make their effects felt on a community if they are permitted to run riot... Therefore we should be on the alert and do what there is to do lest we be saddled later with a problem which will be the utter ruin of our spiritual and moral fibre [sic?].

15 According to the testimony by HPJ van Vuuren, there were between 300 to 400 gay men in a building; "wat hulle blykbaar almal skuldig gemaak het aan die een of ander homoseksuele daad" (who apparently were all guilty of various homosexual acts). See Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7 - '68, p. 1.

16 By chance, a police raid on a private social gathering of gay people also occurred in New York in 1966. See SA Rosen, "Police harassment...", *Columbia Human Rights Law Review*, 12, 1981, p. 166.

17 Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7 - '68, p. 12.

18 The author's accentuation in inverted commas.

19 M Gevisser, "A different fight for freedom...", M Gevisser & E Cameron, *Defiant desire...* p. 32.

20 Government of the Republic of South Africa, *House of Assembly Debates* (Pretoria, Government Printer, 1968), columns 1405-1406.

More specifically, the Select Committee had to hear evidence on the nature of homosexuality, to propose new legislation to regulate sexual activity between white men, and to curb the perceived threat of an emerging gay subculture to “the moral basis of the populace.”²¹ Homosexuality, being considered sinful, unnatural and abnormal, and not even talked about in decent circles, was imagined to undermine sexual purity and the moral solidarity of the nation.²² Moreover, it threatened the hyper-masculine ideal of toughness and dominance and thus, implicitly, Afrikanerdom’s culture, morality, patriarchal power, procreative ideals²³ and hegemonic masculinity²⁴ as represented by the state and some theologians.

Part of the underlying agenda, central debate and a recurring concern of the Select Committee was the assumption that gay men were child molesters and that they would corrupt the youth.²⁵ It was therefore necessary to protect children against gay men.²⁶ The issue elicited interest from various walks of life. For instance, R Mohr’s comments are also relevant for South Africa: “ignorance about gays has not stopped people from having strong opinions about them.”²⁷ Numerous role players either appeared as witnesses before the Select Committee or offered written submissions²⁸ for or against homosexuality.²⁹ These can be divided into two broad sections engaged in a tug-of-war, namely the “conservative” lobby (mostly the police and some of the theologians), and the “liberal” lobby (mostly the psychiatrists and

21 G Elder, “‘Of moffies, kaffirs, and perverts’, Male homosexuality and the discourse of moral order in the apartheid state”, D Bell & G Valentine, *Mapping desire: geographies of sexualities* (London, Routledge, 1994), p 62.

22 K du Pisani, “Puritanism transformed...”, R Morrell, *Changing men in Southern Africa*, p. 169.

23 The Judeo-Christian tradition was hostile towards all non-procreative sexual acts. AN Gilbert, “Conceptions of homosexuality and sodomy in Western history”, *Journal of Homosexuality*, 6(1/2), 1980/1981, p. 64.

24 RW Connell, “The State, gender, and sexual politics: Theory and appraisal”, *Theory and Society*, 19(5), October 1990, p. 516.

25 This notion was quite prevalent also outside South Africa. R Mohr, “Gay Basics”, L Gruen and GE Panichas, *Sex, morality and the law* (New York and London, Routledge, 1997), p. 53.

26 G Retief, “Keeping Sodom out of the laager...”, M Gevisser & E Cameron, *Defiant desire...* p. 102. In the United States the police also viewed homosexuality as a perversion that threatened children. As in RJ Jacobson, “Meagan’s laws’, Reinforcing old patterns of anti-gay police harassment”, *The Georgetown Law Journal*, 87, 1998, p. 2433.

27 R Mohr, “Gay basics...”, L Gruen and GE Panichas, *Sex, morality and the law*, (New York and London, Routledge, 1997), p. 53.

28 The word “submission/s” will be used throughout. It includes both written memoranda and oral testimonies.

29 The Select Committee received no less than 35 individual written submissions as well as submissions from main stream churches, the National Society of Neurologists and Psychiatrist and the Psychological Association of South Africa. Departments of Psychology and Law at the Universities of Pretoria, South Africa, Witwatersrand, Cape Town and the Rand Afrikaans University. In addition, the government departments of Justice, Health, Education, Defence and Social Welfare and Pensions increased the number of submissions. There were also 22 witnesses. See Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7 – ’68, pp. iii-vii.

lawyers). The former, convinced that homosexuality was spreading, thought that gay men were a “threat” to society and, specifically, could endanger the country’s youth. The latter, however, were of the opinion that a homosexual orientation was an ingrained psychosexual disorder that ought to be dealt with medically rather than by incarceration.³⁰ The Select Committee therefore had its work cut out, on the one hand having to deal with false generalisations that maintained stereotypes and a life of its own beyond facts, on the other hand with scientific and rational evidence.

Arguments in favour of the amendment

South African Police

Major FAJ van Zyl, the chief spokesperson of the SAP before the Commission, surmised the following:³¹

... it is clear that no doubt exists that homosexuality in all its forms constitutes a threat to the Republic and it is also abundantly clear that we can never accept the permissive attitude thereto which has already been accepted by the British parliament.

He pointed out that South Africa was conservative and should lay down the law according to its way of life, not Britain’s.³² Continuing, he pointed out that initially the police had encountered no problems with acts committed in private, but that homosexual men were no longer keeping their behaviour private. They were becoming more visible. In Van Zyl’s perception the number of gay men was too large to handle, with some parties taking over entire blocks of flats. He continued:³³

At Head Office [Pretoria] we never used to get information, these days people are telephoning and writing to us and drawing our attention to that particular flat or home, or even that particular area, because of the increasing frequency of the occurrences. That is our problem.

30 These divergent views on the issue also resonated in the well-known debate between Lord Patrick Devlin and Professor HLA Hart in their response to the Wolfenden Committee’s report, L Gruen and GE Panichas, *Sex, morality and the law*, pp. 1-3

31 Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7 – ’68, p. 14. AGS Gous, the Youth Secretary of the Dutch Reformed Church in the Northern Transvaal, was convinced of the threat to the state. According to him, gay men organised themselves into cells and monopolised key services of the State. It was a major danger to State security. See Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7 – ’68, p. 317.

32 Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7 – ’68, p. 71.

33 Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7 – ’68, p. 32.

In addition, people had complained to the SAP that they were worried about the stigma attached to their area if there were known gay men living there. It was therefore the public that had pressurized the police to do something. As white homosexuality affected the SAP's ability to maintain law and order³⁴ it had become such a problem that punitive measures were required. The only way to get them was to amend the Sexual Offences Act.³⁵

Van Zyl did not necessarily represent all members of the SAP. A surprising response, given the conservative nature of the SAP, came from some of district police Commissioners' written submissions, in which they verified that homosexuality existed among white men in their areas and explained public reaction to it. However, of the twelve Commissioners who responded, only four unequivocally agreed to an amendment of the 1957 Sexual Offences Act, which would have allowed for jail sentences. Most did not advocate jail and intimated that homosexuality of white men, at that time, was no threat to society.³⁶

Conservative theologians

As the gay rights movement gained momentum in the United States and Europe during the late 1960's, homosexuality became a topic of debate in South Africa. However, it was significant that there was no formal intervention by the mainstream churches in the discourse. Consequently it was left to individual members of the various churches to speak on the matter.

W Fensham, professor in Hebrew at the University of Stellenbosch, was the advocate of a conservative theology of morality that made a very literal interpretation of especially six Biblical texts that supposedly condemned gay men and legitimized their rejection of homosexual men by the Church.³⁷

34 Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7-'68, p. 32.

35 Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7-'68, p. 31.

36 Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7-'68, pp. 12-14.

37 These were Genesis 19: 1-29, Leviticus 18:22, Leviticus 20:13, Romans 1:18:32, 1 Corinthians 6:9, and 1 Timothy 1:8-11. P Germond refers to these texts as a "six-gun", a pistol loaded with six texts that are used as bullets – Bible bullets – to kill lesbian and gay people in a contest about whether they can be full members of the community of faith." See P Germond, "Heterosexism, homosexuality and the Bible", P Germond & S de Gruchy, *Aliens in the household of God: homosexuality and Christian faith in South Africa* (Cape Town, David Philip, 1997), p. 193. The title of the book is an adaptation of Leviticus 19:33-4: "When an alien resides with you in your land, you shall not oppress the alien. The alien who resides with you shall be to you as the citizen among you: you shall love the alien as yourself, for you were aliens in the Land of Egypt." Also see J Punt, "Using the Bible in post-apartheid South Africa: Its influence and impact amidst the gay debate", *HTS Theological Studies*, 62, 3, 2006, p. 885.

These texts present “a theology that casts lesbian and gay life as perversion.”³⁸ According to Fensham, the government should continue to abide by the traditional scriptural laws on gay men because South Africa was a Christian country and its laws were based on the teachings of the Bible. Furthermore, he stated South Africa had prospered over the previous twenty years because Nationalist rule had put ‘God’ first in the governing of the country. If the government willingly disobeyed God’s word it would bring about a spiritual decline. Fensham openly stated that society needed protection, that gay men were no different from rapists or other sex offenders and that they had depraved minds and were therefore a threat.³⁹

AGS Gous, the Youth Secretary of the Dutch Reformed Church in the Northern Transvaal, likewise warned that it would be a serious fallacy to assume that gay men were good, peaceful and passive citizens who have consenting sex within the privacy of their houses.⁴⁰ He consequently recommended that any planned legislation should reject any homosexual practices as the law also mirror the social consciousness of society. The law should be severe to have a deterrent effect. He therefore recommended imprisonment but with the intention of rehabilitation.⁴¹

The remarks from Fensham and Gous reflected the ideology of Afrikaner Nationalism, of which the all- powerful Afrikaner institution, the Dutch Reformed Church, was one of its most vociferous proponents,⁴² well-known for its opposition to any group or groups that did not subscribe to its ideology. Gay men were one of those groups. As late as 1987 the official policy of the Church still maintained that homosexuality was a disease in which there was an almost pathological fear of the opposite sex.⁴³

38 Gay and Lesbian Archives (GALA), University of the Witwatersrand, AM 2704; M Gevisser, “Properly armed, Christians themselves can now face the ‘six-gun’”, *Sunday Independent*, 17 August 1997.

39 GALA, AM 2656, Letter, W Fensham (Professor in Hebrew, University of Stellenbosch)/PC Pelser (Minister of Justice), 24 February, 1968.

40 Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7 – ‘68, p. 310.

41 Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7 – ‘68, p. 316.

42 SR Ritter confirmed this: “The Church has always been the most powerful formative influence in shaping the values, norms and institutions of the Afrikaner community”. SR Ritter, “The Dutch Reformed Church and Apartheid”, *Journal of Contemporary History*, 2(4), October 1967, p. 17; J Kinghorn, *Die N.G. Kerk en apartheid* (Johannesburg, Macmillan, 1986).

43 J Punt, Using the Bible in post-apartheid South Africa..., *HTS Theological Studies*, 62, 3, 2006, p. 899.

Arguments against the amendment

Liberal theologians

The evidence of the liberal theologians presented a more refined argument against the amendment of the 1957 Imorality Amendment Act. Two submissions to the Select Committee challenged this traditional interpretation. In his submission, Reverend RS Taylor of the Anglican Church questioned the story of Sodom and Gomorrah, pointing out that Ezekiel denounced Sodom for wickedness, which was due to “pride, fullness of bread, and prosperous ease,”⁴⁴ that is, pride, gluttony, and sloth, three of the seven deadly sins. In addition, disrespect of God and arrogance were their crime, not homosexual practices. Taylor concluded:⁴⁵

Careful investigations fails to substantiate the venerable belief that Sodom was destroyed because its inhabitants were addicted to male homosexual practices. The evidence for this belief appears to be very inadequate.

Reverend Ambrose Reeves⁴⁶ reiterated Taylor’s views: “It does not explicitly identify their sin with homosexuality.”⁴⁷ He furthermore noted that Paul’s teachings in Romans 1:27 and I Corinthians 6:9-10 condemned paedophilia, not adult, consensual homosexual acts.⁴⁸

Both Taylor and Reeves suggested to the Select Committee that it should differentiate between those homosexual men who were promiscuous, (“perverts”) and those who were in a committed, faithful and permanent relationship (“inverts”). Taylor condemned the sexual practices of the pervert but questioned whether God condemned the sexual invert.⁴⁹

44 GALA, AM 2656, Submission from Rev. RS Taylor, Archbishop of Cape Town, on behalf of the Bishops of the Church of South Africa and the Christian Council of South Africa to the Select Committee, March 1968.

45 GALA, AM 2656, Submission from Taylor..., March 1968. British historian, H Montgomery Hyde also challenged the traditional Sodom interpretation. According to Hyde it was not the homosexual practices the Sodomites were punished for, but their abuse of Hebrew laws and customs with regards to the treatment of strangers. HM Hyde, *The other love*, (London, Heineman, 1970), p. 30.

46 Reverend Ambrose Reeves was the Anglican Bishop of Johannesburg.

47 GALA AM 2656, Submission from Reeves, 1968.

48 Their views were corroborated by Martin Cohen’s explanation twenty years later, MS Cohen, “The Biblical prohibition of homosexual intercourse”, *Journal of Homosexuality*, 19(4),1990, pp. 3-4; 15.

49 GALA, AM 2656, Submission from Taylor..., March 1968. Taylor referred to the study of John Boswell who challenged some of the basic assumptions about the topic. The church has not been consistently anti-gay but rather has vacillated in its toleration and persecution of homosexuals. At the height of Biblical tolerance the church even accepted homosexual ecclesiastics. Taylor stated: “It shows that acceptance of gay people within the church is not a new phenomenon and that this has been a constant and often positive theme throughout the history of the church.”

Reeves explained that the interpretation of scriptures on the condemnation of homosexuality could not have referred to the homosexual invert because no such person was recognized in New Testament times. He therefore questioned on what grounds and to what extent South Africans could base their views of homosexuality on the classical, Christian tradition as no distinction had been made between the sexual invert and pervers.

However, Reeves' views were not unconditional and he still had reservations. He was not saying the Select Committee and all Christians should condone homosexuality. They should rather base their attitude towards this sexual orientation on the principles of Christian ethics, and moral theology, and not on an event that happened a long time ago, the cause of which had not been adequately proven. Reeves did, however, believe that gay men should be guided to repent and seek treatment.⁵⁰

The homosexuality "issue" became more complicated by numerous submissions to the Committee, pointing out that there was little acknowledgement in South African legislation of the difference between sin and crime. These submissions indicated that God dictated sin as an immoral action. A crime is a deed that a government deems wrong, which demands a penalty.⁵¹ However, while many acts are both criminal and sinful, some crimes are not morally wrong and some sins should not be punished by the state. For Taylor, homosexual acts were sinful, but their association with crime could be questioned. Sin – according to Taylor – should therefore be controlled by moral law that is left up to individual conscience with no punitive consequences. On the other hand, crime should be controlled by state law – prescribed legislation as laid out in a country's statutes by Parliament.⁵²

Theologians from the Catholic Church's submission brought another perspective to this vexing issue.⁵³ It agreed that the state should regulate law and order and public morality and not intervene in the private sexual acts

50 GALA, AM 2656, Submission from Reeves, 1968.

51 GALA, AM 2656, Submission from Rev. Taylor and Rev. Jones to Dr EL Fisher (Committee Member), 18 March 1968; GALA, AM 2656, submission from the Catholic Church; GALA, AM 2656, submission from the Christian Citizenship Department of the Methodist Church of South Africa, 1968; GALA, AM 2656, submission from Prof AC Cilliers, 25 March 1968; Letter from Mrs Hoole (The Religious Society of Friends (Quakers)), 31 March 1968 and GALA, AM 2656, Letter, W Fensham (Professor in Hebrew, University of Stellenbosch)/PC Pelsler (Minister of Justice), 24 February, 1968 and testimony by RW Rein, 5 June, 1968; Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7 – '68, p. 327.

52 GALA, AM 2656, Submission from Taylor..., March 1968.

53 GALA, AM 2656, Submission from the Catholic Church, 2 April 1968

of South African citizens unless these acts affected the *common good*⁵⁴ of the country. Once the private acts of gay men became unacceptable behaviour, homosexuality then became the property of civil law and was a crime as opposed to a sin because the common good was affected.⁵⁵

Submissions by the Church of England adopted yet another angle, comparing the morality of sexual practices of heterosexuals and homosexuals. According to their submission there was no evidence in the Bible or Christian theology that homosexual practices were any more immoral than other sexual malpractices.⁵⁶

Other submissions likewise made it clear that there are forms of private heterosexual behaviour that are equally immoral, yet not criminalised. Some submissions even noted that homosexual acts were less dangerous to society than heterosexual promiscuity and adultery. It was questioned why these deviancies were not “outlawed”, yet homosexuality was. Legislation should be geared towards behaviour, not sexual orientation. Both Taylor and Reeves was of the opinion that there should have been greater moral indignation against illegitimate teenage pregnancies and divorce than against gay men.⁵⁷ They therefore suggested that the Select Committee should also consider that “there is no evidence... that homosexual acts are morally more blameworthy than other sexual malpractices.”⁵⁸ According to these testimonies, the “problem” with South African law was that the government believed state law should uphold moral law. All, however, agreed that when homosexuals corrupted minors, trespassed on public decency, and practised male prostitution, the realm of sin had crossed to crime because it was no longer victimless. The state should then step in with punitive measures.⁵⁹

Thus, the submissions by the more enlightened theologians on the issue of state versus moral law did not advocate that homosexuality be accepted. Nevertheless, they suggested that it should remain in the purview of moral

54 The author's italics.

55 GALA, AM 2656, Submission from the Catholic Church, 2 April 1968. According to George Chauncey Catholic teaching focused so strongly on the moral dangers of sexual contact between men and women that this might have made sexual contact between men comparatively harmless. Therefore anti-gay teaching by the Catholic Church was ineffective. G Chauncey, “Trade, wolves, and the boundaries of normal manhood”, KM Phillips & B Reay, *Sexualities in history* (New York, Routledge, 2002), pp. 299-300.

56 GALA, AB1956, Submission from the Church of England entitled “Memorandum on the Bill to amend the Immorality Act of 1957”, p 4.

57 GALA, AM 2656, Submission from Reeves, 1968 and GALA, AM 2656, Submission from Taylor..., March 1968.

58 GALA, AM 2656, Submission from Taylor, March 1968.

59 GALA AM 2656, Letter, Rev. Jones (Methodist Church)/Dr EL Fisher, 18 March 1968.

law and should weigh on the personal consciences of homosexual men. The government should not punish these men because it was not a crime.⁶⁰

Legal arguments

From a legal point of view, Advocate RW Rein, the Attorney General of the Transvaal testified that the 1957 Sexual Offences Act was sufficient to control the behaviour of gay men, stating that it was not the law that was inadequate but rather proof of offence. Rein was of the opinion that the members of the Select Committee were not the lawyers or judges sitting in courts of law trying to decide on cases of homosexual acts in private without substantial proof. In turn, Commissioner M Mitchell questioned Rein as to whether he had ever prosecuted gay men, to which Rein answered that he only knew of the Forest Town case. This was indeed the dilemma. Because sodomy laws were so infrequently enforced it was difficult to bring cases to the Select Committee.

Nevertheless, Rein emphasized that the law should not be changed if the Select Committee based its recommendations for an amendment on one gay party that seemed to have predominantly affected the SAP more than the public. Furthermore, according to Rein, the Select Committee needed to be specific on what it understood as an indecent act because no court would say that one male kissing another was indecent, after all, “Lots of fathers kiss their sons.”⁶¹ This raised the thorny moral issue of what were considered to be “indecent” and “unnatural offences”.⁶²

Linked to the legal arguments, another member of the Select Committee, J Kruger, asked L Gillis, head of the University of Cape Town’s department of Psychiatry, whether men dancing with men were improper behaviour, namely against the norm of society, and if legislation could prevent this: “Our difficulty is to try and find out where to stop before it becomes an injustice to the individual”.⁶³ Gillis challenged the Select Committee to:⁶⁴

60 GALA, AM 2656, Submission from the Christian Citizenship Department of the Methodist Church of South Africa, 1968.

61 Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7 – ’68, p. 333.

62 According to Isaacs and McKenrick, “An unnatural offence consists of the unlawful and intentional commission of an unnatural sexual act by one person with another person or animal”. Unlawful would be what, in the opinion of the court, runs counter to what public policy would regard as a ‘natural’ sexual act, ie heterosexual sex. One of the important points addressed in sections 10, 14, 20 and 20(A) of the Immorality Act of 1957 were “immoral” or “indecent” acts between men; G Isaacs & B McKenrick, *Male homosexuality in South Africa...*, pp. 147-148.

63 Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7 – ’68, p. 165.

64 Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7 – ’68, p. 166.

...examine our own prejudices, our own sense of shock at being confronted with the sight of two men dancing with each other. We must step backwards to get perspective and say 'In what way is it actually harmful to society?'

He supported the view that legislating against homosexuality would be unnecessary.⁶⁵

... it is wrong for the legislator to act against a minority group because if it is swayed by public opinion then it will be an injustice to that minority group ... If men dancing with men is harmless and it is done in the privacy of a club, does the majority have the right to legislate against it?

Psychologists and psychiatrics

The Department of Justice relied heavily on the views of psychiatrists and psychologists in the hope that they would be able to define and treat gay men. They were the most influential and outspoken in their opposition against the criminalisation of homosexuality, even accusing the Select Committee of being misinformed and therefore misguided. They played an important role in the shaping of the outcome of the investigation. However, their submissions did not provide the clear-cut answers the Department of Justice was looking for.⁶⁶

A major issue for the Select Committee was the question of whether homosexual men could change their behaviour and even be "cured." On the one hand Gous adamantly stated that it was indeed possible. He based his argument on scripture that made provision for this fallen state, proclaiming that healing was possible.⁶⁷

The disciplines of psychiatry and psychology had long been studying homosexuality, but often to the detriment of homosexual men, because homosexuality was initially diagnosed as a mental illness that needed curing.⁶⁸ However, the submission from the psychiatrists and psychologists indicated that not all the literature of the medical profession was trustworthy. There was still too little knowledge of homosexuality, especially in South Africa, where

65 Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7 - '68, p. 161.

66 TF Jones, "Averting White Male (Ab)normality...", *Journal of Southern African Studies*, 34(2), p. 409.

67 Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7 - '68, p. 311.

68 M Judd, "Homosexuality: Mental illness or moral dilemma?", *International Journal of Psychiatry*, 10(1), March 1972, pp. 114-117.

little research had been conducted up till now.⁶⁹ In their study of treatment in Britain, King, Smith and Bartlett expressed similar views, pointing out that professionals with hindsight realised that they lacked understanding of sexual behaviour within its social context. Their research showed:⁷⁰

... how assumptions about public morality and professional authority can lead to the medicalization of human differences and the infringement of human rights. These assumptions sometimes lie at the heart of what we regard as mental pathology...

Some psychiatrists pointed out that the cause of homosexuality was either hereditary, cultural, and/or psychological,⁷¹ arguing that homosexuality was not anti-social but just as instinctive and hormonally driven as heterosexual behaviour. Moreover, additional submissions and testimonies stated homosexuality could not be cured.⁷² However, one rather extraordinary question by the Select Committee, namely whether imprisonment could cure homosexuality, was rebuffed by an analogy that imprisonment was as futile as hoping to rehabilitate a chronic alcoholic by giving him occupational therapy in a brewery.⁷³ Psychiatrists from Cape Town put it succinctly:⁷⁴

Imprisonment does not help the man to change. The harshness of the punishment seems to be grossly out of proportion to the social insignificance of the offence.

69 Gous, confirmed the dearth of research in South Africa. Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7 – '68, p. 308.

70 M King, G Smith and A Bartlett, "Treatment of homosexuality in Britain since the 1959's – an oral history: The experience of professionals", *British Medical Journal*, BMJ, doi:10.1136/bmj.37984.496725.EE, 29 January, 2004, pp. 1; 3.

71 GALA AM 2656, Submission by the Society of Psychiatrists and Neurologists of South Africa to the Select Committee, and a memorandum by the Cape Town branch of the Society of Neurologists and Psychiatrists of South Africa, and the Department of Psychiatry of the University of Cape Town, 28 March 1968.

72 GALA AM 2656, Submission from the Department of Social Welfare and Pensions, 1968. GALA, AM 2656, Submission from JC van Rensburg, 26 February 1968; GALA, AM 2656, Letter from R de Villiers, 26 March 1968; GALA, AM 2656, submission from the Christian Citizenship Department of the Methodist Church of South Africa, 1968; GALA, AM 2656, Submission from Practising Private Psychiatrists in Cape Town, 26 March 1968; GALA, AM 2656, Submission from the South African Psychological Association, 20 March 1968; GALA AM 2656, Submission from the Cape Town Branch of the Society of Neurologists and Psychiatrists and of South Africa, 28 March 1968; Department of Psychiatry of the University of Cape Town, 28 March 1968; Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7 – '68, pp. 126, 148.

73 GALA, AM 2656, Letter from R de Villiers/Select Committee, 26 March 1968. Other analogies were: To punish a homosexual was like punishing someone for having freckles or hairy shoulders. See GALA AM 2656, A Campling, "Homosexuality. Sin or suffering?", *Personality*, 28 March 1968. Gaolring homosexual men was like imprisoning someone for being cripple or having a disease, punishing a homosexual was the equivalent of punishing someone because they had had a heart attack. See GALA, AM 2656, Submission from P Graham, 14 Feb. 1968. The government did not prosecute cripples or the mentally retarded, so why did they prosecute homosexual men for something they had no control over? GALA, AM 2656, Submission from JC van Rensburg, 26 February 1968.

74 AM 2656, Submission from Practising Private Psychiatrists in Cape Town, 26 March 1968.

Therefore, according to their views, the Amendment Bill would be ineffective. Instead, the solution to the homosexual “problem” was not cure, but acceptance. According to AM Lamont, Commissioner for Mental Health, psychiatric public health problems had received little recognition by the South African Health Services. Homosexuals were placed in mental hospitals and prisons, where a skeleton medical and nursing staff could not even cope with day-to-day medical care, let alone indulge in the research deemed necessary to control and ‘treat’ homosexual men. Furthermore, Lamont stated that homosexuality was definitely not a planned revolt against society’s sexual morality and norms and that gay men did not aim to corrupt and degrade society.⁷⁵ For the psychiatrists this notion was grossly over-exaggerated.⁷⁶ Gay men did not threaten society because it was increasing – as Van Zyl maintained.

In his submission, Dr LF Freed corroborated the views of the liberal theologians, psychiatrists and psychologists.⁷⁷ He fervently denied that gay men were bent on corrupting the youth – one of the major concerns of the Select Committee:⁷⁸

There is no proof that homosexual men have any preference for young boys, any more than do heterosexuals for young girls.

Likewise, in their submission, the psychiatrists refuted the claim by some government officials and the Selects Committee’s insistence that gay men were paedophiles, that it was therefore the duty of the government to protect all minors from seduction by gay men, and that heavy penalties were necessary.⁷⁹

Furthermore, in its submission the Department of Welfare and Pensions pointed out that it was unnecessary to amend the law because the 1957 Sexual Offences Act and the Children’s Act of 1960 protected minors from

⁷⁵ GALA, AM 2656, Submission from AM Lamont, Commissioner for Mental Health to the Secretary for Health, 1968.

⁷⁶ GALA AM 2656, Submission from the Society of Psychiatrists and Neurologists of South Africa, 28 March 1968.

⁷⁷ GALA AM 2656, Submission from the Cape Town Branch of the Society of Neurologists and Psychiatrists and of South Africa, 28 March 1968; GALA, AM 2656, Submission from Taylor, March 1968; GALA AM 2656 Submission from Reeves, 1968; GALA, GALA, AM 2656, Submission from Practising Private Psychiatrists in Cape Town and testimony from Gillis, 26 April, 1968. Also see Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7 – ’68, p. 79.

⁷⁸ GALA AM 2656, Submission from Dr LF Freed 16 May 1968; AM 2656, Submission from Practising Private Psychiatrists in Cape Town, 26 March 1968.

⁷⁹ GALA, AM 2656 Submission from Practising Private Psychiatrists in Cape Town, 26 March 1968.

seduction.⁸⁰ Therefore:⁸¹

...to legislate indiscriminately against the very much larger proportion of homosexual men for whom children hold no sexual interest, in order to protect them from a few paedophiles, is therefore a misguided effort.

Some psychiatrists also argued that toleration did not mean South Africa would decline into degeneracy. Submissions from the Department of Welfare and Pensions indicated that it was actually the police who were the problem, not white, gay men.⁸²

The Department had no complaints from the public about any incidences of white homosexuality. This was confirmed by a recent survey carried out at regional and branch offices of this Department. The Chief Welfare Officer in Pretoria said that although it was assumed that white homosexuality was practiced in Pretoria, it was not so widespread or conspicuous that it was a source of concern to the community. The Johannesburg Regional Office agreed. The manifestation of white homosexuality in Johannesburg could be described as “sporadic” and “incidental”.⁸³

Other arguments

Many submissions and testimonies by people from all walks of life questioned whether the proposed amendment would be effective.⁸⁴

80 GALA AM 2656, Submission from the Department of Social Welfare and Pensions to the Select Committee, 1968.

81 GALA AM 2656, Submission from the Cape Town Branch of the Society of Neurologists and Psychiatrists and of South Africa, 28 March 1968.

82 GALA AM 2656, Submission from the Department of Social Welfare and Pensions to the Select Committee, 1968.

83 GALA AM 2656, Submission from the Department of Social Welfare and Pensions to the Select Committee, 1968.

84 GALA, AM 2656, Submissions from: MA Boehmke, (Senior Lecturer in Law) and JB du Toit, (Professor in Sociology), University College, Western Cape, 1968; University of the Witwatersrand, 1968; Practising Private Psychiatrists in Cape Town, 26 March 1968; Cape Town Branch of the Society of Neurologists and Psychiatrists and of South Africa, 28 March 1968; “Samaritan”, *Eastern Province Herald*, 13 February 1968; Dr RE Hemphill to the Secretary of the House of Assembly, 28 March 1968; JC van Rensburg, 26 February 1968; Letter, James Locke/Select Committee, 26 February 1968; Dr A Levin, 28 February 1968; R de Villiers/Select Committee, 26 March 1968; AM Lamont, Commissioner for Mental Health to the Secretary for Health, circa 1968; P Graham, 14 February 1968 and Dr van Niekerk and C Dugard, “The Treatment of the Problem of Homosexual Conduct in Some Foreign Legal Systems”, 1968.

These revolved around three issues: the implementation of the law; whether homosexuality could be controlled as it was seen as a threat; and whether or not it could be “cured.” MA Boehmke and JB du Toit alerted the committee to the fact that there is “good law” and “bad law”. Good law is specific and applicable in practice. There must be proof of law-breaking, conviction, and punishment. If a law could not produce these results it would be brought into disrepute. The proposed Amendment Bill was perceived as an example of bad law because no serious attempt was made by the authorities of the time to “apply” it.⁸⁵ Applying the law was impractical as it would be impossible to detect private homosexual acts. The only way the Amendment Bill could be enforced was by spying and bashing down bedroom doors,⁸⁶ leading to expensive police traps. This could create the potential for a “medieval witch-hunt” and would not be the policing of morality. The police could end up wasting their time investigating malicious rumours, not to mention the police labour necessary to implement the new law.⁸⁷ In addition, the police would never be able to find those homosexual men in long-term relationships. Those arrested were usually “careless exhibitionists” who did not represent all homosexual men. An amendment to the Sexual Offences Act would therefore only endanger gay men, not eliminate homosexuality.⁸⁸ It was impossible for British law officials to carry out the law effectively, and was considered not to be worth the paper it was written on:⁸⁹

The law making homosexuality illegal in the United Kingdom failed totally to put down or control homosexuality between adults, attempts to control it gave rise to hardship, to sordid evils and to impeded treatment and medical research.

The situation in America was similar. From 1930 to 1939 there were only 1396 arrests for sodomy in New York, yet it was conservatively estimated that there were ten million homosexual acts committed during the same time. From 1950 to 1954 only 89 sodomy cases had been reported.⁹⁰ Thus,

85 GALA, AM 2656, Submission from MA Boehmke, (Senior Lecturer in Law) and JB du Toit, (Professor in Sociology), University College, Western Cape, 1968.

86 GALA AM 2656, “Samaritan”, *Eastern Province Herald*, 13 February 1968.

87 GALA, AM 2656, Submission from P Graham, 14 February 1968.

88 Submission of the Cape Town Branch of the Society of Psychiatrists and Neurologists of South Africa and the Department of Psychiatry of the University of Cape Town to the Select Committee, 26 April 1968 (Government of the Republic of South Africa, *Report of the Select Committee...*, S.C. 7 - '68, p. 80).

89 GALA, AM 2656, Submission from Practising Private Psychiatrists in Cape Town, 26 March 1968.

90 N St John Stevan, “The Homosexual in America”, *Life, Death and the Law* as quoted in the submission from B van Niekerk and C Dugard, 1968.

though there was punitive legislation in place to prevent it, the possibility to control, let alone eliminate homosexuality, was almost impossible. So how, it was questioned, did the Select Committee reason that an amendment to the Sexual Offences Act in South Africa would eliminate homosexuality?⁹¹

The outcome

Despite the strong evidence from the psychiatrists and psychologists, as well as some theologians, it did not carry enough clout to forestall harsher measures against gay men. The recommended amendments to the Sexual Offences Act were passed into law on 9 May 1969 and was called the Immorality Amendment Act of 1969. A crucial part of the argument to incorporate laws against homosexuality in the Act was the definition of “unnatural offence”. The Act now clarified this:⁹²

The crime in South African law of committing an ‘unnatural offence’ is constituted any ‘gratification of sexual lust in a manner contrary to the order of nature.

Homosexual acts were contrary to the “order of nature” so they were unnatural offences and illegal. Thus, despite the fact that sex between men was already prohibited under the common law crime of sodomy, Section 14 of the 1969 Act made it an extremely serious crime for a man to have sex with another male under the age of nineteen. This was designed to prevent “child molestation” by protecting teenage boys.⁹³

In addition, Section 20(A) of the Act, colloquially known as the “men at a party” clause, prohibited any form of sexual activity between two men at a party where “party” was defined as any occasion where more than two men were present. This meant that gay clubs and gay restaurants were theoretically operating illegally. However, homosexual acts in private were not criminalized.⁹⁴

91 GALA, AM 2656, Submission from Practising Private Psychiatrists in Cape Town, 26 March 1968.

92 G Isaacs and B McKendrick, *Male homosexuality in South Africa*. p. 147.

93 M Gevisser, “A different fight for freedom...”, M Gevisser & E Cameron, *Defiant desire...*, p. 35.

94 On this score it echoed the recommendation of the Wolfenden report that homosexual behaviour between consenting adults in private should no longer be a criminal offence. Society and the law should give individuals freedom of choice and action as far as private morality was concerned.

As with matters such as race, the government was again out of sync with the prevailing views in numerous countries in the Western world where homosexuality was decriminalised by the end of the 1960s.⁹⁵ The message from the authorities was clear: there would be no relaxation of the legal prohibitions concerning homosexuality.

Conclusion

The deep-rooted conservatism of the powers that be prevailed. The state asserted its right to legislate morality as manifested in the hard line the Select Committee took. The strong arguments from some church representatives as well as the medical and legal fraternities were discarded. Instead the Select Committee opted to adhere to stereotypes of gay men fed by a narrow interpretation of the Bible. Consequently, it chose to recommend very specific and strict measures against gay men. Clearly the time was not yet ripe for liberalising sexuality in South Africa.

The upshot was that for the next 25 years gay men were in danger to be criminalised for their sexuality. Prejudice as well condemnation of gay men were common. They had no choice but to go underground. South Africa could continue to follow its conservative, Christian tradition, with no visible threat to its power or well-established hegemonic masculinity. Nevertheless, it is significant to note that, despite the outcome, some liberal South Africans stood up for gay rights in 1968.

As late as 1982, Edwin Cameron referred to a text book on South African criminal law which stated that:⁹⁶

...the crime in South African law of committing an “unnatural sexual offence” is constituted by any “gratification of sexual lust in a manner contrary to the order of nature.

And public opinion is:

...not yet ready to accept the abolition of sodomy (and other ‘unnatural’ acts) as criminal even when practised in private between consenting adults.

Two years later, this was corroborated by a survey conducted by the Human

⁹⁵ TF Jones, “Averting white male (Ab)normality...,” *Journal of Southern African Studies*, 34(2), p. 402.

⁹⁶ E Cameron, *Untitled talk delivered to GASA convention*, Johannesburg, 31 May 1985, pp. 1-2.

Sciences Research Council, in which 70% of white respondents felt that homosexuality between consenting adults should not be de-criminalised.⁹⁷ Only in the 1990s would homosexual men receive legal freedom in South Africa.

⁹⁷ LE Glanz, *Attitudes of white South Africans towards certain legal rights of homosexuals*. Memorandum submitted to the President's Council. Pretoria (Human Sciences Research Council, 1987).

