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Parliament must choose

Next Friday, thanks to some hard work on the part of Mr. Leo Abse and those supporting him, the House of Commons may have a chance to let a glimmer of light penetrate one of the darkest corners of the criminal law. The Sexual Offences Bill ('to amend the law relating to homosexual offences') could make the Director of Public Prosecutions responsible for every decision whether to bring a criminal charge in a case of male homosexual conduct *unless* it was committed 'in the public view', or involved someone over 21 with someone below that age, or amounted to an assault. Moreover, if the incident was more than 12 months old, neither the DPP nor anyone else could prosecute. And what would the blackmailer do then?

As to these three exceptions, it may well be thought reasonable enough to spare the DPP the work entailed. Not many people are opposed in principle to public decency, to the moral protection of minors or to the restraint of violence; and in these cases there is no reason, whether or not they are homosexual, why the decision as to prosecution or 'refused charge' should not be delegated right down to the usual levels of police responsibility. But in the cases remaining, the acts done by mature persons as privately as any other incidents of sexual life, Mr Abse believes that the immediate need is for uniformity of police procedure. The hope that this might naturally follow the Wolfenden recommendations was very soon dashed. In most parts of the country it's almost as easy as ever it was to start up a homosexual witch-hunt like the one going on at the moment because of two London murders.

A stern moralist of my acquaintance, otherwise normal enough (in the sense that he walks about at large, reads, votes and has been seen to laugh), tells me that these two murders are an indication of what we should get if we enacted Part Two of the Wolfenden Report. I have his half-promise that he will tell me, when he has thought it out, why amorous relationships between men and women should not be ruthlessly stamped out on the ground that some men kill their wives. But even Mr Abse has had to anticipate and seek to placate this abysmally fatuous line of argument, by putting in his bill a clause declaring that the word brothel in the Sexual Offences Act, 1956, shall include 'premises used for homosexual practices'.

One danger in this proposal is that a brothel is not necessarily a place in which any money changes hands; another would be its lapidary effect on the word 'practices', thus enshrined for the first time in the statutes as an epithet never yet applied to the incidents of heterosexual life; and the worst would be its capitulation to the view that homosexual eccentricities, even where they give no offence to those present, must always be punishable in some special statutory way.

The bill suggests considerable faith in the effect of psychiatric treatment on the homosexual condition. Clause Two makes it mandatory upon judge or magistrate to consider psychiatric evidence before passing a sentence or deciding any other course of action. The proviso dispensing with this evidence where the offender has already been

convicted of a similar crime since the age of 17 invites two criticisms. First, although homosexual convictions before that age are rare, they are often of some significance. Secondly, it is often on a second or subsequent conviction that the psychiatrist finds he has a real chance. If the truth is to be faced, the psychiatrist's main hope lies not in bringing off 'cures' but in enabling a man to come to terms with his condition and live the difficult life of a self-disciplined semi-outlaw. Professional psychiatry is not alone in its ability to do this from time to time; and in any case it can even be a tragedy to attempt such drastic 'reform' with a momentarily unbalanced first offender.

Ten years ago, Judges were saying: 'If it is medical treatment of some kind that you need, and for all I know it may be so, it will be available in prison.' They seemed genuinely to believe it, but at that time there were only about two prison medical officers who shared the belief. Today there are more than 50 prison psychologists skilled in group counselling; while the prison medical officers, though still on the whole unimpressed with the need to qualify in psychological medicine, have had much experience in observing the problem and collating their findings. Of course the problem that no prison measures can possibly affect, for good or ill, is the social ostracism that follows a conviction and sometimes drives the man into a homosexual underworld.

If Clause Two of Mr Abse's bill would have the effect of keeping men out of prison it would, in many instances, do a great deal of good and absolutely no harm; in token of which, where it calls for the evidence of 'a duly qualified medical practitioner approved for the purposes of Section 28 of the Mental Health Act. 1959', I should like to see it add the words, 'not being a member of the prison medical service'. Remanding a homosexual to prison for a medical report is really rather futile.

In setting a 12-month limit to any prosecution, the bill strikes not only at the blackmailer but also at the special diligence, still observable in some police districts, which takes avid notice of stale offences — 10 years is not too old for some of them, though the man concerned may have been living a blameless life for nine — and which sets off chain-reactions of confession and incrimination. This is often the origin of the occasional gigantic puff-ball of 'vice' that calls (successfully) for three-inch headlines on Sundays. I should have liked to see it set the limit at six rather than 12 months in dealing summarily with offences under the so-called Labouchere amendment; its proposal to enable those offences to be tried by magistrates might as well have adopted the universal limitation of time for summary proceedings, and served notice at the same time that the Labouchere legacy may now be considered — as it surely may — to be on the way out.

For in my view this bill will not, as some reformers believe, 'set the clock back' by its re-enactment of obsolete laws in a form which, by slight modification, will show them to have been reconsidered and re-approved by parliament. If it did, the reappearance of the life sentence in the bill's schedule of punishments would be a grievous error. This kind of reform is effected piecemeal or not at all. It may even be furthered by the creation of temporary anomalies and absurdities, as will prove to have been the case with the Homicide Act, 1957.

There will be much fuss about loading yet more work on to the DPP's department — this will be the government's main line of opposition. In the five-year battle for the Obscene Publications Bill, this was the one important demand that had to be given up, as a quid-pro-slightly-less-than-quo — though the DPP still, as he did before, takes over every important prosecution without any statutory directions to do so. A full list of his department's responsibilities, as compiled from time to time (and never understated) for a variety of Royal Commissions and Select Committees is of course impressive. But if the department could not cope with the few — and probably diminishing — homosexual cases likely to be sent to him under this bill, it would seem better to enlarge it than to go on sending people needlessly and tragically to prison. For that, quite simply, is the choice that Mr Abse is offering to parliament.

(From: *The New Statesman*, London)

Plea to alter homosexual law fails

A private Member's Bill seeking to amend the law on homosexual offences was talked out in the House of Commons today.

Mr. Abse (Lab. Pontypool), moving the second reading of the Sexual Offences Bill, said most M.P.s were uneasy after the debates on the subject following the Wolfenden report about witch-hunts which were shown to exist.

The majority of Members also felt the utter inadequacy of treating homosexuals with imprisonment. They appreciated that 'to imprison a homosexual had the same effect as sending a rapist to Holloway women's gaol'. It was said that at least one man in 25 was a homosexual.

Although the problem was distasteful, a renewed attempt should be made to deal with it. Clause One would make it impossible to start proceedings against an homosexual for an offence over a year old.

This would mean that men being blackmailed for old offences could go to the police without fear of being prosecuted themselves.

It also provided that for offences between adult homosexuals in private, proceedings could be initiated only by the Director of Public Prosecutions or his representatives.

Mr. John Wells (Maidstone, C.), opposing the Bill, said it would be disgraceful if an offence was committed and the offender disappeared for 12 months, only to reappear a month later and so go free.

Mr. Weitzman (Stoke Newington and Hackney, North. Lab.) said that in Europe, only western Germany and Britain now regarded homosexual conduct between consenting males in private as being a crime. It was time to remedy the position.

Mr. Doughty (East Surrey, C.) said that the Bill should be rejected. It would place in a privileged position those whose offence was repugnant to the majority of people. The Bill was an attempt to go a step forward in making this offence no longer an offence. He hoped the House would never go an inch of the way.

(From: *Daily Telegraph*, London)