

## **CHAPTER 2: Submissions to the Select Committee in 1968.**

### **Introduction**

This chapter looks at different white groups in South African society and their views of homosexuality. These offer windows into white perceptions of homosexuality in the late 1960s, for example the varying ideas told by the SAP, churches, the medical fraternity, and some members of the white, South African public.<sup>1</sup> As well as these various groups being representative of some facets of South African society, it becomes obvious that they were motivated by the impending change in legislation. This was because they took the time to submit their opinions to the Select Committee, be they for or against an amendment in legislation affecting white, homosexual men. The views of the church were influential but ultimately it was spokespersons from the medical fraternity who seemed to have commanded the most respect and had the most sway. The first half of this chapter reflects what certain elements of white society thought about homosexuality whereas the second half describes the voting down of the proposed amendment. It is not so much the arguments against the amendment that are analysed, but more so the process surrounding the arguments against the amendment. The arguments against the bill are distinct from the views on homosexuality.

“Whether South African mores are yet ready (as the British public apparently now is) to accept the abolition of sodomy (and other ‘unnatural’ acts) as criminal when practised in private between consenting adults, is very doubtful.”<sup>2</sup> Some people were, however, ready for this, even though they had little to gain from lenient homosexual legislation. Garmeson says, “as amazing as it seems some people were actually interested in democracy”<sup>3</sup> in the sense that they reputed discrimination. Fundamentally these pro-gay

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<sup>1</sup> While I recognise that not every member of the church of England, for example, or the SAP was in agreement regarding arguments for and against an amendment of the Immorality Act I have used the submissions to and interviews by the Select Committee as general guidelines as to how various groups responded to the possibility of an amendment. Also, although some submissions were compiled on behalf of organisations, where some individual members might have disagreed with the organisation’s arguments regarding homosexuality, I have taken that organisation’s submission to represent the organisation in its entirety, unless otherwise stated.

<sup>2</sup> Hunt and Burchell, ‘Unnatural Sexual Offences’, D3.

<sup>3</sup> Interview with Joe Garmeson.

or rather anti-amendment lobbyists were democrats<sup>4</sup> and recognized that criminalizing all homosexual acts was unworkable.

### **Initial Aims and Beliefs of the Select Committee**

The state felt the 1968 Select Committee was necessary because deviant behaviour did not conform to the dominant political interests at the time. Gerald Kraak, South African author and anti-apartheid and gay rights activist, reminds us of the context of the 1968 Select Committee: there was moral panic in South Africa and the notion of communist onslaught produced by the NP government. The narrow paradigm of Calvinism needed a bulwark against disobedience. There was also the perceived negative influence of the counter culture of free love in America.<sup>5</sup>

The purpose of the Select Committee was to hear evidence on the nature of white homosexuality and to propose new legislation because of “the threat to ‘the moral basis of the populace’.”<sup>6</sup> White homosexuality was a threat within Afrikaans, nationalist discourse because it was imagined to undermine sexual purity and the moral solidarity of the nation.<sup>7</sup> Also, “to sustain patriarchal power on the large scale requires the construction of a hypermasculine ideal of toughness and dominance.”<sup>8</sup> Masculinity is a social process. Hence men are do masculinity; they do not just possess it.<sup>9</sup> The Select Committee wanted to maintain the definition of white masculinity that existed in the country and reinforce the social structure. Such a structure is established by social organization where constraints are laid out. Constraints on social practice are maintained through power and social institutions,<sup>10</sup> such as select committees. The state can use select committees to reinforce dominant discourse to ensure social control.<sup>11</sup> Considering many of the Select Committee’s reactions to the interviews with psychiatrists and psychologists who seemed to be quite enlightened at that time, I believe the Select

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<sup>4</sup> Ibid.

<sup>5</sup> Interview with Gerald Kraak, (11 March 2004, Johannesburg, 2:30pm).

<sup>6</sup> Elder, ‘Of Moffies, Kaffirs, and Perverts’, p 62.

<sup>7</sup> Stychin, A Nation by Rights, p 69.

<sup>8</sup> Connell, Gender and Power, p 42.

<sup>9</sup> Ibid, p 83.

<sup>10</sup> Ibid, p 92.

<sup>11</sup> Connell, Gender and Power, p 127.

Committee attempted to rely on dominant discourses. The committee wanted to continue dictating the hegemonic masculinity, which was being threatened by the white, homosexual masculinity.

Once the SAP had submitted proposed amendments to the Immorality Act to the Minister of Justice and the minister had sanctioned this, Parliament called for and set up a select committee. It became clear that the aim of the committee was to follow through with the SAP's request and suggestions. The original aim of the Select Committee was to criminalize all homosexual acts, including those in private. Brig. Joubert was convinced the Select Committee's aim was to enable the SAP to control homosexuality more easily.<sup>12</sup> Select Committee member, Mr J. Engelbrecht outlined the committee's aim: "Our difficulty is to try to exercise control."<sup>13</sup> Control meant repression. Commissioner of Mental Health, Mr A. Lamont, said if the law were amended it would include the protection of the youth, the mentally retarded, promote public order and decency, which was necessary. However, an amendment would also legislate against private homosexual acts. This would be taking control too far.<sup>14</sup> Considering the Select Committee's responses it seems this was the extent of control the Select Committee wanted to recommend to the NP government.

I believe, initially, the Select Committee's proposed purpose and aim were at odds because although their purpose of investigation seemed unbiased, their aim was potentially a foregone conclusion. However, after much testimony and many submissions the Select Committee did not recommend criminalizing all homosexuality. After hearing pro-homosexual/anti-amendment evidence they did not follow through with their original aim to criminalize all homosexual acts.

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<sup>12</sup> Letter from Joubert to Die Adelingskommissaries, 'Homoseksualiteit in Suid Afrika', (22 June 1968), (C8/111/10, Police Records, vol. 2).

<sup>13</sup> Evidence to the Select Committee for Amendment Bill of Immorality Act, (3 May 1968, AM 2656, GALA), p 155.

<sup>14</sup> Memo from A.M. Lamont, Commissioner for Mental Health, Re: Immorality Amendment Bill, (AM 2656, GALA), C3.

The parliamentary members elected to sit on the Select Committee were Mr J.J. Engelbrecht, Dr E.L. Fisher, Mr S. Frank (chairman), Mr J.T. Kruger, Mr M.L. Mitchell, Mr T. Langley, Mr L. le Grange, Dr A. Radford, and Dr W.L.D.M. Venter.<sup>15</sup> The sittings were held in Cape Town in 1968. The Select Committee included members of the UP, for example Dr Fisher. The composition of the Select Committee mirrored the NP government's concerns because only white, male sexuality was considered and was scrutinized by an all-white committee. The Select Committee's report referred predominantly to white, gay men, not lesbians or black homosexuals.<sup>16</sup>

The Select Committee published notices in newspapers in South Africa calling on members of the public to submit evidence. The white, homosexual community rose to the occasion: a gay activist group, the Law Reform Movement (LRM), which had established itself after the Forest Town raid, paid legal and expert witnesses to make representations to the Select Committee.

Considering Select Committee sources it is evident that some of the members assumed white, homosexual men were child molesters: it was a recurring concern. The Select Committee therefore wanted to guard against this. This notion of the white youth being corrupted came from the SAP.<sup>17</sup> Retief says the central debate of the Select Committee was whether or not homosexuality was infectious and could put South Africa's white youth at risk.<sup>18</sup> It seems, however, that the underlying agenda of the Select Committee was to justify the prevailing white opinion, not by genuinely debating *if* white homosexuality was infectious and a threat to South Africa's youth, but by *proving* that homosexuality *was* infectious and a threat. Anthony Manion agrees: the Select

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<sup>15</sup> Of these members of the Select Committee only Mr Langley is still alive. According to Johan Kotze of the Department of Foreign Affairs, Langley was our ambassador in the Czech Republic in the latter part of the 1990s. Apart from a fax number in the Czech Republic no other information was available regarding his whereabouts and I was unable to locate him.

<sup>16</sup> Retief says the Select Committee report, published in 1968, was "the only serious policy-making initiative to ever come from the government on the question of homosexuality." (Retief, 'Keeping Sodom out of the Laager'), p 102.

<sup>17</sup> Evidence to the Select Committee for Amendment Bill of the Immorality Act, (24 April 1968, GALA), p 45.

<sup>18</sup> Retief, 'Keeping Sodom out of the Laager', p 102.

Committee was a rubber stamp to carry out the government's wishes.<sup>19</sup> "Subjects and discourses are shaped by the limits and constraints placed on knowledge by institutions and society."<sup>20</sup> The Select Committee was shaping knowledge by attempting to place constraints on it. Some of their views, however, were outdated. William Spurlin says post-colonial nation-states used classifications from colonial rule. This kept moral boundaries. Arguments were borrowed from religion, science (the law of nature) and medicine (outdated psychiatric discourse on perversion).<sup>21</sup> Judging from Select Committee transcripts, I think the Select Committee really knew very little about homosexuality and what they did know were essentialist classifications, popular in various fields that had changed little since their inception. The Select Committee was basing its opinion on out-of-date research. The committee had also been commissioned just after an "increasingly assertive African nationalism in the 1950s and 60s, (which) tended to narrow tolerance of *any* liberal values, let alone destigmatize homosexuality."<sup>22</sup>

Advocate R.W. Rein, Attorney General of the Transvaal, could already foresee problems regarding an amendment. He testified that the 1957 Immorality Act was sufficient to control the behaviour of white, homosexual men. He said it was not the law that was inadequate, but rather proof of offences. He saw the difficulties between suggesting legislation and making sure the law took its course. He pointed out it was all very well the Select Committee suggesting to the NP government that the Immorality Act be amended, but they were not the lawyers or judges sitting in courts of law trying to prove cases of homosexual acts in private. Commissioner M. Mitchell asked Rein: "apart from this one big party mentioned in the Police report, have you ever had any complaints, or did you have to prosecute people for this type of sexual orgy, if I may call it that?"<sup>23</sup> Rein answered that he only knew of the Forest Town case.

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<sup>19</sup> Interview with Antony Manion of GALA, (28 August 2000).

<sup>20</sup> Suzack in J. Hawley, (ed), Encyclopaedia of Postcolonial Studies, p 187.

<sup>21</sup> W. Spurlin 'Broadening Postcolonial Studies/Decolonizing Queer Studies', in J. Hawley (ed), Post-Colonial Queer, p 196.

<sup>22</sup> M. Epprecht, 'What an Abomination, a Rottenness of Culture: Reflections Upon the Gay Rights Movement in Southern Africa' in Canadian Journal of Development Studies, vol. xxii, 2001, p 1093.

<sup>23</sup> Evidence given by Advocate R.W. Rein, Attorney-General of Transvaal, to the Select Committee for Amendment Bill of Immorality Act, (3 May 1968), p 333.

What needs to be understood is that there was more involved than simply an amendment that would affect homosexual men. Power comes into play in that those arguing against the amendment were not reinforcing the hegemonic masculinity and this threatened the NP government's power. Some saw it unnecessary for the law to be changed if the Select Committee was basing recommendations for an amendment to the Immorality Act on one party, which, considering the submissions to the Select Committee, seemed to have predominantly affected the SAP and the C.I.D. more than the public.

The Select Committee also felt that men dancing with men was improper behaviour and legislation could prevent this. They asked Prof. L. Gillis, head of the University of Cape Town's department of Psychiatry, if he agreed? Prof. Gillis' responded:

This I think is the Committee's problem. You cannot pass legislation, which is too far behind public opinion or too far ahead of public opinion. On the other hand, the legislature also has to lead public opinion. I think personally 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?<sup>24</sup>

I do not think Mr J. Kruger of the Select Committee was comfortable with the idea of leading public opinion, he felt that the committee should adhere to current white, heterosexual public opinion towards white homosexuality and suggested legislation in favour of societal norms:

Our duty as a committee of legislators - as said, I think, by Prof. Gillis - is to lead public opinion. I think that is taking it a little bit too far. We may have to lead public opinion but at least it is our duty to give expression to the public norm in our laws. If that is so then it is necessary for this Committee to seriously consider making a law or laws against any public expression of homosexuality – any external manifestations of homosexuality. Our difficulty is to try and find out where to stop before it becomes an injustice to the individual.<sup>25</sup>

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<sup>24</sup> Prof. Gillis, p 161.

Based on the questions being asked and answers Prof. Gillis, especially, provided, it did not seem as though the Select Committee was prepared to relinquish power afforded them by the NP government. The committee wanted to reinforce the hegemonic masculinity not challenge it. This becomes evident because many who testified, and some who had written submissions or memoranda did not advocate criminalisation at all. They explained where to stop before it became an injustice to the individual and why yet the committee seemed to be failing to hear this.

Prof. Gillis tried to point out to the Select Committee that their prejudices must not get in the way of their decisions. He questioned the committee on the extent of acceptable homosexual expression before legislation encroaches on homosexual men's individual rights. "I think we must also 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?'"<sup>26</sup> Kruger's response was: "I am not certain whether we should even consider whether it is harmful to society as such but rather whether it is against the norm of society."<sup>27</sup> According to Connell, researching societal norms, which is what the Select Committee was attempting to do, is the theory of how things happen. He says the normative standard dictates the conventional sex role of the majority. Departure from it shows inappropriate socialization.<sup>28</sup> I believe the norm for the Select Committee (as for most in authority in South Africa at the time) was heterosexuality. Appropriate socialization was heteronormativity. For the committee it was legitimate to criminalize homosexuality because it was not normal.<sup>29</sup> Considering the transcripts it seems the Select Committee wanted to maintain the status quo that entrenched hegemonic masculinity. This, in turn, meant the maintenance of power. Fixed, unchanging sex and gender roles were imperative in order to achieve this.

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<sup>25</sup> Evidence to the Select Committee for Amendment Bill of Immorality Act, p 165.

<sup>26</sup> Prof. Gillis, p 166.

<sup>27</sup> Evidence to the Select Committee, p 166.

<sup>28</sup> Connell, Gender and Power, p 52.

<sup>29</sup> Foucault, Discipline and Punishment.

Mr S. Frank had the same attitude as Kruger. He felt, it seems, the committee could not alter the entrenched norms of society. I believe the committee was forgetting that it was its task to take this into consideration. Prof. Gillis disagreed with Frank and Kruger: societal norms had changed, even in the last five years. People were more aware of homosexuality, owing partly to books and films. Prof. Gillis gave the example of 'Reflections in a Golden Eye', a film that was being screened in South Africa at that time, which depicted white homosexuality, fetishism, and sexual perversion. Prof. Gillis continued to pursue the issue of societal norms:

So if you are to legislate according to to-day's norm you have to accept that a certain measure of expression of what we call deviate sexual behaviour is all right. Why then will you let it be written in books and shown on films? So you must be in keeping with a changing norm. How do you establish that norm? Just from the prevailing social attitudes at a given time. And I suppose the question that one has got to ask oneself is: am I out of step with my times to-day?<sup>30</sup>

I think if one considers the Select Committee's line of questioning, it was out of step. Much evidence presented showed societal norms had changed in South Africa, and homosexuality had the proverbial foot in the door prior to 1966, but the Select Committee was bent on slamming that door shut.

### **The SAP and the Select Committee**

The most prevalent SAP voices before the Select Committee were the Commissioner of the SAP, J.M. Keevy, who was resourced by Brig. Joubert<sup>31</sup> and Major van Zyl of the C.I.D., personal staff officer of Joubert who was elected by Joubert to address the Select Committee. Van Zyl spoke on behalf of the SAP, although critically analysing his testimony I found it at times to be questionable and some of his perceptions unfounded.

Some SAP districts made written submissions to the Select Committee in which they verified that homosexuality existed among white men in their areas and they explained

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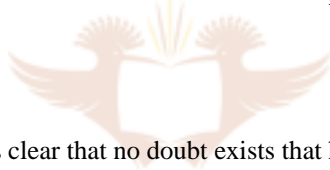
<sup>30</sup> Prof. Gillis, p 166.

<sup>31</sup> See Police Records, vol. 2 in State Archives.



public reaction to it. However, most SAP information to the Select Committee came from van Zyl's testimony. He nevertheless constantly referred to the SAP regions' written submissions when he addressed the Select Committee.

The report of the regional Police Commissioners in South Africa gave a variety of responses to white homosexuality.<sup>32</sup> Six areas in South Africa said no to amended legislation,<sup>33</sup> while four said new legislation was necessary.<sup>34</sup> The Northern Transvaal said white, homosexual men should be treated first and then imprisoned.<sup>35</sup> The report for Hillbrow said white, homosexual men were secretive though this did not necessarily mean they were a threat to society.<sup>36</sup> Of the twelve regions, only four unequivocally said yes to an amendment of the 1957 Immorality Act. Therefore most of the Police Commissioners did not advocate gaol and intimated that homosexuality of white men, at that time, was no threat to society. They felt that white, homosexual men were a threat to themselves and needed psychiatric treatment. Yet despite this, van Zyl surmised the following:



In view of the foregoing, 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.<sup>37</sup>

Considering queer theory and the need for the maintenance of hegemonic masculinity, I think van Zyl recognized the power the SAP had and would not accept this hegemony being challenged by white, homosexual men. Fear of loss of power could possibly have

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<sup>32</sup> See p 77.

<sup>33</sup> The Eastern Province said legislation should protect minors, the East Rand said gaol was not the answer, the Eastern Transvaal said homosexuality was just teenage rebellion, the Northern Cape Commissioner did not comment on the grounds of admitting his incompetence on the topic, Border said homosexual men should be institutionalized, not gaoled, and Port Natal said punishment was not the answer.

<sup>34</sup> The Witwatersrand, Natal, the South Western Districts, and the Northern Orange Free State. Garmeson says he remembers one police officer/commissioner from Natal being very aggressive about a change in legislation. This police officer's son was gay and the officer, adamant that he could not sire a homosexual son, was intent on blaming this on corruption.

<sup>35</sup> Testimony by van Zyl, p 14.

<sup>36</sup> Ibid. Hillbrow did not consider the fact that homosexual men were secretive because they were under constant threat by the police.

<sup>37</sup> Testimony by van Zyl, p 14.

driven van Zyl to his conclusion. Kraak says van Zyl's opinion was simply ideological: it was NP mentality.<sup>38</sup>

Mr Mitchell of the Select Committee pointed out the irregularity of the varying regional views to van Zyl. Yet when asked what the SAP's view was on what should be done, van Zyl said homosexuality should be made an offence regardless of where it was committed.<sup>39</sup> Mitchell even quoted one SAP region, which said homosexuality was an inborn human defect.<sup>40</sup> He asked van Zyl if this changed his attitude towards homosexual men. Van Zyl said it did not. He insisted that because white homosexuality had become such a problem in South Africa it required punitive measures. The police needed legislative help.<sup>41</sup> However, the Department of Social Welfare and Pensions told the Select Committee that the police was exaggerating the incidence of white homosexuality.<sup>42</sup>

Mitchell also questioned van Zyl on the issue of private morality, specifically, private, homosexual acts – what problems the police encountered. Van Zyl replied that initially the police had encountered no problems with acts committed in private. However, he said white, homosexual men were no longer keeping their behaviour private. They were becoming more visible. The number of white, homosexual men was too large to handle and some parties were taking over whole blocks of flats.

At Head Office, for which I speak particularly, 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. We cannot sit up and take notice because what can we really do?<sup>43</sup>

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<sup>38</sup> Interview with Kraak.

<sup>39</sup> Testimony by van Zyl, p 31.

<sup>40</sup> The Eastern Province Police.

<sup>41</sup> Testimony by van Zyl, p 31.

<sup>42</sup> Evidence Submitted by the Department of Social Welfare and Pensions to the Select Committee for Amendment Bill of Immorality Act, (1968, AM 2656, GALA.), C78

<sup>43</sup> Testimony by van Zyl, p 32.

I assume this was again a threat to the hegemonic masculinity, intolerable to van Zyl. According to van Zyl this more public white homosexuality had been the attitude ever since England had decriminalized homosex in private the year before. He said white, homosexual men in South Africa were constantly referring to Britain's situation,<sup>44</sup> but pointed out South Africa was conservative and should lay down the law according to its way of life, not Britain's.<sup>45</sup>

Van Zyl also said that even though the public was not harmed, people had complained to the SAP that they were worried about the stigma attached to their area if there were known white homosexual men living there. According to van Zyl it was the public that had pressurized the police to do something.<sup>46</sup> Mitchell did not seem satisfied with van Zyl's argument, and his inconsistent testimony in general, and reiterated his question as to whether white homosexuality affected the SAP's ability to maintain law and order.<sup>47</sup> The answer by van Zyl was: "not as such."<sup>48</sup> Mitchell then questioned how necessary it was to amend the Immorality Act if white South African law and order was not threatened by white homosexuality, which van Zyl had admitted to. Van Zyl thought it was very necessary.<sup>49</sup>

Van Zyl was insistent that the police were not responsible for this upsurge in interest in white homosexuality. He believed it was the public pressurizing the SAP to control the situation and the police were ill equipped to do this because of the limitations of the 1957 Immorality Act and the fact that they were not educated on homosexuality.<sup>50</sup> According to van Zyl the police could not distinguish between homosexuality and perversion and

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<sup>44</sup> Ibid, p 32.

<sup>45</sup> Ibid, p 71.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid, p 31.

<sup>50</sup> In my hunt at the State Archives I did, however, find a request by Joubert to London for a copy of Britain's 1967 Sexual Offences Act (Letter from Joubert to the Commissioner of Police, London, C8/111/10, 'Homsoeksualiste', Police Records, vol. 1) and a request from Major van Zyl on behalf of the SAP to the State Library for a list of about 80 books and journal articles under the subject of homosexuality, available in South Africa and overseas. (SAP File 439, K54/66, Police Records vol. 2 and 3).

had never discussed the matter with psychologists or psychiatrists.<sup>51</sup> I do not think, given the context of the time that educating the police on homosexuality would have made a difference. One needs to bear in mind power is often not about reason, but a means to an end.

The Select Committee asked van Zyl if the SAP used traps to catch white, homosexual men. The major answered no, but admitted that if trapping did occur the SAP turned a blind eye. However, he said such behaviour was not an instruction from the top level of the police force. “There may be a complaint and the local detective-officer may find it necessary to take action and he acts off his own bat. So it may take place, but definitely not, on an organized basis.”<sup>52</sup> To trap, a police officer would pretend to be a homosexual man cruising for quick, easy sex in a public toilet. Kraak calls this “the pretty policeman syndrome.”<sup>53</sup> Once the officer targeted a cruiser he would arrest the homosexual man just before sex took place. The police waiting outside the toilet arrested any other homosexual men who fled. Entrapment was therefore a symptom of the restrictions of the law and prejudice. Police officers decided amongst themselves when they would target public toilets. Those policemen who had no personal agenda when it came to homosexuality were seldom involved in these arrests.<sup>54</sup> In Kraak’s opinion, most policemen of the time would not have been adverse to such tactics because they saw their role as “upholding the moral fibre” of the community and social deviance was considered criminal behaviour.<sup>55</sup> At clubs entrapment was not necessary because, as van Zyl said in his experience as an undercover policeman visiting white, homosexual bars, there were seldom boys under twenty years of age at the bars.<sup>56</sup> I think if one considers van Zyl’s testimony this would not have warranted an amendment of the Immorality Act because the 1957 act already protected minors under the age of sixteen.

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<sup>51</sup> Testimony by van Zyl, p 32.

<sup>52</sup> Ibid, p 40.

<sup>53</sup> Interview with Kraak

<sup>54</sup> Informal conversation with Anthony Manion, (3 Sept, Johannesburg, 9:00am, 4 Sept. 2002, Johannesburg, 9:00am).

<sup>55</sup> Interview with Kraak.

<sup>56</sup> Testimony by van Zyl, p 45.

Van Zyl also said the police force had a problem with young, white, homosexual recruits. Once policemen were found to be homosexual they were boarded. According to van Zyl, white, homosexual police recruits could not handle physical training or stand to see other men naked when they showered.<sup>57</sup> Van Zyl had purposely recruited two white, homosexual men as an experiment, to see if by putting them in a disciplined body with strong men they would be cured. The outcome of his experiment was not discussed with the Select Committee.

I believe, considering the transcripts of interviews with the Select Committee, that some members of the committee were a little suspicious or uncomfortable with van Zyl at times. Consequently he was questioned in detail. It seems as though the Select Committee was trying to tease out fact from fiction in van Zyl's testimony. Mitchell, for example, was very specific in his questions to van Zyl and repeated himself when the major's testimony became contradictory. Mitchell also seemed to become quite agitated by some of van Zyl's responses. Other members of the Select Committee were not so suspicious of the major and his testimony flowed again once Mitchell stopped interrogating him. Therefore there was at least one member of the committee, I think, who was beginning to recognize the discrepancy between the aim and purpose of the committee. Also, it was perhaps evident to Mitchell that van Zyl was perhaps not totally representative of the SAP's opinion regarding white homosexuality. Despite the questioning of van Zyl, he still recommended that the Immorality Act of 1957 be amended as soon as possible.<sup>58</sup>

Perhaps in the hope that it would support their recommendation for an amendment the C.I.D.'s report to the Select Committee included twelve murder cases "in which homosexuality played a role."<sup>59</sup> However, these cases were not really about being homosexual. They were about revenge, paedophilia, suicide, robbery, and self-defense but happened to have white, homosexual men as suspects or felons.<sup>60</sup> The C.I.D. claimed

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<sup>57</sup> Ibid.

<sup>58</sup> Ibid, p 15.

<sup>59</sup> Ibid, p 15.

<sup>60</sup> Four of the cases were revenge murders (one son killed his father because of child abuse), two were cases

that these cases proved that homosexuality and murderous intent were synonymous; that white, homosexual men murdered because they were homosexual. To the C.I.D. the notion of a white, homosexual man defending himself was moot – if a homosexual man killed someone he was a murderer. Elements within the C.I.D. even felt that heterosexual sodomy that had led to murder was still a homosexual murder case, because in theory, anything relating to the act of sodomy was a homosexual act. The C.I.D. also included homosexual suicides in its report to ‘prove’ white, homosexual men murdered, even though this was self-inflicted.<sup>61</sup> The inclusion of these cases, which in reality were only minimally to do with their participants’ homosexuality, aided the SAP’s statistics for deaths caused by white, homosexual men. It seems the SAP’s logic was that this was proof that white homosexuality was a threat to South Africa and its law and order.

In South Africa the production of white masculinity has relied on the idea of surplus aggression.<sup>62</sup> “Masculinity and violence have been yoked together in South African history.”<sup>63</sup> I believe if van Zyl thought he could lobby successfully, and if the SAP could achieve stricter legislation against white, homosexual men they would be asserting their masculinity and have power over a masculinity they perceived to be a threat. This was part of the apartheid ideology. This assertion of masculinity and retention of power became necessary because of this “sex panic in South Africa” in 1968.<sup>64</sup> If all homosexual acts were to become illegal the SAP would have the power to investigate those men whom they were even remotely suspicious of, thereby asserting the dominant definition of masculinity. An amendment to the Immorality Act would have given them this power, even if not all policemen thought it necessary. I think van Zyl used the SAP as a platform to gain access to power he personally wanted. Kraak comments that it was not in fact the police who wanted the power; it was the NP government, and the latter was using the SAP to achieve and maintain this. At some stage all countries’ homosexuals

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of paedophiles killing their victims, two cases were suicides by homosexual men, two cases concerned robbery, one of the murders was self-defence, and one murder was based on a case of anal sex with a woman.

<sup>61</sup> Testimony by van Zyl, p 15.

<sup>62</sup> Kaufman, ‘The Construction of Masculinity’, p 11.

<sup>63</sup> Morrell, *Changing Men in Southern Africa*, p 12.

<sup>64</sup> S. Murray, ‘Sexual Politics in Contemporary Southern Africa’ in S. Murray and W. Roscoe, *Boy-Wives and Female Husbands*, (St. Martin’s Press, New York, 1998), p 244.

will be targeted, “its an insider/outsider thing.” He says there is a need for society to conform, be they drug addicts or white, homosexual men. Conformity stamps out deviance and dissent. In this case conformity was aimed at white, gay men by the government, carried out by the police.<sup>65</sup>

**Testimony of the Department of Social Welfare and Pensions and its Attitude Regarding the SAP and White Homosexuality**

Even before van Zyl sat before the Select Committee the members of the Department of Welfare had made it clear that it was the police that was actually the problem, not white, gay men. The Department submitted that the public had not complained about any incidences of white homosexuality. The Department felt there was no homosexual problem or threat to white South African society: “a recent survey carried out at regional and branch offices of this Department produced no definite information on the extent and incidence of the problem. According to this survey, there is no problem worth mentioning.”<sup>66</sup> The Chief Welfare Officer in Pretoria said although it was assumed white homosexuality was practiced in Pretoria; it was not so widespread or conspicuous that it was a source of concern to the community.<sup>67</sup> The Johannesburg Regional Office of the Department of Welfare said the manifestation of white homosexuality in Johannesburg could be described as sporadic and incidental.<sup>68</sup>

From the Department of Welfare’s submissions it is clear the instigation for the public awareness of homosexuality among white men came from the police. “This is the first time that this subject has pertinently come to the notice of the public, and the stimulus came more ... from the police rather than from the Social Welfare Department, and similarly the churches have taken it up.”<sup>69</sup> Other submissions pointed out to the Select Committee that if the problem of white homosexuality were as severe as the police made out then prison accommodation would have to be doubled to make room for convicted

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<sup>65</sup> Interview with Kraak.

<sup>66</sup> Evidence Submitted by the Department of Welfare, C78.

<sup>67</sup> Ibid, C97.

<sup>68</sup> Ibid.

<sup>69</sup> Evidence to the Select Committee for Amendment Bill of the Immorality Act, (24 April 1968), p 71.

homosexual men.<sup>70</sup> According to the Department of Welfare, some communities may well have wanted something done about South Africa's white, homosexual problem, but this was because the SAP encouraged them to be vigilant against white, homosexual men and advocated that such men were a threat to their community.

The Department of Welfare submitted written testimony to the Select Committee, unlike van Zyl who was personally interrogated by Mitchell, therefore there is less evidence to refer to. However, unlike Van Zyl's testimony, the Department's evidence is consistent. The welfare officers from Pretoria, Johannesburg, and Cape Town all echoed each other's sentiments, whereas the various police commissioners had widely differing views, which were then interpreted by van Zyl.

### **The Churches and White Homosexuality**

Religion played a role in the 1968 white homosexuality saga. Religious leaders, both for and against the blanket legislation regarding homosexuality, submitted memoranda to the Select Committee.

Religious leaders who wanted more stringent measures against white homosexual men commented on the six Biblical texts that supposedly condemned homosexual men and legitimized the rejection of homosexual men by the Church: Genesis 19: 1-29, Leviticus 18:22, Leviticus 20:13, Romans 1:18:32, 1 Corinthians 6:9, and 1 Timothy 1:8-11.<sup>71</sup> These texts present "a theology that casts lesbian and gay life as perversion."<sup>72</sup> Pelsler had used the Genesis 19 text to encourage the NP government to setup the Select Committee.<sup>73</sup>

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<sup>70</sup> Evidence to the Select Committee, (24 April 1968), p 71.

<sup>71</sup> This is according to Paul Germond and Steve du Gruchy's Aliens in the Household of God. Germond refers to these texts as a 'six-gun', and the six texts being the bullets, which kill homosexual men. 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."

<sup>72</sup> Gevisser, 'Properly Armed, Christians Themselves Can Now Face the 'Six-Gun,,' Sunday Independent, 17 Aug. 1997, AM2704, GALA), n.p.

<sup>73</sup> See p 83.



The Select Committee had to consider the contradiction that the Bible explicitly states homosexuality is wrong and is Christian proof that homosexuality is condemned by God, yet there were South African religious leaders who argued otherwise.

It was especially the Biblical texts of Leviticus and Genesis that were prominent in submissions to the Select Committee.<sup>74</sup> Leviticus 18:22 says: “thou shalt not lie with mankind as with womankind: it is an abomination.”<sup>75</sup> Leviticus 20:13 says: “if a man also lie with mankind, as he lieth with a woman both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them.”<sup>76</sup> Those advocating the criminalization of all homosexual acts felt that the Leviticus texts clearly stated that God did not approve of homosexuality.<sup>77</sup>

Because of the evidence presented to it by theologians, the Select Committee had to consider whether the South African Christian-based views were authenticated or disproved by Genesis 19, considered to have long proven that any kind of sexual behaviour was better than homosexuality.<sup>78</sup>

Two testimonies to the Select Committee challenged this traditional interpretation of Genesis 19. In his memorandum Reverend Robert Selby Taylor of the Anglican Church,<sup>79</sup> questioned the story of Sodom and Gomorrah. One of his explanations for the punishment of the Sodomites was that, according to the Old Testament prophet, Ezekiel, God was angry with the Sodomites because of their idolatry. Ezekiel denounced Sodom for wickedness, which was due to “‘pride, fullness of bread, and prosperous ease’.”<sup>80</sup> That is, pride, gluttony, and sloth, three of the seven deadly sins. Rev. Taylor said

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<sup>74</sup> Memorandum from Rev. R. S. Taylor, to Select Committee for Amendment Bill of Immorality Act, (1968, AM 2656, GALA), Written Submission by Rt Rev Reeves, to Select Committee for Amendment Bill of Immorality Act, (1968, AM 2656, GALA), Submission to the Select Committee by the Religious Society of Friends, Towards a Quaker View of Sex, (Henry Burt and Son, Great Britain, 1963), (AM 2656, GALA), memorandum from the signatories, (29 March 1968, GALA).

<sup>75</sup> Leviticus 18:22, KJ Version.

<sup>76</sup> Leviticus 20:13, KJ Version.

<sup>77</sup> The Witwatersrand Commissioner of Police, W. Fensham, and the Church of England in South Africa.

<sup>78</sup> See Westwood, Society and the Homosexual.

<sup>79</sup> He was the Archbishop of Cape Town representing the Bishops of the Church of South Africa and the Christian Council of South Africa.

disrespect of God was their crime, not homosexual practices. He also pointed out the Book of Wisdom, too, denounces the Sodomites, but for their arrogance towards God and their inhospitality, not their homosexuality.<sup>81</sup>

The Right Reverend Ambrose Reeves, the Anglican Bishop of Johannesburg, presented a paper at the Winter School Conference of 1959-60, entitled 'A Churchman's view of the Report' (the Wolfenden Report). He sent a copy of this paper to the Select Committee. In his submission Reeves also questioned the story of Sodom and Gomorrah. He believed it had influenced religious thinking on homosexuality because it was assumed the story had sexual connotations. He said Genesis depicts Sodom as the epitome of sin, destruction, and punishment but "it does not explicitly identify their sin with homosexuality."<sup>82</sup> Rev. Reeves concluded: "my own judgment is that the age-old assumption that the Sodom story is concerned with homosexuality is not proven, and in all probability has no direct bearing upon the problem of either homosexuality or homosexual acts."<sup>83</sup> Rev. Reeves acknowledged Western, Christian attitudes to homosexuality were influenced by the story of Sodom and by Paul's teachings in Romans 1:27 and I Corinthians 6:9-10. But he noted that these Biblical texts directed condemnation against paedophilia, not adult, consensual homosex. "Careful investigations fails (sic) 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."<sup>84</sup>

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<sup>80</sup> Memorandum from Taylor, C44.

<sup>81</sup> Ibid.

<sup>82</sup> Written Submission from Reeves, B151.

<sup>83</sup> Ibid.

<sup>84</sup> Memorandum from Taylor, C44. British historian, H. Montgomery Hyde, in The Other Love, has 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. Regardless of their sin, earthquake, lightening, and fire destroyed the cities of Sodom and Gomorrah. Hyde said this was possibly not God's wrath; the fire began by bituminous gases igniting and the Dead Sea then submerged the cities. Modern archaeological research substantiates this. Hyde said that it was the Jews who reinterpreted the story of Sodom saying that the Sodomites were destroyed because of their homosexual practices. The Jews reinterpreted the story because they were against the Hellenistic way of life and saw Sodom as representing the ills of Hellenism. The early Christian Church then accepted the idea that the sin of Sodom was homosexual practice.

Rev. Reeves explained 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, not on an event that happened a long time ago, the cause of which had not been adequately proven.

It was also pointed out to the Select Committee

that none of the passages in the Bible condemning homosexual practices refers (sic) to Sodom or its destruction – this would be a strange omission if it was really held that the overthrow of the city and its neighbours was a Divine judgment upon the sodomist.<sup>85</sup>

According to the Church of England there was no evidence in the Bible or Christian theology that homosexual practices were any more immoral than other sexual malpractices.<sup>86</sup> However, the church did state that “the normal and divinely ordained human condition is heterosexual, and homosexuality is an aberration – though not one for which the subject is responsible or culpable.”<sup>87</sup>

In the New Testament Paul says, in Romans 1: 27, “and likewise also the men, leaving the natural use of the woman, burnt in their lust one toward another; men with men working that which is unseemly, and receiving in themselves that recompense of their error which was meet.”<sup>88</sup> This Biblical text was also taken as a reference to homosexuality. The Quakers suggested to the Select Committee that Paul abhorred homosexuality because he was worried about the sexual neglect of women, not homosexual acts themselves. Regardless of what Paul said or meant, said the Quakers, they were his views, not God’s.

His opinions may have been personal ones, however, or part of the accepted Jewish thought of the day. Equally strong prohibitions, for example, that women should not pray with their hats off (*I Cor. 11, v.5*), nor speak in Church (*I Cor. 14, v.34*), tend to be

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<sup>85</sup> Memorandum from Taylor, C44.

<sup>86</sup> Church of England, ‘Memorandum on the Bill to Amend the Immorality Act of 1957’, (AB1956 C49, Episcopal Synod, CPSA Collection), p 4.

<sup>87</sup> Ibid, p 2.

<sup>88</sup> Romans 1:27, KJ Version.

disregarded by most modern Christians, so that St. Paul's views are not, in themselves, final.<sup>89</sup>

I Corinthians 6: 9-10, another of the six texts, says:

Know ye not that the unrighteous shall not inherit the Kingdom of God? Be not deceived: neither fornicators, nor idolaters, nor adulterers, nor effeminate, nor abusers of themselves with mankind. Nor thieves, nor covetous, nor drunkards, nor revilers, nor extortionists, shall inherit the Kingdom of God.<sup>90</sup>

According to this text, constantly referred to in submissions to the Select Committee, homosexual men would not inherit the Kingdom of God because they were effeminate and abused themselves with other men.

W. Fensham, professor in Hebrew at the University of Stellenbosch, reminded the Minister of Justice in a letter of the sixth Biblical verse that condemns homosexuality. "Again 1 Timothy 1 ver. 9 and 10 says that men who defile themselves with mankind (homosexual men) are subject to law and are punishable as a crime against God, the state, and the individual."<sup>91</sup>



A further issue before the Select Committee was that of the difference between a sexual invert, someone in a committed, faithful relationship, and a sexual pervert, a person who has indiscriminate sex. Rev. Reeves asked the Select Committee to consider this.

From all this it is clear that we have Biblical authority for condemning male perverts, but we have to still ask if the Scriptures also condemn the physical expression of affection between two persons of the same sex who claim to be in love with one another. In short, do the Biblical scriptures apply to the genuine sexual invert as well as the sexual pervert?<sup>92</sup>

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<sup>89</sup> Written submission from the Religions Society of Friends, p 32.

<sup>90</sup> 1 Corinthians 6:9-10, KJ Version.

<sup>91</sup> Letter from W. Fensham to P.C. Pelser, Minister of Justice, Cape Town, 'Homosexuality', (24 Feb. 1968, AM 2656, GALA), B85. (The brackets are Fensham's).

According to Rev. Reeves the Scriptures on homosexual condemnation could not have referred to the homosexual invert because no such person was recognized in New Testament times. Rev. Reeves questioned on what grounds and to what extent South Africans could base their views of homosexuality on the classical, Christian tradition?<sup>93</sup> He concluded that this tradition of the sexual invert and pervert being synonymously classified was defective and that there should be a distinction between the two. He said Christian tradition unjustifiably regarded homosexual offences as more serious than heterosexual offences, and tended to concentrate on sodomy and homosexuality as being exclusive. Many believed then, as they do now, that sodomy was what being homosexual was all about. Rev. Reeves did, however, believe that some traditional features regarding homosexual men should be retained, for example homosexual men should be guided to repent and seek treatment.<sup>94</sup> According to the Church of England it was necessary for homosexual men not to give in to sexual acts.<sup>95</sup>

Rev. Taylor, although against the sexual practices of the pervert, also questioned whether God condemned the sexual invert. He felt neither the Old nor the New Testament really attempt to give an answer to this problem, but he was not surprised because he felt antiquity did not recognize homosexual inversion.<sup>96</sup>

Both Rev. Taylor and Rev. Reeves suggested to the Select Committee that it differentiate between those homosexual men who were promiscuous and those who practiced a private lifestyle with a permanent partner. However, judging by the state's response to homosexuality, I do not think it saw a difference; all homosexual acts should be

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<sup>92</sup> Written Submission by Reeves, B151.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Church of England, 'Memorandum on the Bill to Amend the Immorality Act of 1957', p 2.

<sup>96</sup> Memo from Rev. Taylor. Conversely, according to a new study by John Boswell, which "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. He says at the height of Biblical tolerance the church even accepted homosexual ecclesiastics. "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." (Comments on J. Boswell, 'Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe From the Beginning of the Christian Era to the Fourteenth Century', [www.amazon.co.uk/exec/obidos](http://www.amazon.co.uk/exec/obidos)).

punished. I think any recognition meant relinquishing power and this was not part of the ethos of apartheid.

According to many submissions there was also little recognition in South African legislation of the difference between sin and crime.<sup>97</sup> Numerous testimonies indicated that God dictated sin as an immoral action, a transgression of the law of God. A crime is a deed that a government deems wrong, which demands a penalty.<sup>98</sup> These testimonies pointed out that many acts are both criminal and sinful, but some crimes are not morally wrong and some sins should not be punished by the state. They suggested to the Select Committee that perhaps sin should be controlled by moral law, that is, left up to individual conscience with no punitive consequences, whereas crime should be controlled by state law – prescribed legislation as laid out in a country's statutes by Parliament. According to these testimonies the problem with South African law was that the government believed state law should uphold moral law.

W. Fensham's letter concurred with the government's line of thinking. He said that the government should continue to abide by the traditional scriptural laws on homosexual men because South Africa was a Christian country and its laws were based on spiritual standards of the Bible. Furthermore, he stated South Africa had prospered over the past 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 in South Africa.<sup>99</sup>

The Church of England and Rev. Taylor also brought up issues of sin and crime. In his memo Rev. Taylor gave examples of what he understood as the difference between sin

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<sup>97</sup> Memo from Rev. Taylor, Rev. Jones in Memo to Dr Fisher (Committee Member investigating proposed Bill on Homosexuality) from Rev. Jones, (18 March 1968, AM 2656, GALA), the Catholic Church, (Memorandum to the Select Committee, AM 2656, GALA), the Christian Citizenship Department of the Methodist Church of South Africa in a memorandum to the Select Committee, (1968, AM 2656, GALA), Prof. A.C. Cilliers, (25 March 1968, AM 2656, GALA), memorandum from the signatories, (29 March 1968, GALA), letter from Mrs Hoole (Religious Society of Friends), W. Fensham, and testimony by R.W. Rein.

<sup>98</sup> Ibid.

<sup>99</sup> Letter from Fensham, B85.

and crime. He alleged that to steal is a sin. However, when a kleptomaniac stole he had no control over his behaviour and an unemployed father who stole to feed his starving family was possibly justified in his theft. But a thief who stole because he was lazy or greedy was a different matter. The kleptomaniac and the unemployed father were sinning, but the greedy thief was committing a crime. Rev. Taylor said a similar problem confronted the Select Committee in dealing with homosexual practices. He acknowledged homosexual acts were sinful; but were they crimes?<sup>100</sup> Therefore he felt the Select Committee needed to bear in mind that homosexuality was a moral offence, not a criminal one and subsequently should not be prevented or punished by the law.

Thus, those who submitted arguments to the Select Committee on the issues of state versus moral law did not advocate that homosexuality be accepted.<sup>101</sup> Rather, they suggested that it should remain in the purview of moral law, it should weigh on the personal consciences of homosexual men, but should not be punished by the government because it was not a crime.

Many submissions were concerned with the common good and not the individual acts of homosexual men.<sup>102</sup> Such submissions felt that the state should regulate law and order and public morality and not intervene in the private lives of South African citizens, unless such acts affected the common good of the country. The Catholic Church felt homosexuality became a crime when it affected public opinion. Once the private acts of homosexual men became acceptable behaviour, homosexuality then became the property of civil law and was a crime as opposed to a sin because the common good was affected.<sup>103</sup>

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<sup>100</sup> Memorandum from Taylor, C45.

<sup>101</sup> The Catholic Church, The Methodist Church, and R.W. Rein.

<sup>102</sup> Memo from Rev. Taylor, Rev. Jones, the Catholic Church, the Christian Citizenship Department of the Methodist Church of South Africa, memo from the signatories, letter from Mrs Hoole, and letter from H.M.P. (a South African Homosexual) to the Select Committee (2 April 1968).

<sup>103</sup> Memo from Catholic Church. 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 (p 299). Therefore anti-gay teaching by the Catholic Church was ineffective (p 300). (G. Chauncey, 'Trade, Wolves, and the Boundaries of Normal Manhood' in Phillips, Reay, (eds), Sexualities in History).

Most submissions regarding state versus moral law were in agreement that when homosexuality concerned the corruption of minors, public decency, and male prostitution, homosexuality had crossed over from the realm of sin to crime because it was no longer victimless. The presenters of these submissions felt the state should then step in with punitive measures.<sup>104</sup>

The Immorality Amendment Bill proposed to make all private homosexual acts illegal because they were indecent. Yet memoranda made it clear that there are forms of private heterosexual behaviour that are equally immoral, yet not criminalised.<sup>105</sup> These memos noted homosexual acts were less dangerous to society than heterosexual promiscuity and adultery.<sup>106</sup> It was questioned why these deviancies were not ‘outlawed’, yet homosexuality was. Rev. Taylor was concerned that such heterosexual actions were left up to the moral responsibility of individuals. He questioned that if the state did not deem itself competent to interfere with the private, heterosexual actions of consenting adults why should it be allowed to criminalise all homosexual acts?<sup>107</sup> He believed moral responsibility must be left up to the individual regardless of his sexual orientation. Both Rev. Taylor and Rev. Reeves felt there should have been more moral indignation towards illegitimate teenage pregnancies and divorce than white homosexual men.<sup>108</sup> The Select Committee had to consider that “there is no evidence ... that homosexual acts are morally more blameworthy than other sexual malpractices.”<sup>109</sup> The Methodist Church felt that if homosexuality was a moral infection it was far more urgent to legislate against migratory labour because African men removed from their wives was a greater cause of the spread of homosexuality.<sup>110</sup> The Church of England, however, used this moral argument to advocate the passing of the Amendment Bill and the NP government’s right to legislate morality. It supplied examples of private morality that *were* controlled and monitored by

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<sup>104</sup> Rev. Jones, the Catholic Church, the Methodist Church, and Mrs Hoole.

<sup>105</sup> Memo from the signatories, Religious Society of Friends, Rev. Reeves, Rev. Taylor, and Prof. Gillis.

<sup>106</sup> Memo from the signatories, D102 and Letter from Mrs Hoole, D44.

<sup>107</sup> Memorandum from Taylor, C47.

<sup>108</sup> Written submission by Rev. Reeves, B151 and Memo from Rev. Taylor, C46.

<sup>109</sup> Memorandum from Taylor, C47.

<sup>110</sup> Memo from the Christian Citizenship Department of the Methodist Church of South Africa, D159. See chapter 1.



legislation, such as polygamy, incest, and abortion.<sup>111</sup> Therefore, the church questioned, why not homosexuality?

### **Psychiatrists and Psychologists Before the Select Committee**

In 1968 there were, surprisingly, many South Africans who did not believe homosexuality should be criminalized at all. These written submissions and testimonies were in stark contrast to the apparent official opinion of the SAP and Major van Zyl. The inclusion of the anti-Immorality Amendment views in this chapter aims to show the extent of the pro-gay lobby in South Africa in 1968. It was not just white, homosexual men who were against the Immorality Amendment Bill.

The disciplines of psychiatry and psychology had long been studying homosexuality, but often to the detriment of homosexual men, because homosexuality was diagnosed as a mental illness that needed curing. Therefore, according to one memorandum, not all the literature of the medical profession was trustworthy:<sup>112</sup> not enough was known about homosexuality and the Select Committee could not be dogmatic about the traditional medical and psychiatric aspects of homosexuality.<sup>113</sup> This becomes evident when considering the more 'enlightened' testimonies of the psychiatrists and psychologists who testified before the Select Committee.

There had been little research conducted in South Africa regarding homosexuality and it was recognized that supposedly medico-social problems such as homosexuality, alcoholism, divorce, and promiscuity could not be totally controlled by legislation. Psychiatric public health problems had received little recognition by the South African Health Services. It was difficult to attract professional staff to these areas of concern. The skeleton medical and nursing staff provided for mental hospitals and prisons, where homosexuality was recognized, could not even cope with day-to-day medical care, let alone indulge in the research deemed necessary to control and 'treat' homosexual men.<sup>114</sup>

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<sup>111</sup> Memo from Hammond, C138.

<sup>112</sup> The signatories' memo.

<sup>113</sup> Memo to the Select Committee, (29 March 1968), D 97.

<sup>114</sup> Memorandum from A.M. Lamont, C3.

However, the psychiatrists who testified before the committee seemed to be well versed in the more up-to-date research on homosexuality.

I believe that of all the groups who submitted to the Select Committee the psychiatrists were the most influential. There was perhaps strength in numbers because so many submissions and testimonies were by psychiatrists and it is obvious from interview transcriptions that much attention was paid to them. Many of the committee members questioned and requestioned the psychiatrists, sometimes blatantly disagreeing with latter, even to the point of challenging their professional opinions and researched evidence. Invariably if the psychiatrists were challenged or pressurized by the Select Committee it was the Select Committee member who relinquished the argument, not the psychiatrist. Not only were these men knowledgeable in their fields but considering the transcripts of the Select Committee, they also seemed conversant on justice and practical law. The Select Committee also possibly took the accounts of the psychiatrists more seriously because Dr Fisher of the Select Committee was a medical doctor. There were memoranda submitted stating the cause of homosexuality to be hereditary, cultural, and psychological.<sup>115</sup> The psychiatrists explained that homosexuality was not anti-social; it was just as instinctive and hormonally driven as heterosexual behaviour. Many submissions explained homosexuality was not a planned revolt against society's sexual morality and norms. Hence they explained the homosexual man's aim was not to corrupt and degrade society.<sup>116</sup>

According to Foucault modern ideas around sexuality were produced by medical science. Medical theories put all behaviour together and physicians then differentiated between what was normal and abnormal, thereby controlling the pleasures of the body.<sup>117</sup> Medical theories of sexual life and practices of control were therefore intertwined. Subsequently

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<sup>115</sup> Written 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, AM 2656, GALA).

<sup>116</sup> Ibid.

<sup>117</sup> H. Oosterhuis, 'Richard von Krafft-Ebing's 'Step-Children of Nature', in Phillips, Reay (eds), Sexualities in History, p 272.

social authority is constructed and moves beyond the treating of physical diseases.<sup>118</sup> It becomes more about the creation and reinforcement of dominant discourse.

Medicalisation created a power structure based on the authority of a masculine profession. The issue was who had the power to set the parameters in which gender would be understood and how conflicts would be fought.<sup>119</sup> However, one might consider that this was not necessarily repressive. Foucault says understanding of sexuality was shaped, not repressed by science. The science of sexuality was medical colonization, the replacing of religious and judicial authority with medico-moral tyranny.<sup>120</sup> I agree with Foucault that this is construction not repression. The recognition of deviants and the sex role-model theory that normalized white, middle-class, heterosexual male behaviour was created from this repression.

Considering how some members of the Select Committee questioned the psychiatrists, it appears the committee turned to the medical profession to try to prove white homosexuality was out of control in South Africa and that legislation was necessary to combat such behaviour. The doctors' testimony, however, did not support the Select Committee in its aim to control white homosexuality. In April 1968 Prof. L. Gillis, Dr C. Simonsz, senior psychiatrist at Valkenberg Hospital, Dr I. Safinofsky, senior psychiatrist at Groote Schuur Hospital, and Dr A. Zabow gave evidence before the Select Committee. The homosexual behaviour the Select Committee apparently took exception to was, according to Engelbrecht, that they drank more than heterosexual men did. Engelbrecht asked Dr. Sakinfosky to corroborate this. Dr Safinofsky replied: "No. There is, in fact, evidence to the contrary. The McCords in 1962 and Machover found this concept to be a myth. They found that homosexuality (could) not be associated with alcoholism."<sup>121</sup> Hence the Select Committee's purpose of investigating white homosexuality was beginning to contradict its aim of proposing stricter legislation regarding homosexuality because the evidence before it was in contrast to many of the perceived, entrenched ideas

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<sup>118</sup> Connell, *Gender and Power*, p 250.

<sup>119</sup> *Ibid*, p 251.

<sup>120</sup> Oosterhuis, 'Richard von Krafft-Ebing's 'Step-Children of Nature'', p 272.

<sup>121</sup> Dr Safinofsky, p 155.

regarding this sexual orientation. The psychiatrists and psychologists challenged the perceptions of the members of the Select Committee's.

### **Fears and Misinformation Revealed by Submissions to the Select Committee**

Discourses from the 1960s suggest that much of white South African society saw white homosexuality as a threat. Homosexuality was wrong in the eyes of the churches and still seen as such by much of the medical field, (unlike the psychiatrists before the Select Committee) and constructed as different, not the norm. This seemed to be accepted without question by many. According to Foucault people fear homosexuality therefore its extent is perceived as great and it is consequently seen as a threat to be eliminated.<sup>122</sup> Some submissions to the Select Committee tried to show otherwise.

According to some members of the committee white homosexuality was a threat because this sexual orientation was increasing.<sup>123</sup> It was felt that if no amendment were passed white homosexuality would continue to increase. Ironically, according to some of the psychiatrists, there was no proof of this perceived increase, so there was really no basis on which to amend the legislation.<sup>124</sup> I presume this perception of increased white homosexuality was the influence of Britain's 1967 Sexual Offence Act and the Forest Town party.<sup>125</sup> White homosexuality had not necessarily increased, just its visibility. But more to the point, I think the issue at hand was more a lack of control of a challenging masculinity.

Many submissions to the Select Committee stated that consenting, white, adult homosexuality was not a threat to society and there was no evidence to prove this. It was

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<sup>122</sup> Foucault, The History of Sexuality, vol. 1.

<sup>123</sup> Evidence to the Select Committee, (3 May 1968), for Amendment Bill of Immorality Act, (1968, AM 2656, GALA), p 154.

<sup>124</sup> Memo from the Cape Town Branch of the Society of Neurologists and Psychiatrists of South Africa, the Department of Psychiatry of UCT, and the Society of Neurologists and Psychiatrists of South Africa and M. Smith, 'Police Action Against Deviates is Unwise, Say Psychiatrists', Sunday Times, (8 Sept. 1968), (C8/111/10, Police Records, vol. 2).

<sup>125</sup> Memo from the Cape Town Branch of the Society of Neurologists and Psychiatrists of South Africa, and the Department of Psychiatry of UCT.

shown white homosexuality did not debase society and toleration did not mean South Africa would decline into degeneracy.<sup>126</sup>

Some submissions simply informed the Select Committee while others were challenging, accusing the committee of using the presumption of threat as a justification for the Amendment Bill. There was the argument that if there was an absence in the press about the so-called problem of white homosexuality, even in publications specializing in sex crimes, why then did the committee consider South Africa to have a threatening white homosexual problem?<sup>127</sup> 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. “Lots of fathers kiss their sons.”<sup>128</sup>

Some submissions, however, said society did need to be protected; homosexual men were no different from rapists and other sex offenders; they had depraved minds and were therefore a threat.<sup>129</sup>

### **Reasons for Attacking the Legislation**

Many submissions to the Select Committee argued an amendment simply would not work, especially owing to the fact that the Select Committee was misinformed and therefore misguided. The notion of homosexual paedophilia was the most pronounced argument against an amendment of the legislation.<sup>130</sup> The other reason some submissions attacked the proposed legislation was because no age limit of arrest had been stipulated; therefore the amendment would not be effective.<sup>131</sup> Numerous submissions argued against homo-ignorant notions that had become entrenched beliefs in South Africa. It was predicted by submissions that the Select Committee would use the two arguments of

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<sup>126</sup> Memo from the Department of Social Welfare and Pensions, the Society of Neurologists and Psychiatrists of South Africa, and the memorandum by the signatories.

<sup>127</sup> Written submission by church minister to Select Committee, (5 March 1968), p B107 and memorandum from Prof. A.C. Cilliers, C21.

<sup>128</sup> Evidence given by Rein, p 333.

<sup>129</sup> Letter from Fensham, B85.

<sup>130</sup> Memo from the Cape Town Branch of Society of Neurologists and Psychiatrists of South Africa, Department of Psychiatry of UCT, Prof. Gillis, Advocate Rein, the signatories, and Dr Clarke.

<sup>131</sup> Ibid.

degeneracy and paedophilia and they were consequently countered.<sup>132</sup> The committee insisted on protecting children against homosexual men. When questioning interviewees this notion came up continuously: the committee felt it justified criminalizing homosexuality. But submissions questioned the notion of heterosexual men who indulged in immoral practices.

Evidence from members of the public to the Select Committee also pointed out that promiscuity and indecent behaviour at white, homosexual parties was the same as that at heterosexual parties. Such evidence argued that if there was to be an amendment to legislation it should be geared towards behaviour, not sexual orientation.<sup>133</sup> I think such argument evidenced that some white members of the public were more concerned with the fair and equal treatment of all white citizens not homosexuality *per se*. Their arguments also showed that in their opinion an amendment was illogical. Considering the testimonies before the Select Committee, to legislate against homosexual behaviour only was prejudicial and unfair according to the people who had the opportunity to speak.

Garmeson says the threat of visible, white homosexuality and the propaganda of the risk homosexual men were to the youth were the two most prominent concerns of the Select Committee.<sup>134</sup> The committee was insistent that all homosexual men would seduce young boys who would consequently become homosexual men. The Department of Welfare also believed this to be so although thought it was uncommon because most of the cases they had dealt with concerned men of the same age and not men seducing boys.<sup>135</sup> However, said the psychiatrists, this notion was grossly over-exaggerated.<sup>136</sup>

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<sup>132</sup> Memo by the signatories, Religious Society of Friends, Rev. Reeves, Rev. Taylor, Prof. Gillis, Society of Neurologists and Psychiatrists of South Africa, A. Campling, 'Homosexuality. Sin or Suffering?' in Personality, to Select Committee for Amendment Bill of Immorality Act, (1968, AM 2656, GALA), Memorandum from Dr L. Freed to Select Committee, (16 May 1968), Memorandum from Practising Private Psychiatrists in Cape Town, to Select Committee for Amendment Bill of Immorality Act, (1968, AM 2656, GALA), Cape Town Branch of Society of Neurologists and Psychiatrists of South Africa, Department of Psychiatry of UCT, Advocate Rein (in evidence to the Select Committee), Dr Safinofsky (in evidence to the Select Committee), and Dr Clarke.

<sup>133</sup> Evidence to the Select Committee, (3 May 1968), p 154.

<sup>134</sup> Interview with Garmeson.

<sup>135</sup> Evidence submitted by the Department of Social Welfare and Pensions, C98.

Some submissions explained that toleration of homosexuality did not mean that the seduction of young boys would increase. “There is no proof that homosexual men have any preference for young boys, any more than do heterosexuals for young girls.”<sup>137</sup> In fact, “statistics show that approaches by them (homosexual men) towards the innocent young are far less frequent than comparable approaches by heterosexuals.”<sup>138</sup> Therefore the Select Committee’s reasoning for the Amendment was challenged: “the claim by some government officials that it is the duty of the government to protect all minors from seduction by homosexual men and that heavy penalties are necessary are (sic) refuted by the facts.”<sup>139</sup> Besides, as the Department of Welfare pointed out, it was unnecessary to amend the law because the 1957 Immorality Act and the Children’s Act of 1960<sup>140</sup> protected minors from seduction. Therefore “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.”<sup>141</sup> There had been some cases of older, white homosexual men with 16-year old boys but these were not cases of seduction, they were consensual homosexual acts.<sup>142</sup> Rein even suggested that the law should not criminalize homosexual men living together because they might go out and look for young boys to molest.<sup>143</sup>

The Select Committee, as well as the SAP, brought up the issue of murders where white, homosexual men had violated white children before killing them. This, however, is a separate matter because such murderers are sexual psychopaths and this has nothing to do with homosexuality.<sup>144</sup> Just as some paedophiles are homosexual, some psychopaths or murderers also happen to be homosexual. Sufficient evidence was provided to the Select

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<sup>136</sup> Memorandum from the Society of Neurologists and Psychiatrists.

<sup>137</sup> Memorandum to the Select Committee, D101, Dr Freed, and the Practising Private Psychiatrists in Cape Town.

<sup>138</sup> A. Campling, ‘Homosexuality. Sin or Suffering?’ in Personality, D140.

<sup>139</sup> Memorandum from Practising Private Psychiatrists in Cape Town, C62.

<sup>140</sup> “(a child who) ‘frequents the company of any immoral or vicious person, or is otherwise living in circumstances calculated to cause or conduce to his seduction, corruption or prostitution ...’” (Memorandum by the Dept of Welfare, C102).

<sup>141</sup> Memorandum by Cape Town Branch of Society of Neurologists and Psychiatrists of South Africa and by the Department of Psychiatry of the University of Cape Town, to Select Committee for Amendment Bill of Immorality Act, (1968, AM 2656, GALA), p 79.

<sup>142</sup> Testimony by Rein.

<sup>143</sup> Ibid.



Committee showing that the committee's insistence on homosexual men being paedophiles and murderers and this needed to be legislated against, was homo-ignorant and unfounded.<sup>145</sup>

The other argument, based on the proposed legislation by the SAP, against an amendment of the Immorality Act, was the query as to why the Amendment Bill had not stipulated an age limit of arrest.<sup>146</sup> The Bill simply said 'with any other male'. "As the Bill is worded, boys of 14 or 15 years of age found indulging in mutual masturbation at school can be put in prison."<sup>147</sup> This proposed legislation was vague and would possibly give the police the support to arrest homosexual men of all ages, although I do not believe they meant minors. In other words it gave the police power. The Select Committee was concerned with protecting juveniles who had homosexual relations with adults but also had to consider teenagers who had homosexual relations with each other. Memoranda made the Select Committee aware that homosexual experimentation was considered normal for boys<sup>148</sup> and if the proposed legislation became law it would apply to juveniles, causing more harm.<sup>149</sup> Dr Clarke pointed out that those young boys experimenting could mistake themselves as being homosexual because there was no one to talk to about their experiences. He advised that legal sanctions and imprisonment would only consolidate and perpetuate homosexuality in a number of young boys who should otherwise develop

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<sup>144</sup> Dr Safinofsky, p 164.

<sup>145</sup> Dr Safinofsky, Memorandum by Cape Town Branch of Society of Neurologists and Psychiatrists of South Africa, the Department of Psychiatry of the University of Cape Town, the signatories' memo, and Prof. Gillis.

<sup>146</sup> Memorandum by Cape Town Branch of Society of Neurologists and Psychiatrists of South Africa and by the Department of Psychiatry of the University of Cape Town. Garmeson had written to Pelsler prior to the Select Committee pointing out that it was not so much the age of the men that was important but rather the age difference. Garmeson felt a difference of two years might be considered worth penalizing but two teenagers of similar ages was not a threat. He received a reply saying his note had been "duly taken," which he says meant they were not interested. (Interview with Joe Garmeson).

<sup>147</sup> Prof. Gillis in memorandum by Cape Town Branch of Society of Neurologists and Psychiatrists of South Africa and by the Department of Psychiatry of UCT, p 96.

<sup>148</sup> The signatories' memo. Kinsey found that 48% of his subjects had experienced a homosexual affair while an adolescent.

<sup>149</sup> Memorandum by Cape Town Branch of Society of Neurologists and Psychiatrists of South Africa and by the Department of Psychiatry of UCT, p 79.



into heterosexual males.<sup>150</sup> Therefore twenty-one years of age was the generally suggested legal age of consensual homosex.<sup>151</sup>

### **Would the Amendment Act be Effective?**

It was all very well the Select Committee being commissioned to consider amending the 1957 Immorality Act, but would a change in legislation be effective? Interestingly many submissions and testimonies by a wide variety of people from all walks of life said no.<sup>152</sup> Some argued the law should not be amended instead of trying to prove there was nothing wrong with homosexuality.<sup>153</sup>

The committee was made aware there is good law and bad law.<sup>154</sup> 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. It was felt by some that the proposed Amendment Bill was bad law because no serious attempt would be made by the authorities to apply it. It was believed the state would therefore have legislation, which was not applicable and was never intended to be.<sup>155</sup>

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<sup>150</sup> Dr Clarke in memorandum from Practising Private Psychiatrists in Cape Town, C61.

<sup>151</sup> Memo from the Cape Town Branch of Society of Neurologists and Psychiatrists of South Africa, Department of Psychiatry of UCT, Prof. Gillis, Advocate Rein, the signatories, and Dr Clarke (no initial given).

<sup>152</sup> Memo from the signatories, memorandum from Memorandum from M.A. Boehmke, Senior Lecturer in Law and J.B. du Toit, Professor in Sociology, University College, Western Cape, to the Select Committee, (1968, AM 2656, GALA), Memorandum from the University of the Witwatersrand to the Select Committee, (1968, AM 2656, GALA), the Department of Social Welfare and Pensions, Practising Private Psychiatrists, Society of Neurologists and Psychiatrists of South Africa, Dr Clarke, Cape Town Branch of Society of Neurologists and Psychiatrists of South Africa, 'Samaritan', in the Eastern Province Herald (13 Feb. 1968, AM 2656, GALA), to Select Committee for Amendment Bill of Immorality Act, (1968, AM 2656, GALA), Rev. Taylor, the Catholic Church, Written Submission from Dr R.E. Hemphill to the Secretary of the House of Assembly (28 March 1968, AM 2656, GALA). Prof. Gillis, Written Submission by J.C. van Rensburg to the Select Committee, (26 Feb.1968), James Locke, Port Elizabeth, (26 Feb. 1968, AM 2656, GALA), Advocate Rein, Written Submission by Dr Levin to the Select Committee, (28 Feb.1968, AM 2656, GALA), Dr Safinofsky, Dr Zabow, Department of Psychiatry of the University of Cape Town, the Methodist Church, Religious Society of Friends, A. Campling, R. De Villiers, A.M. Lamont, Mr P. Graham, Evidence to the Select Committee (26 April 1968, AM 2656, GALA), Memorandum from Dr van Niekerk and Mr Dugard, 'The Treatment of the Problem of Homosexual Conduct in Some Foreign Legal Systems' to the Select Committee, (1968, AM 2656, GALA).

<sup>153</sup> Ibid.

<sup>154</sup> Boehmke, and du Toit, to the Select Committee, C26.

<sup>155</sup> Ibid.

Furthermore, it was pointed out to the committee that it would be impossible to detect private homosexual acts, which would have been the first criterion of good law in this case. There was the concern that such law would also lead to expensive police traps. One member of the public believed the only way the Amendment Bill could be enforced was by spying and bashing down bedroom doors.<sup>156</sup> Also, it was realized that if this bad law was passed the police could end up wasting their time investigating malicious rumours, not to mention the police labour necessary to implement the new law that would render the legislation ineffective.<sup>157</sup> A massive police recruitment policy would have to be imposed.<sup>158</sup>

The Select Committee was told in a memorandum that an amendment to the Immorality Act would only endanger homosexual men, not eliminate homosexuality.<sup>159</sup> The concerns of the anti-amendment lobbyists, I think, were justified: if the Select Committee recommended the Amendment Bill it could potentially be instigating a witch-hunt, not the policing of morality.

Another problem with the proposed Amendment Bill, according to some submissions, was that the police would never be able to find those homosexual men in long-term relationships. Evidence to the committee suggested that those arrested were usually 'careless exhibitionists'; they did not represent all homosexual men.<sup>160</sup>

Many argued that legislation against homosexual men would also be ineffective because it would bring the law into disrepute by inadvertently protecting blackmailers.<sup>161</sup> Some testimony showed that blackmail of white, homosexual men was uncommon in the

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<sup>156</sup> 'Samaritan', in the Eastern Province Herald (13 Feb. 1968).

<sup>157</sup> Ibid.

<sup>158</sup> Memorandum to the Select Committee, D104.

<sup>159</sup> Memorandum to the Select Committee, C39.

<sup>160</sup> Evidence to the Select Committee, (26 April 1968), p 80.

<sup>161</sup> Memorandum by Cape Town Branch of Society of Neurologists and Psychiatrists of South Africa and by the Department of Psychiatry of the University of Cape Town, p 81, the Catholic Church, memorandum to the Select Committee, the Department of Social Welfare and Pensions, the Methodist Church, and M. Smith, 'Police Action Against Deviates is Unwise, Say Psychiatrists', Sunday Times, (8 Sept.1968).

Transvaal but this, it was argued, would perhaps not be the case if the Amendment Bill were passed.<sup>162</sup>

Many submissions considered that the only way all homosexual practices could be successfully criminalised was if it was proven that society was damaged by such acts. Also, if the law against homosexual practices could be effectively enforced, if the law aided homosexual men to treat themselves, and if it prevented the spread of homosexuality. None of these applications of good law were possible it was stated. Regardless, homosexuality had never been eliminated, anywhere in the world, through repressive measures,<sup>163</sup> so how, it was questioned, did the Select Committee reason that an amendment to the Immorality Act in South Africa would eliminate homosexuality?<sup>164</sup> Only ten per cent of all homosexual acts in South Africa would be detected, proven, and punished. “Where 90% of the offenders can contravene a law with relative, or almost absolute impunity, then the whole of that law, and the administration of justice, is brought into disrepute.”<sup>165</sup>

It was also felt by some that the proposed legislation would be ineffective on account of the numbers of homosexual men, in any given country.<sup>166</sup> Two to five per cent of South

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<sup>162</sup> Evidence to the Select Committee, (5 June 1968), p335.

<sup>163</sup> M. Schofield, Sociological Aspects of Homosexuality – A Comparative Study of Three Types of Homosexual men, in Evidence submitted by the Department of Social Welfare and Pensions, C94.

<sup>164</sup> Such legislation in England was bad law. Homosexuality was made illegal in England in 1885 yet 50 to 60 million homosexual acts were committed every year with only 1 300 prosecutions per annum. Therefore the law was hardly worth the paper it was written on. (Memorandum sent to the Select Committee, D104). It was impossible for British law officials to carry out the law effectively. “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.” (Memorandum from Practising Private Psychiatrists in Cape Town). 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. (‘The Homosexual in America’, in N. St John Stevan, Life, Death and the Law, as quoted in Memorandum from Dr B, van Niekerk and Mr C. Dugard). The Mattachine Society in America said there were 16 million homosexual men, or those who would commit a homosexual offence, even though there was punitive legislation in place to prevent it. (Memorandum from Practising Private Psychiatrists in Cape Town). Dr Clarke said, as a generalization, statistics ranged from 1 out of every 50 homosexual men being caught to 1 out of every 2 000 to 3 000 acts. (Memorandum from Practising Private Psychiatrists in Cape Town).

<sup>165</sup> Memorandum from Boehmke and du Toit, C26.

<sup>166</sup> Memo from the Society of Neurologists and Psychiatrists of South Africa, Boehmke and du Toit, Dr

Africa's adult population was homosexual.<sup>167</sup> The psychiatrists said in order to carry out the new law the police, courts, prisons, medico-psychological facilities, and the churches in South Africa would have to become involved if such proposed legislation became law.<sup>168</sup> I think one can safely assume that the Select Committee realized this was an almost impossible feat it would be responsible for advising. Based on the universal incidence of homosexuality there was enough proof put to the Select Committee that criminalizing all homosexual acts would be ineffective and impossible to police.

Numerous submissions stated homosexuality could not be cured;<sup>169</sup> yet the Select Committee was concerned with this issue. The committee wanted to know if a homosexual man went to gaol would he be cured of his homosexuality through his incarceration or would he return to society and continue being homosexual? Many analogies were given to the Select Committee to make clear the point that a homosexual man could never be cured, specifically through imprisonment. It was said imprisonment was as futile as hoping to rehabilitate a chronic alcoholic by giving him occupational therapy in a brewery.<sup>170</sup> It was also made clear to the Select Committee in some submissions that the treatment of homosexual men through imprisonment was a contradiction in terms.<sup>171</sup> Over-crowded gaols only encouraged homosexual practices as Westwood pointed out. "If one were consciously to plan an institution perfectly designed

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Clarke, the Department of Social Welfare and Pensions, the Cape Town Branch of the Society of Neurologists and Psychiatrists of South Africa, and the Department of Psychiatry at UCT.

<sup>167</sup> Kinsey cited by Boehmke and du Toit, and the Cape Town Branch of the Society of Neurologists and Psychiatrists of South Africa.

<sup>168</sup> Society of Neurologists and Psychiatrists of South Africa.

<sup>169</sup> Memo from the signatories, the Religious Society of Friends, the Department of Social Welfare and Pensions, A. Campling, Mr P. Graham, 'Samaritan', J.C. van Rensburg, Letter from Rochelle de Villiers to Select Committee for Amendment Bill of Immorality Act, (26 March 1968, AM 2656, GALA), Rev. Taylor, the Methodist Church, the Practising Private Psychiatrists of Cape Town, the South African Psychological Association, the Cape Town Branch of the Society of Neurologists and Psychiatrists of South Africa, the Department of Psychiatry at UCT, Dr Clarke, the Methodist Church, Dr Hemphill, A.M. Lamont and testimony by Prof. Gillis, and Dr Safinofsky.

<sup>170</sup> Letter from de Villiers, C170. Other analogies were: to punish a homosexual was like punishing someone for having freckles or hairy shoulders (A. Campling), gaoling 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 (Written Submission from Peter Graham), the government did not prosecute cripples or the mentally retarded, so why did they prosecute homosexual men for something they had no control over? (Written Submission by J.C. van Rensburg).

<sup>171</sup> Memo from de Villiers, the Department of Welfare, Rev. Taylor, and the Methodist Church.

to promote sexual degeneracy, he would create the modern prison.”<sup>172</sup> Gaols would simply become houses of vice.<sup>173</sup> “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.”<sup>174</sup> Therefore according to their views the Amendment Bill would be ineffective. Instead, the solution to the homosexual ‘problem’ was not cure, but acceptance. It was suggested legislation should rather help homosexual men to be happier and aid them in becoming better-adjusted people.<sup>175</sup>

Some expressed the idea that the Amendment Bill would also be ineffective because there were inadequate gaol facilities to house all prosecuted homosexual men.<sup>176</sup> Thousands of homosexual men would be put in gaol<sup>177</sup> and more prisons would have to be built.<sup>178</sup> A member of the public explained that many talented, responsible, professional homosexual men would fill the gaols even though they were not criminals.<sup>179</sup> Some submissions therefore attempted to be purely logical, without the emotion or judgment of whether or not homosexuality should be penalized.<sup>180</sup> It is probable the Select Committee had no concept of just how many white men in South Africa were homosexual. The argument for gaoling homosexual men was based on visible white homosexuality: public displays and parties. I do not believe there was sufficient understanding of the extent of private white homosexuality.

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<sup>172</sup> Westwood, Society and the Homosexual, in Evidence Submitted by the Department of Welfare, C94.

<sup>173</sup> Memo from Rev. Taylor, C48.

<sup>174</sup> Memorandum from Practising Private Psychiatrists in Cape Town, C64.

<sup>175</sup> Evidence to the Select Committee, (26 April 1968), p 98.

<sup>176</sup> Testimony by Prof. Gillis, memo from the Cape Town Branch of Society of Neurologists and Psychiatrists of South Africa, J.C. van Rensburg, and J. Locke.

<sup>177</sup> Memorandum by Cape Town Branch of Society of Neurologists and Psychiatrists of South Africa and by the Department of Psychiatry of the University of Cape Town, p 99.

<sup>178</sup> Written Submission by J.C. van Rensburg, B110.

<sup>179</sup> Evening Post interview of a Port Elizabeth homosexual calling himself ‘the King of Homosexual men’ in a letter from James Locke, B109.

<sup>180</sup> Memo from de Villiers, the Department of Welfare, Rev. Taylor, the Methodist Church, Practising Private Psychiatrists in Cape Town, Prof. Gillis, Cape Town Branch of Society of Neurologists and Psychiatrists of South Africa, the signatories, the Religious Society or Friends, the Department of Social Welfare and Pensions, A. Campling, Mr P. Graham, ‘Samaritan’, and J.C. van Rensburg.

According to testimonies a gaol sentence for homosexual behaviour was supposed to be a deterrent. If the law were amended it would not be.<sup>181</sup> Some members of the public submitted that such punishment would only cause homosexuality to go underground, thereby rendering the Amendment ineffective.<sup>182</sup> Also, the threat of gaol for homosexuality was not a guarantee that white, homosexual men would remain celibate out of fear.<sup>183</sup> Much evidence to the Select Committee pointed out that in fact gaoling homosexual men would be counter-productive, because it did not allow for lasting relationships: out of fear of being discovered homosexual men would rather engage in one-night stands. The law would therefore be encouraging promiscuity. The committee was told this would result in the spread of venereal diseases, which people would not treat because they were afraid of being labeled homosexual.<sup>184</sup> Garmeson says long-term relationships were dangerous. There was greater risk. He says it was far safer parking next to the Rotunda and being “titillated.”<sup>185</sup>

Contrary to the many submissions proving that the Amendment Bill would be ineffective, the Church of England stated the opposite. The church believed such law was ineffective in some countries, for example England, because the country was legislatively lax and this resulted in the law conforming to certain practices. Such countries allowed the public to make the law unworkable, the church said. One memorandum explained South Africa had not yet reached that stage because God was still acknowledged as Lord, the Bible still revered, and Sunday still respected as the Lord’s Day. South Africa’s conservatism was still intact.<sup>186</sup> The Church of England supported any move that would assert or re-assert Divine standards.<sup>187</sup>

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<sup>181</sup> Memos from Dr Levine, the signatories, the Cape Town Branch of the Society of Neurologists and Psychiatrists of South Africa, the Department of Psychiatry at UCT, and testimony by Prof. Gillis, Dr Safinofsky, and Dr Zabow.

<sup>182</sup> Memo from the signatories.

<sup>183</sup> Testimony by Prof. Gillis, Dr Safinofsky, and Dr Zabow.

<sup>184</sup> Evidence to the Select Committee, (26 April 1968), p 80.

<sup>185</sup> Interview with Garmeson. Garmeson only had one long-term relationship of five years during which he lived with his partner.

<sup>186</sup> Memo from H. Hammond, C137.

<sup>187</sup> Ibid.

### **Suggested Alternatives to the Immorality Amendment Bill**

Many pro-gay/anti-amendment lobbyists suggested alternatives to the Amendment Bill, which fell much in line with what the Immorality Act stipulated anyway.<sup>188</sup> Some white members of the public suggested that the Select Committee concentrate on homosexuality only when it involved blatant public misbehaviour, the seduction of youth, prostitution, and blackmail.<sup>189</sup>

The views of the anti-amendment lobbyists were diverse. Some suggested white, homosexual men be treated medically for their 'condition' instead of being sent to gaol.<sup>190</sup> The Methodist Church suggested churches create a climate of understanding and non-rejection and aid in 'rehabilitating' homosexual men. It was also felt that white homosexuality could be 'solved' through education.<sup>191</sup> Rev. Jones believed research on whether homosexuality was heritable was necessary, as opposed to simply accepting that homosexuality was a lifestyle chosen by 'degenerates'. There was much ignorance about homosexuality and this could adversely influence the Select Committee.<sup>192</sup> According to some submissions, if the Select Committee did not educate itself its recommendations would continue generalizations and mis-information. The Department of Welfare stated the secrecy surrounding the issue of homosexuality was a problem. People did not consider the subject of homosexuality polite conversation and because of silence ignorance remained.<sup>193</sup> Some submissions explained that the white public needed to be

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<sup>188</sup> Memo from the Society of Neurologists and Psychiatrists of South Africa, the Methodist Church, the University of the Witwatersrand, the 'Minister of a large church group', the signatories, H.M.P., 'Samaritan', Dr Levine, Rev. Jones, A.M. Lamont, the Department of Social Welfare and Pensions, Mrs Hoole, A. Campling, Rev. Reeves, Dr B. van Niekerk and Mr C. Dugard, Dr R. Hemphill, J. C. van Rensburg, and testimony by Prof. Gillis.

<sup>189</sup> Memo from the Society of Neurologists and Psychiatrists of South Africa, the Methodist Church, Memorandum from the University of the Witwatersrand to the Select Committee, (1968, AM 2656, GALA), Written Submission by Church Minister to the Select Committee (5 March 1968, AM 2656, GALA), and the signatories.

<sup>190</sup> Memo from 'Samaritan' and Dr Levine. (Dr Levine failed to mention that his *modus operandi* was aversion shock therapy of gay SADF soldiers. See chapter 3).

<sup>191</sup> Memo from the Methodist Church, Rev. Jones, the signatories, A.M. Lamont, The University of the Witwatersrand, Dr Levine, the Department of Social Welfare and Pensions, Mrs Hoole, A. Campling, Rev. Reeves, and testimony by Prof. Gillis.

<sup>192</sup> Memorandum from Rev. Jones to Dr Fisher, (1968, AM 2656, GALA), D28.

<sup>193</sup> Evidence submitted by the Department of Social Welfare and Pensions, C73.



educated and this might eliminate prejudice.<sup>194</sup> One must bear in mind, however, that the problem was that those in power controlled knowledge, and therefore education and they would want the status quo, hence the dominant discourse, to remain intact.

The Select Committee thought that maybe sex education at school level would decrease the incidence of white homosexuality in South Africa.<sup>195</sup> However, this was unlikely because I think the committee's reasoning for school education on homosexuality was self-serving. It seems they were really more interested in educating people not to become homosexual as opposed to fostering toleration of homosexuality because their line of questioning with those they interviewed showed more interest in control as opposed to tolerance.

### **The Select Committee's Decision and the Results Thereof.**

The Select Committee had to decide whether or not to amend the Immorality Act on the grounds of the information submitted to it. According to Peter Graham's submission: if the Select Committee did recommend the "morbid and brutal" Amendment Bill it could create the potential for a miserable "medieval witch-hunt."<sup>196</sup>

However, the committee was talked out of suggesting the idea of new laws by some members of the white public from different backgrounds and with different fields of interest and expertise.<sup>197</sup> The pro-gay/anti-amendment activists had been successful. Suggested amendments to the Immorality Act were initially far stricter than what was eventually legislated. The Select Committee recommended that the new proposed legislation be dropped. Instead, it felt there should be greater concentration on public displays of homosexuality, the corruption of minors, and drugs.<sup>198</sup>

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<sup>194</sup> Campling, D140 and Rev. Reeves, B152.

<sup>195</sup> Evidence to the Select Committee, (5 June 1968), p 331.

<sup>196</sup> Written Submission from Peter Graham to the Select Committee, (14 Feb. 1968, AM 2656, GALA), B54.

<sup>197</sup> Retief, 'Keeping Sodom out of the Laager', p 102.

<sup>198</sup> Interview with Garmeson.



According to Connell masculinities are not homogenous, therefore they are neither genetic nor fixed. It is social interactions that actively produces masculinities. They are created in specific historical circumstances. Circumstances change and gender practices are contested and reconstructed therefore masculinities change. But gender orders do not change immediately. The ruling classes of men have the power and wealth to defend privilege.<sup>199</sup> So although the proposed legislation was not passed, it did not mean the authorities accepted homosexuality or that the gender order had altered.

The Select Committee did not recommend blanket legislation against all homosexual acts, even those in private. I think this was probably due to three circumstances. Firstly, it seems the members of the Select Committee realized that such an amendment was impractical and ineffective law; too many police officers would be needed to control homosexuality. Considering the political context, the police was a resource for race regulation, more so than sexuality. Furthermore, I think enough evidence was put before the Select Committee for it to recognize that there was insufficient gaol capacity for all homosexual men. Also, as was obvious by the interrogative questioning of van Zyl, the committee was not altogether convinced that homosexuality was the general problem van Zyl and some SAP members portrayed it to be. The committee even questioned the religious notion of the condemnation of homosexuality by God. Moreover, many white South African academics and professionals, especially the psychiatrists' evidence, had argued that an amendment to the Immorality Act would prove ineffective.<sup>200</sup> Considering this, I believe the threat of white homosexuality was based on prejudice and a loss of power, not necessarily white homosexuality itself.

Secondly, the LRM had represented white, homosexual men in Parliament.<sup>201</sup> According to Mazibuko Jara and Sheila Lapinsky the LRM was the first obvious political action in an otherwise quiet white, homosexual community.<sup>202</sup> "The LRM was made up entirely of

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<sup>199</sup> Connell, *The Men and the Boys*, p 13/14.

<sup>200</sup> Interview with Kraak.

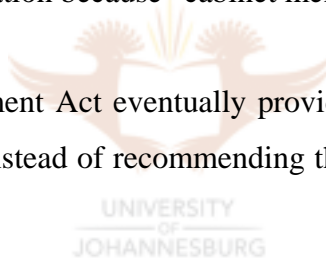
<sup>201</sup> See R. Louw, 'Gay and Lesbian Rights: Rulings of the Constitutional Court' in *Indicator*, vol. 16, issue 1, 1999, p 87.

<sup>202</sup> M. Jara, S. Lapinsky, 'Forging a Representative Gay Liberation Movement in South Africa', [www.interfund.org.za](http://www.interfund.org.za), p 2.

whites, the majority of whom were wealthy men whose political intent did not extend beyond resisting the single issue of anti-homosexual legislation.”<sup>203</sup> The LRM was not just about collecting money for legal representation. It also had a research committee which Garmeson, secretary of the LRM, says successfully contributed to the SAP’s realization that homosexuality was not going to go away.<sup>204</sup> Also, Dawie de Villiers, lawyer for the LRM, was hired at great expense because he was widely respected in the field of law.<sup>205</sup> De Villiers, as a hired lawyer, not a Nationalist, successfully fought for homosexual rights in Parliament in 1968. With a job well done, according to the LRM, it disintegrated once the Select Committee had published its report.

Thirdly, and perhaps most telling of all, it was rumoured that one of the NP politicians’ sons was gay.<sup>206</sup> If legislation becomes personal affects those close to home I believe it is seen from a different perspective. Kraak agrees that the Select Committee possibly did not suggest the proposed legislation because “cabinet members’ sons would be upset.”<sup>207</sup>

The 1969 Immorality Amendment Act eventually provided for the same punishment as the 1957 Immorality Act.<sup>208</sup> Instead of recommending that all homosexual acts in South



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<sup>203</sup> Ibid.

<sup>204</sup> Interview with Garmeson.

<sup>205</sup> Interview with Graeme Reid, (12 May 2000, Johannesburg, 3:00pm). He was a supporter of the NP government and considered a Nationalist hero because in 1965 he had successfully defended South Africa’s case for its continued control over South West Africa (SWA).

<sup>206</sup> Both Graeme Reid and Antony Manion of GALA had heard this rumour circulated within the gay community, but neither could verify it.

<sup>207</sup> Interview with Kraak. See chapter 1 regarding Forest Town party. I footnote the following regarding Dr Fisher as a potential reason for the Select Committee not proposing stricter legislation because it is based on presumption and supposition and it is therefore not in the text of my thesis. In the police records of suspected homosexuals in Johannesburg, which includes their occupations and addresses, there is listed a Zona Fisher, a lesbian singer, and a Michael Fisher, a homosexual actor. (K279 278/4/66, Police Records, State Archives). Also, in 1969 van Zyl investigated the apparent formation, by Colin Anstey, of the Homosexual Alliance of South Africa. The Alliance proposed to ask Dr Fisher to assume the presidency of the Alliance, saying Dr Fisher “has done considerable work in parliament against the proposed new bill. He has been a constant champion of minority rights.” However, van Zyl said: “all attempts to ascertain the existence of the Alliance, have been abortive, and it can be safely assumed that it is non-existent and that the whole matter can be treated as a hoax.” Neither the Immorality Staff in Cape Town or the Security Branch could establish if the Alliance actually existed. (Letter from van Zyl, 4 Aug. 1969, C8/111/10, ‘Homosexual Alliance of South Africa’, Police Records, vol. 2).

<sup>208</sup> R400 or imprisonment not exceeding two years for a male who committed an act to stimulate sexual passion or give sexual gratification to another man at a party.

Africa be criminalized, the Select Committee encouraged the full use of Section 20A of the Immorality Act:

The South African government attempted to make it illegal to be a homosexual. This radical law was never passed, but instead a law known as Section 20A ... was promulgated. There is no comparable law in the world against gay people, making this law unique to South Africa.<sup>209</sup>

Homosexual acts in private were not criminalized but the men at a party clause in Section 20A was relied on to a greater extent. According to Section 20A all homosexual acts became illegal, not just sodomy. This included tongue-kissing and intimate dancing because they supposedly stimulated sexual passion. The act also amended the age of consent for male homosexual acts in private from sixteen to nineteen years of age. I believe this section of the Amendment Act verifies that the Select Committee had proposed lenient legislation because the majority of the testimonies and memoranda suggested a minimum age limit of twenty-one years for consensual homosex. The Amendment Act also prohibited the manufacture of dildos because they could be used to perform unnatural sexual acts.<sup>210</sup>

Legislation affecting cross-dressers was also amended. Under the Transvaal Masks and Disguises Law of 1891 dressing in drag was an illegal disguise. This was reversed in 1969 when the Prohibition of Disguises Act was passed. Drag was only criminal if the person in drag had criminal intent.

The anti-amendment lobbyists were satisfied with the 1969 Immorality Amendment Act. I think the NP government had to accept the new Act because it could not justify the criminalizing of private homosexuality if the Select Committee had not recommended it. Most of those who worked against an amendment felt the process had proceeded smoothly and effectively.<sup>211</sup> “The Select Committee appears to have produced humane,

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<sup>209</sup> ‘South African Police Service: Diversity Training Inclusion of Sexual Orientation Module’, from Senior Superintendent Juan Nel to Equality Foundation, (n.d. Kevan Botha Collection, GALA), p 6.

<sup>210</sup> This pertained mainly to lesbians.

<sup>211</sup> Retief, ‘Keeping Sodom out of the Laager’, p 103.

common-sense provisions for dealing with a problem that is as old as Western Civilizations.”<sup>212</sup> However, not everyone was impressed with the Amendment Act. It “should ... be recognized for what it is, *viz.* an unfortunate throwback to times when legal concepts were crude and criminal law steeped in the taboos of a superstitious age. It is also in sharp contrast to criminal policy elsewhere in the civilized world.”<sup>213</sup>

Although Garmeson (and Kraak) feel the LRM was successful they were concerned about the jubilation of some white, homosexual men. “The queens were saying: ‘aah, we’re free’.”<sup>214</sup> Garmeson initially suggested, before disbanding the LRM, that a guide be issued explaining to the white, homosexual community what was and what was not illegal. After the LRM discussed and voted against this Garmeson had to agree that it was not such a good idea: he said the SAP had always had the power to arrest homosexual men but had not realized the extent of their power. Garmeson recognized that issuing a legal guide might provide the SAP with a handbook of powers of arrest.<sup>215</sup>

After the Immorality Amendment Act was passed Pelsler clarified in Parliament that the new law did not condone homosexuality and there would be no relaxation of the legal prohibitions concerning homosexuality.<sup>216</sup> Consequently the police seemed to reinforce the Act by clamping down on white, male, outdoor cruising venues, and surveying white, homosexual clubs, bars, and parties, thereby continuing to entrench power and hegemonic masculinity. The LRM’s legal team warned Garmeson that frequenting the ever-increasing number of white, homosexual clubs would be more dangerous. The SAP was insistent that the “dirt remained under the rug.”<sup>217</sup> During the 1970s there were random police raids – the police would enter a club, remove all the men who were kissing or dancing together and put them in police vans. The other men at the club were put up against a wall and their photographs taken. The police took down the registration

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<sup>212</sup> Cape Times, (19 March 1969) in Gevisser, ‘A Different Fight for Freedom’, p 35.

<sup>213</sup> B.v.D. Van Niekerk, ‘The Third Sex’ in South African Law Journal, 1970, (Juta and Co. Ltd, Cape Town, Johannesburg, p 88.

<sup>214</sup> Interview with Garmeson. Garmeson re-enacted this with a screech and flapping hand that had me in hysterics.

<sup>215</sup> Interview with Garmeson.

<sup>216</sup> Rand Daily Mail, (26 April 1969) in Gevisser, ‘A Different Fight for Freedom’, p 35.

<sup>217</sup> Interview with Joe Garmeson.

numbers of cars parked outside the club and threatened that a person caught at one of these clubs would have his identity leaked to the newspapers. This, the SAP warned, would result in unemployment, social isolation, and abuse. “The message from the authorities was clear: the status quo remained. The LRM had not, in fact, been successful in reforming the law. Rather, it had simply staved off even more repressive legislation.”<sup>218</sup> Garmeson disagrees that the LRM was unsuccessful. He says, “it swung a balance that took time to take root.”<sup>219</sup> One is reminded here that Foucault says regulation is production.<sup>220</sup>

The Immorality Amendment Act, with its three new provisions, gave the SAP potentially greater powers of arrest regarding homosexual men, than ever before. Kraak, however, says this may have been on paper but what about burden of proof? “Can you really police behaviour?”<sup>221</sup> The Select Committee report had shown the police what some people thought the extent of white homosexuality was and that it was inconceivable to eliminate it. Instead the SAP tried to prevent the visibility of white homosexuality and its accessibility, concentrating on white, public homosexual venues. Van Zyl had warned this would happen.<sup>222</sup> This pushed white homosexuality indoors in the 1970s.

## **Conclusion**

The original aim of the Select Committee was to criminalize all homosexual acts, including those in private. However, the committee did not recommend this. It had to consider the arguments of the pro-gay/anti-amendment lobbyists, Dawie de Villiers, the LRM, psychiatrists, and religious leaders, many of whom had nothing to gain from the Amendment being scrapped. Many white people in South Africa stood up for homosexual rights in 1968, even though they themselves were heterosexual. They argued with and made suggestions to the Select Committee, with researched proof, that the committee could not justify an amendment of the Immorality Act. The logistics of

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<sup>218</sup> Gevisser, ‘A Different Fight for Freedom’, p 36.

<sup>219</sup> Interview with Garmeson.

<sup>220</sup> P. Bailey, ‘Parasexuality and Glamour’, in Phillips, Reay (eds), *Sexualities in History*.

<sup>221</sup> Interview with Kraak.

<sup>222</sup> ‘Homoseksualiteit Ruk Hande Uit’, *Dagbreek and Landstem*, (8 Sept. 1968), (C8/111/10, Police Records, vol. 2).

imprisoning all South Africa's homosexual men and van Zyl's questionable testimony were strong arguments that an amendment was not viable. However, this did not mean that the NP government was lenient towards homosexual men. It simply meant that white homosexuality had to be hidden away so South Africa could continue her conservative, Christian tradition with no visible threat to its power and well-established hegemonic masculinity.

