Psychiatry, Psychology, Law and Homosexuality - Uncomfortable Bedfellows

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HONOURING BOB MYERS

Dr Bob Myers, for whom this memorial lecture series is established, was well known in Melbourne, and beyond, as a forensic psychiatrist.His particular field of interest lay in treating patients with the multitude of problems that were catalogued as "sexual deviancy".Over recent decades, that catalogue has been redefined.

According to those who knew him well, Bob Myers was visionary and charismatic.Apart from his intellectual prowess and professional skills, he was delightful company, a fine gourmet and a loving partner to Ellen Berah (herself an Associate Professor in Psychology at Monash University) and father to their son Jake.He contributed to establishment of this Association.It has instituted this annual lecture in his honour.He regarded the Association as an important means for bringing together the mental health disciplines and the law in an atmosphere more congenial and constructive than that usually provided by the courtrooms where they otherwise interact.

In consequence of the initiative by Bob Myers, this Association has become one of the more significant interdisciplinary professional bodies in Australasia.Its journal, *Psychiatry, Psychology and Law* enjoys one of the largest subscriptions of law journals in Australasia.It commenced in 1993.It continues to flourish.

Bob Myers' dream was that the Association, formed originally in Victoria, would spread to all parts of Australia and New Zealand.By the time of his death branches had been established in most Australian States and in New Zealand.It is pointless to maintain a memorial lecture series without remembering the person who is honoured.Anyone who takes an initiative to bring together members of learned professions for the exchange of experience, criticism and shared ideas, deserves to be remembered.As the years pass, there will be fewer members of the Association who knew Bob Myers as a person.But, through the work of the Association and the journal, we are all his beneficiaries.

I am proud to follow those who have preceded me in this lecture, which is now such a significant tradition.I am always glad of an opportunity to be associated with Monash University.It is, without doubt, one of the finest research and teaching universities not only of Australia but of the world.This is not the first time that I have addressed a meeting of the

Association.If one remains in office as long as I have, the clock comes around again.My last address was at its Sixth Annual Congress in 1985.I talked of "The Rights of Patients and the Law".Bob Myers was my host.Now he is not here.But he is remembered with affection by those who knew him as a friend and with gratitude by the rest of us for the legacy, and the challenge, that he has left behind.

HOMOSEXUALITY AS DEVIANCY

I have chosen to speak on a topic which would have interested Bob Myers.For most of his professional lifetime, homosexuality**[1]**, the core subject of my remarks, was regarded as a "sexual deviancy problem".It was thus a matter of pressing concern to psychiatrists, psychologists and lawyers.

Talking of the late 1960s, and the practice of psychiatry in Australia, Professor Sidney Bloch has recently described how his idyllic experience as a young professional came to a "disturbing halt" during the course of what was to become, for him, "a pivotal clinical encounter"**[2]**.I do not doubt that Bob Myers would have undergone a similar experience.Professor Bloch describes what happened:

"A student in his mid-twenties consulted the clinic but obviously with a great reluctance.His complaint was bafflement about his sexual orientation.Inclined to homosexuality, he had experimented accordingly.As greater trust evolved between us it emerged that John had been apprehended by the police a few weeks earlier and been told in no uncertain terms that his loitering with other men in a public place was socially unacceptable and legally risky.Moreover, he should seek psychiatric help *post haste* in order to remedy his sexual deviation.

Quite inexperienced in treating this area of human functioning, I sought guidance.A clinical psychologist unhesitatingly recommended a behavioural approach, and so it was that we launched a programme in which John was administered mild electric shocks on viewing slides of homosexual scenes but was spared the same when viewing heterosexual scenes.At the end of treatment neither of us was persuaded that anything had changed, although I assumed, no doubt rationalised, that I had fulfilled my professional responsibility as best I could.Today I shrink back in horror on recalling the role I played and can barely mollify myself by believing that I acted in accordance with scientific principles then prevalent and in harmony with corresponding social norms".**[3]**

This honest and heart-felt description of Professor Bloch's professional enlightenment over little more than thirty years could be repeated many times by psychiatrists, psychologists and lawyers in Australasia, as in many other countries.Given the deep-seated ignorance that formerly existed in relation to human sexuality, the enduring prejudice, its reinforcement by religious beliefs and legal sanctions and the fear that difference often occasions, it is remarkable that so much progress has been made in thirty years.

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Whilst progress is no excuse for complacency or acceptance of continuing wrongs, it is, I think, a reason why somebody like me, approaching the topic I have chosen, should be optimistic and confident that the future belongs to the enlightenment.It does not belong to religious bigotry, legal discrimination, social stigmatisation and personal hatred.In fact, as I shall show, it is the persistence of these phenomena, which can themselves often be traced to deep-seated personal anxieties, that may require psychological and psychiatric attention in the future:treatment for those afflicted, rather than for homosexuals themselves.

THE BEGINNING OF ENLIGHTENMENT

*The rebels and sceptics:*Even in the midst of the religious, legal and medical oppression of homosexual people, there were always sceptics.In the churches, they usually held their tongues or, knowing of the high proportion of homosexuals called to spiritual vocations, they contented themselves with counselling love for homosexuals whilst hating as "intrinsically evil" the conduct occurring between consenting adults, to which such sexual orientation naturally gave rise**[4]**.This was a false dichotomy:love the sinner, hate the sin.Sadly, it is still seriously propounded by otherwise intelligent people, calling all homosexuals, in their millions and in their spectacular variety, to the totally unrealistic and impossible lifestyle of sexual celibacy.

Within the law there were always sceptics about the criminal sanctions against homosexuals.Thus, the great "questioner of all things established" (as John Stuart Mill called Jeremy Bentham) expressed in his writings unorthodox and critical opinions on subjects as diverse as grammar, birth control, the Church of England and homosexuality**[5]**.

Psychiatry also had its sceptics.A partial sceptic was Sigmund Freud.In his famous "Letter to an American Mother"**[6]**, he asserted that homosexuality was "nothing to be ashamed of, no vice, no degradation, it cannot be classified as an illness".For Freud, homosexuality was a "variation of the sexual function".Whilst he postulated a cause (which he described as "a certain arrest of sexual development") he acknowledged the many "highly respected individuals of ancient and modern times who have been homosexuals".He denounced the "great injustice" which was caused by the persecution of homosexuality.He described this as "a crime, and cruelty too".

Yet, until recent times, professional journals in the fields of psychology, psychiatry and the law contained instructions on how "homosexual fixations" could be eliminated by the type of electric shocks or nausea-producing drugs with which Professor Bloch and his contemporaries treated hapless patients like John as late as the 1960s**[7]**.

Such treatments were encouraged, and may in some quarters still be encouraged, by people of religious persuasion who saw homosexual acts between consenting adults as nonetheless "intrinsically evil".Such treatments were sometimes required by judges and lawyers seeking a quick fix to the case of a person convicted of criminal conduct originating in their

sexuality.Police often utilised strategies of entrapment.The media embraced policies of publicity and humiliation for those thought to be homosexual.Politicians jumped on the bandwagon.Nevertheless, enlightenment eventually came.

*The impact of Alfred Kinsey:*It is impossible to overstate the importance of the work of Alfred Kinsey and his colleagues at Indiana University in the United States in the 1940s and 1950s**[8]**.I recently visited Indiana University and the Kinsey Institute, with its unique collections dating back to the research of Kinsey and his colleagues.A university in Bloomington in rural Indiana may seem an unlikely setting for such bold investigations.Yet it was to the great credit of Indiana University and its then President, Herman Wells, that it resisted all the pressures of Joseph McCarthy and others of like mind and politer speech, to discontinue the research into this vital aspect of human existence.The noted anthropologist, Margaret Mead, was especially persistent in her criticism.Not only did she attack Kinsey's research on technical grounds.She also argued that, even if partly true, it should not have been published because it undermined the resolve of young people who were trying to lead "conventional" sex lives**[9]**.

In the field of sexuality, the work of Kinsey and his colleagues was to help launch a process somewhat akin to that of Darwin.Scientific data, empirical research and an unyielding demand for the truth would eventually replace religious bigotry, human prejudice, ignorance and fear of difference.

The most important finding by Kinsey, sensational in its time, was that homosexual behaviour was actually relatively common.Kinsey reported that 37% of the male population studied had, at some time between adolescence and old-age, experienced at least one overt homosexual act to the point of orgasm.According to Kinsey, about 4% of the general population were exclusively homosexual throughout their lives after the onset of adolescence.The figures for women were somewhat lower - 13% of the women interviewed had had some overt homosexual experience to orgasm after adolescence and between 1 and 3% of unmarried women (fewer than 0.3% of married women) were exclusively homosexual.If homosexuality was even partly as prevalent as Kinsey and his colleagues reported, and if homosexual acts were common, it became extremely difficult to suggest that this phenomenon of sexual difference was a tendency towards "instrinsic evil" in wilful human beings.Instead, the phenomenon of homosexuality began to look like simply one of the many variations in the human species, whether genetic, hormonal, experiential or otherwise in origin.

Simon LeVay has acknowledged**[10]**, and many other critics have pointed out with far less balance, that Kinsey's studies were in some ways defective.His sampling strategy was haphazard by today's standards.Nevertheless, part of the blame for these imperfections can be laid at the door of the religious and political agitators who placed great pressure on those who had helped to fund Kinsey's research.Thus, the Rockefeller Foundation was forced to discontinue its financial support.In the result, much of Kinsey's original data was never

published**[11]**.

Nevertheless, Kinsey's research removed once and for all the substantial embargo which had existed upon the study of sexuality as a legitimate subject of scientific, specifically psychological, investigation.The inhibitions against such investigation began to disappear under the pressure of human curiosity enlivened by Kinsey's reports, the large public interest which the first report had engendered and the independence of mind and courage exhibited in a number of university and scientific institutions. This was particularly so in the United States, where the First Amendment to the Constitution made it impossible to suppress open discussion of the research outcomes and widespread publicity of them within the general community.In earlier times it might have been conceivable, by Church Inquisition or judicial punishment, that the results of such free thinking investigations would have been buried.But by the middle of the twentieth century, the combination of law, technology and public attitudes made suppression impossible.The enlightenment had advanced a further step.

CHANGES IN THE PROFESSIONS

In 1953, Evelyn Hooker, a young psychologist in California, received a small grant from the National Institute of Mental Health in the United States**[12]**.She proclaimed her intention to research "normal homosexuals".Although in the preceding year the *Diagnostic and Statistical Manual* (DSM) had included homosexuality as one of the sexual "deviations" (a classification to be continued in DSM II in 1968), Evelyn Hooker was not convinced.In her own life's experience she had encountered a few homosexuals who, contrary to the then current religious, legal, political and psychological teaching, had struck her as "normal".

Evelyn Hooker's main study involved securing psychological profiles from 30 homosexual and 30 heterosexual men.She then invited three renowned psychologists to determine the sexual orientation of the subjects from the test results.With but a few exceptions (which may themselves have been attributable to random factors) they were unable to do so accurately.The so-called experts could not tell the "deviant" homosexuals from the "normal" heterosexuals.This led to Dr Hooker's 1956 paper entitled "The Adjustment of the Male Overt Homosexual"**[13]** in which she rejected the idea that homosexuality was pathological.

It was partly because of the further stimulus occasioned by Evelyn Hooker's publication, coinciding as it did with the beginning of the early manifestations of the movement for the rights of homosexual citizens in the United States, that led in 1973 to the decision of the American Psychiatric Association to debate homosexuality, and then to delete it from its diagnostic handbook.Instead the Association substituted, for the deleted *genus*, a new classification which it described as "sexual orientation disturbance".For some years after 1972, there was much controversy in psychiatric and psychological circles as to how to classify those considered "disturbed" in this way.Was the expression to be confined to those who were in conflict with, or who wished to change, their sexual orientation?Or did the new category go further?

In 1980, in the third revision of DSM, a new term "egodystonic homosexuality" was included.It was made plain that this condition referred to those who were unhappy with their homosexuality and who wished to change to heterosexuality.In 1987, a revised edition of DSM III removed "egodystonic homosexuality".In its place, there was substituted reference to a sexual disorder, not otherwise specified, which included conditions of "persistent and marked distress about one's sexual orientation".This classification persisted in the fourth edition of DSM in 1994.Of course, as with so many things psychiatric and psychological, questions remain.Is the disturbance referred to something that is personal to the patient himself or herself?Is it something that is inflicted on the patient by a family, a church, a society or, worse still, by the law with its heavy-handed sanctions?Or is this a construct of psychiatry or psychology themselves, seeing in the patient a "disorder" which psychiatrists or psychologists conceive from the depths of their own attitudes as necessary in order to explain some human variation that they cannot, or will not, accept?

Obdurate objections to the enlightenment persisted in clinical psychiatry whilst all of these efforts of Evelyn Hooker, the National Institute of Mental Health and the American Psychiatric Association were gathering pace.In Australia, progress was at first somewhat slower.Thus in 1976, Dr Neil McConaghy was still conducting experiments using aversion therapy for homosexual patients.Like others, McConaghy found no significant change in measured sexual orientation despite the most energetic attempts at aversive therapy**[14]**.In the same year, Dr D Phillips and her colleagues, responding to the ground swell that was growing as a result of the work of Kinsey, Hooker and others, reported on new perspectives for therapists treating patients who engaged in homosexual behaviour**[15]**.In the place of a single strategy of attempting to eradicate homosexual behaviour (which had proved hopelessly ineffective) Dr Phillips and her colleagues counselled alternative options, which included one of ignoring the so-called problem altogether if it was functionally unrelated to any symptoms in the patient.

Notwithstanding early indications of change, some in the psychiatric profession continued to grasp at the deep-seated conviction that, in certain cases at least, homosexual patients just had to be changed.Looking back on this persistent assumption, Professor Bloch describes how his conversion to enlightenment came about**[16]**:

"With John I was unwittingly carrying out a role delineated by society and its representative agencies:the law in the guise of the police.It soon dawned on me, perhaps for the first time, that I too was in effect a social agent potentially acting at the behest of others.This disconcerting realisation was brought into bold relief when I spotted a brief letter in the *British Journal of Psychiatry***[17]** in late 1971 dealing with allegations of the misuse of psychiatry in the Soviet Union.My initial incredulity was magnified by scrutiny of the documents I later received from the letter's signatories.On moving to London in 1972, I contacted the group comprising human rights activists, psychiatrists and political scientists, all intensely concerned about the allegations".

Here, Professor Bloch reveals a key which is often necessary for an escape from the assumptions of one's own paradigm - whether it is religion, law, psychiatry or psychology.It is often essential to have the stimulation of people who do not share the same assumptions, especially the stimulus of those who demand that all assumptions be submitted to close scrutiny, empirical examination and sceptical questioning.This was indeed what Bob Myers intended when he helped to establish the Association of Psychiatry, Psychology and Law.Yet in the struggle to eliminate the professional prejudices of psychiatrists, psychologists and lawyers, it is necessary to dig still deeper.Only in the bedrock will be found the sources of the attitudes, concerns and fears that continue to fuel resistance to homosexual equality and prejudice towards homosexuals, despite the growing body of scientific knowledge that shows that homosexuality is but one of a multitude of variations present in the human species.Scientists may condescendingly excuse religious people who feel themselves locked into an understanding of a Holy Book until, like evolution and *Genesis,* they too are obliged to accept established truth.But there is no excuse for scientists themselves, or lawyers and people with power over the disposition of the lives of their fellow citizens to give effect to such views in deploying governmental power.

Science may not unravel the precise causes of homosexuality in human beings.But that a proportion of people exist who are exclusively homosexual and cannot change, and who engage in consenting adult homosexual acts, is the starting point for an attitude of professional integrity and social justice.Such people continue to suffer many disadvantages. It is unacceptable.It is now irrational.It has to stop.

CAUSES OF HOMOSEXUALITY

It is somewhat unprofitable, at least at this stage of knowledge, to examine why some people are, or become, homosexual and why most people, at least for most of their lives and sexual activities, do not.Yet much scientific research is devoted to the question. Indeed, the search appears to be gathering momentum.

*The brain cell theory:*Several authors have propounded a theory (in part derived from animal studies) that a structure within the human brain may point to a biological component, at least for male homosexuality. Amongst the leading experimenters to support this theory is Dr Simon LeVay**[18]**.Building on earlier work by Dr Roger Gorski, who had found that a group of cells near the front of the hypothalamus were several times larger in male than in female rats, LeVay and his colleagues examined autopsy specimens of 19 homosexual men.All of them had died of complications resulting from AIDS. The researchers compared their findings with studies of the brain cells of 16 heterosexual men, 6 of whom had also died of AIDS.LeVay reported that the cell group, termed INAH3, was twice as large in men as in women.In the case of homosexual men, there was no significant difference from women**[19]**.

LeVay's research has been severely criticised.Dr William Byne**[20]** attacked the study of brain cells of AIDS patients on the basis that, at the time of death, virtually all men with AIDS have decreased testosterone levels and some have brain function impairment because of the virus

and its treatment.Byne dismissed the attempt to analogise from animal experiments because the distinction in brain size of males and females is not as marked in humans as it is in other mammals.In humans, it appears to be related to nothing more than average body size.But Byne accepted that all psychological phenomena are ultimately biological.He suggested that the salient question about biology and sexual orientation was not *whether* biology was involved but *how* it was involved.

Genetic factors theory: Another line of research, using pairs of identical twins, has been addressed to the discovery of a genetic cause for homosexuality.Research published in 1985 by Doctors Richard Pillard and James Weinrich of Boston University documented the first series of twin and sibling studies of homosexual subjects**[21]**.Such studies have continued ever since.Pillard and Weinrich found that 57% of identical twins, 24% of fraternal twins and 13% of brothers of homosexual men were also homosexual.There were parallel findings in relation to female subjects.Such correlations are much higher than random.They do seem to indicate a significant genetic element in the presence of homosexuality.Obviously, it is not a perfect genetic correlation.Otherwise, in the case of identical twins, there would be a 100% matching.

Most twins and siblings grow up in a similar home and school environment.Twin studies may thus sometimes confuse biological and environmental causes.Nevertheless, the extremely high incidence of common sexuality in identical twins seems likely to have, at least in part, a biological foundation.Perhaps of even greater interest are the studies of the family trees of homosexual subjects.These tend to show significant patterns of homosexuality, especially on the mother's side of the family.Such outcomes have given rise to a suggestion, by no means proved, that sexuality, like reproductive rate, may be inherited from the mother**[22]**.

As against these experiments concerning various genetic influences on sexuality, others are more equivocal.Bailey and Pillard, for example, found that the incidence of homosexuality in adopted brothers of homosexuals (11%) was much higher than estimates in the general population (1 to 5%).Indeed, it was roughly equal to the rate for non-twin biological brothers**[23]**.Yet whilst this seems to emphasise the importance of the rearing environment, other studies of twins parted at birth tend to confirm the conclusion about a high level of biological influence over human sexuality**[24]**.

*The genomic theory:*With the development of the Human Genome Project, scientists have begun to postulate that, at least in some cases, sexuality may be caused, or influenced by, the presence of a gene, the so-called "gay gene or genes". If identified, these would act as markers for all the other features that go together to identify a proportion of human beings as exclusively homosexual.Dr LeVay, for example, postulates that a gene will be found in the chromosomal region Xq 28; although he has properly signalled a number of caveats to this thesis**[25]**.Certainly, the hypothesis has not yet been proved.Obviously, it carries with it the potential risk that it will be used to identify and then persecute homosexuals on the basis of this difference.Foetuses with the suspected gene or marker might be eliminated before

birth.

*The hormonal theory:*A further theory, also stimulated by animal experiments, has enjoyed currency in recent times.It is that the release of prenatal hormones may affect sexual orientation in humans.Thus some writers have suggested that unusual amounts of stress in the mother during pregnancy may be associated with later development of the male child as homosexual**[26]**.As with the brain cell theory, this supposition has been criticised on the basis that it is dangerous to attempt to transfer the results of experiments on laboratory animals into lessons about the complex subject of sexuality in humans.The profound "cognitive and emotional components of human sexuality" have no counterpart in laboratory animals**[27]**.

*The environmental theory:*Much attention is also now being paid by research psychologists to the experience of homosexual subjects in growing up and why they sometimes play different games, are attracted to different pleasures and form different relationships**[28]**.A great deal of mischief has been done and undeserved guilt heaped upon parents by unproved theories attributing homosexuality to parental behaviour.Freud, I am afraid, has a lot of answer for in this respect.Although he had the insight to reject the theory that homosexuality was a crime or a sin, he fell victim to the medicalisation of the "problem" by declaring that it was a state of arrested development caused primarily by defective parenting**[29]**.Freud's attitude in this regard influenced some of his followers.As Professor Bloch has recounted, it invaded psychology and psychiatry mid-century.It eclipsed the beneficial influence of the findings of Havelock Ellis in the century's early decades.It resulted in homosexuality being perceived as a "disease" or "illness".It took most of the twentieth century to rid psychology, psychiatry and the law of that hypothesis**[30]**.Le Vay again:

"[I]n the spirit of medical optimism that has characterized the twentieth century, disease implies curability and untold thousands of gay men have been subjected to psychoanalysis, castration, testicle grafts, hormone treatments, electric shock therapy, and brain surgery in attempts to 'cure' them of their unfortunate condition. ... [N]ot one of these treatments ever produced the desired result, but the physical and psychological damage done by them must be counted amongst the most serious crimes ever committed by the medical profession".**[31]**

*The forefinger discovery:*The extent to which some scientists will press on with endeavours to establish biological differences between homosexual and heterosexual subjects is well illustrated by a report in March 2000 published in the scientific journal *Nature*.Researchers at the University of California at Berkeley have discovered (so it is reported) that the difference in the length of the ring finger and the index finger of the hand represents an objective indication of sexual orientation.Based on a survey of 720 subjects, the Californian team found that the ratio of the second to the fourth digits was "significantly smaller" amongst homosexuals (male and female) than amongst heterosexuals**[32]**.

It is ironic that such a report should surface at this time.Little more than a decade ago, in

Rwanda, one means that was used to distinguish Hutus from Tutsis in the genocide was by reference to finger length.In other oppressions, various body parts have been utilised as markers with deadly consequences.So it was with face and nose shape in Hitler's Germany and whether a male was circumcised when India was divided from Pakistan.What causes some humans to be tall?Some to be blue-eyed?Some to be colour blind?Some to be left-handed?Is there a danger that the search for the cause may one day become the search for the means of extinction? Past history - including the history of the recent past - shows that this possibility cannot be easily eliminated.

*Cause and effect:*When considering reports on brain cells, genetics, hormones and genes, and the ways they may affect sexual orientation, a number of issues are raised.Assuming such considerations to be scientifically accurate, the question of cause and effect lingers unanswered.For example, do the brain cells, hormones or genes cause homosexuality or is it caused by some other genetic trigger of these conditions that is the true "cause"**[33]**?And why are we concerned to discover the ultimate source of human sexuality anyway?Doubtless Dr LeVay, himself homosexual, was keen to prove a biological trigger to counter the churches and others who (at least until recently) have persistently suggested that sexuality was a "lifestyle" choice and that it could be easily changed with enough prayer, help and willpower**[34]**.But there is a danger in such attempts to identify objective indications of the presence of homosexuality.Those whose minds are full of prejudice and fear may simply use the markers (whatever they are) to eliminate the bearers of this point of difference that is unacceptable to them.The foregoing is why there is much wisdom in the comment of William Byne:

"Researchers and the public must resist the temptation to consider [the findings to date] in any but the most tentative fashion.Perhaps more important, we should also be asking ourselves why we as a society are so emotionally invested in this research.Will it - or should it - make any difference in the way we perceive ourselves and others or how we live our lives and allow others to live theirs?Perhaps the answers to the most salient questions in this debate lie not within biology of human brains but rather in the cultures those brains have created"**[35]**.

END OF CENTURY ENLIGHTENMENT

Do not think that, at the end of the twentieth century, enlightenment about homosexuality has been fully achieved.True, some progress has been made.Take the general medical profession.After the deletion of homosexuality from the diagnostic glossaries in most Western countries, the tenth edition of the *International Classification of Diseases*, published by the World Health Organisation, finally dropped homosexuality as an "illness" in 1992.Universal practice and global professional attitudes may not yet accord with this position.But the leadership of the medical profession has now taken an unmistakable stand.It will not be reversed.

More recently, in December 1998, the American Psychiatric Association began to stand up to

those (often, I regret to say, in the churches) who continue to press for "reparative" or "conversion" therapies for homosexuals on the basis that these are needed to make people "comfortable with themselves".Organisations have been established in many countries which promise "conversions" from homosexuality, failing to perceive that it is often the instructions of the churches and their supporters that need to change in order for people to be comfortable with their homosexuality.Unfortunately, in the United States, where the issue of homosexuality is even more politically charged than in Australasia, such organisations gather noisy and sometimes powerful political supporters.They play on fears.They demand that homosexuals embrace change or, at the very least, accept lifelong secrecy, shame and celibacy.

The December 1998 position statement of the American Psychiatric Association is now similar to that of the American Academy of Paediatrics, the American Medical Association, the American Neurological Association, the American Counselling Association and the National Association of Social Workers**[36]**.This statement says (in part):

"To date, there are no scientifically rigorous outcome studies to determine either the actual efficacy or harm of reparative treatments ... [but] it is possible to evaluate the theories which rationalise the conduct of 'reparative' or conversation therapies.Firstly, they are at odds with the scientific position of the American Psychiatric Association which has maintained, since 1973, that homosexuality per se is not a mental disorder.The theories of 'reparative' therapists define homosexuality as either a developmental arrest, a severe form of psychopathology, or some combination of both ...In recent years noted practitioners of 'reparative therapy' have openly integrated older psychoanalytic theories which pathologise homosexuality with traditional religious beliefs condemning homosexuality ... There has been an increasing body of religious thought arguing against traditional Biblical interpretations that condemn homosexuality and which underlie religious types of 'reparative' therapy".

Against this background, the American Psychiatric Association recommends that the attempt to repathologise homosexuality by claiming that it can be "cured" needs a quick and appropriate response from psychiatrists everywhere.It counsels against therapists recommending "conversion" treatment, either coercively or through subtle influence.It recommends that "ethical practitioners refrain from attempts to change individuals' sexual orientation".It notes the way in which reparative therapy literature tends to ignore the impact of social stigma which the promise of "conversion" itself tends to reinforce.

GOALS IN AUSTRALASIA

In Australia and New Zealand, we can observe the American debates with a degree of dispassion.But neither in psychology, psychiatry nor law can we afford to be complacent.

So far as psychiatry and psychology are concerned, therapists in Australasia are probably subject to many of the same criticisms as have been voiced in the United Kingdom from which country many of our traditional professional standards and attitudes still

derive.Doctors Michael King and Annie Bartlett in England concluded recently**[37]**:

"Teaching about gay and lesbian issues in medical schools is in its infancy ... Evidence is only now emerging about the effects on gay and lesbian patients of systems of care which regarded their sexuality so negatively.... Many are reluctant to disclose their sexuality to medical healthcare workers and are suspicious of psychiatry".

These remarks are echoed by two Australian commentators.One, a doyen of Monash University, wrote to me last year**[38]**:

"I may be biased, but I have always thought that not only lawyers but much of the medical profession find it difficult to be objective about sexual behaviour, embarrassment and a giggly response preventing the analytical approach given to other types of behaviour.Things are changing slowly".

More recently, in a paper for a conference in Sydney, Dr John Parkinson, a psychiatrist, made much the same point**[39]**:

"Three years ago ... in Melbourne I attended a symposium on suicide.The three speakers were young, male academic psychiatrists from around Australia.When I stood up to point out that there had been no mention of sexuality as a possible factor in youth suicide, I was greeted with embarrassed giggles from the platform and primitive defences.The next morning when we happened to meet on the escalator, one of them had recovered enough to say to me, 'You know, *those people* have much better support systems than *we* do'.By the time we had got to the top of the escalator I had just enough time to point out that when it comes to youth suicide it is not a question of '*those people*' but of confused adolescents who do not know with what group of people they belong, who have no idea of the resources in the gay community and who may have good cause to distrust doctors or counsellors to whom they do have access".

So let us here resolve together, those who are psychiatrists and psychologists, that the new millennium will see an end to the giggling.And to the alienation of, and patronising indifference to, "those people".Instead, what is needed is the adoption (as my Monash friend urged) of a proper scientific, analytic approach to the issue of human sexuality.An approach based on empirical data, good science and the kinds of norms that are reflected in the 1998 statement of the standards of the American Psychiatric Association.Those standards should be clearly adopted in Australia and New Zealand by the psychiatric, psychological and medical professions.This approach was put forward fifty years ago by Alfred Kinsey and Evelyn Hooker.It remains the principal medium of the enlightenment.

Within the law, some progress has also been made in the past thirty years.But if we look beyond Australasia, even more remarkable developments are occurring in the law in other counties, with the aid of constitutional charters of rights, to rid the legal discipline of the last

vestiges of prejudice and entrenched discrimination against homosexual citizens**[40]**.In Australia and New Zealand, we have no such entrenched constitutional charters of rights.We are therefore almost wholly reliant on the legislatures, federal, State and Territory.Although some law reforms have recently been enacted in Australia**[41]**, they are limited and far from universal.Basic measures to accord homosexual citizens equal treatment with the heterosexual majority in many matters of State and federal concern remain still to be achieved**[42]**.So those of us who are lawyers should not feel a comfortable smugness that all the prejudice and disadvantage are over.In many respects our laws lag behind those of other countries.In the law, the problem is apathy, complacency and indifference to injustice and to eliminating discrimination.

And when any of us, psychologists, psychiatrists or lawyers, confront the ugly face of homophobia, it is surely our duty in the new millennium to reject it.To reject the homophobic jokes, the contemptuous put-downs and the inequality.To reject the belittlement that classifies a person's sexuality as a mere "lifestyle", like an attraction to racing cars, glossy magazines or a devotion to table-tennis.Sexuality is no "lifestyle".Its sources lie deep in human nature.It is not chosen; it is a given.In all but the rarest case (and that dubious) it cannot be changed, only suppressed.It is the source of the deep motivation shared by all humans to seek out love and companionship and wholeness of being with another.It is an indelible feature of human existence.It cannot be expunged.

You would be surprised if I were to read to you the messages of hate that I have received in the last two years concerning my sexuality.Strange, disturbed letters contorted by rage and spitting contempt.Sadly, most of them are written by people who conceive of themselves as religious.Many of them invoke Scripture.Many hurl at me the opinions of the leaders of their religions.These, and not homosexual Australians and New Zealanders, are the people who need the help of psychology and psychiatry today.These are the people who are mentally disturbed, beset by their mental devils.

It is to the sources of such passions and the origins of those devils that the causes of homophobia must be traced.Until they are extirpated, hatred, discrimination, disadvantage and violence will persist.Most informed people today know that this is so.But do not believe that the battle for the minds and hearts of ordinary citizens has been won.It has not.So let there be an end to the apathy and hatred.Those who *cause* these feelings, and not those whom they target, need the assistance of scientific psychology and psychiatry.Those who are their *targets* need the strong assistance, protection and equal justice of the law.

[1]The use of the term "homosexual" is itself controversial.I have used it to refer to persons who identify themselves as exclusively, or almost exclusively, sexually attracted to persons of the same sex.The labels "heterosexual", "bisexual" and "homosexual" do not provide an exhaustive description of human sexuality.Within the three categories, individuals differ greatly in their preferred sexual activities and in the shape of their relationships.See S LeVay,

"So Full of Shapes is Fancy - Sexual Orientation and its Development" in S LeVay, *The Sexual Brain* (1993) 105 at 106.For a lucid complaint about the systematic tendency to ignore the special issues presented by bisexuality, see K Yoshino, "The Epistemic Contract of Bisexual Erasure" (2000) 52 *Stanford Law Review* 353.The author makes the point that this "erasure" is the more surprising because of the powerful evidence from Kinsey's studies onward that "sexual orientation arrays itself along a continuum" and not necessarily in sharply distinguished categories.A somewhat similar complaint about "lesbian invisibility" has been made.See M Eaton, "The Legal Construction of Lesbians" in M Eaton, *Theorising Sexual Orientation* (1991).It would be possible to make the same argument in relation to transsexualism.

[2]S Bloch, "Psychiatry:An Impossible Profession" (1997) 31 *Australian and New Zealand Journal of Psychiatry* 172 (hereafter "Bloch") at 172-173.

[3]*Ibid*, 173.

[4]cf Notification of the Commission for the Doctrines of the Faith re Father Robert Nugent and Sister Jeannine Gramick, Rome, 31 May 1999, reported *Inside the Vatican*, August-September 1999.See M D Kirby, "Remaining Sceptical: Lessons from Psychiatry's Mistreatment of Homosexual Patients" (2000) 44 *Quadrant* 48.

[5]Entry on Jeremy Bentham by H L A Hart in A W B Simpson, *Biographical Dictionary of the Common Law* (1984) 45.See also the contribution of the German lawyer Karl Heinrich Ulrichs (1825-1895) described in S LeVay, *The Sexual Brain* (1993) (hereafter "LeVay I") at 109.

[6]Quoted R Bayer, *Homosexuality and American Psychiatry - The Politics of Diagnosis* (1987) 27.See also LeVay I, above n 5 at 110.

[7]S Rachman, "Aversion Therapy:Chemical or Electrical?" (1965) 2 *Behavioural Research Therapy* 289.

[8]A C Kinsey, *Sexual Behaviour in the Human Male* (1949), noted in Bayer, above n 6 at 42.

[9]See LeVay I, above n5 at 107.

[10]LeVay I, above n 5.

[11]*Ibid,* 107.

[12]E Hooker, "Reflections of a 40-Year Exploration - A Scientific View on Homosexuality" (1993) 48 (4) *American Psychologist* 450; N Frude, *Understanding Abnormal Psychology* (1998) at 238-241.

[13]This story is told in C Burr, *A Separate Creation* (1996).cf E Hooker, "A Preliminary Analysis of Group Behaviour of Homosexuals" (1956) 42 *Journal of Psychology* 217; E Hooker, "Homosexuality: Summary of Studies" in E M Duvall and S M Duvall (eds), *Sex Weighs in Fact*

and Faith (1961).A number of articles by Evelyn Hooker are extracted in W Eskridge and N Hunter, *Sexuality, Gender, and the Law* (1997) at 148.

[14]M McConaghy, "Is a Homosexual Orientation Irreversible?" (1976) 129 *British Journal of Psychiatry* 556; F X Acosta, "Etiology and Treatment of Homosexuality:A Review" (1975) 4 *Archives of Sexual Behaviour* 9; D F Greenberg, *The Construction of Homosexuality* (1988) esp Ch 9; P J Fink, "Homosexuality - Illness of Lifestyle?" (1975) 1 *Journal of Sex and Marital Therapy* 225.

[15]D Phillips, "Alternative Behavioural Approaches to the Treatment of Homosexuality" (1976) 5 *Archives of Sexual Behaviour* 223.

[16]Bloch, above n 2 at 173.

[17]D Richter, "Political Dissenters in Mental Hospitals" (1971) 119 *British Journal of Psychiatry 225*.

[18]S LeVay and S H Hamer, "Evidence for a Biological Influence in Male Homosexuality" in *Scientific American,* May 1994, 20 (hereafter "LeVay II").

[19]*Ibid,* 22.

[20]W Byne, "The Biological Evidence Challenged" in *Scientific American,* May 1994, 26.

[21]Described LeVay II, above n 18 at 24.

[22]Byne, above n 20 at 30.

[23]*Ibid,* 30.

[24]LeVay II, above n 18 at 24.

[25]*Ibid,* 25.

[26]Ellis and Ames (1987) cited in P Gray, *Psychology* (2nd ed, 1994) at 215.See also LeVay I, above n 5 at 113 and P J Pinel, *BioPsychology* (1997) at 292.

[27]Pinel, above n 26 at 291-292.

[28]LeVay I, above n 5 at 119.

[29]*Ibid*.

[30]*Ibid*, 110-111.

[31]*Ibid*.

[32]*Nature,* reported "Index-finger trait points to female, male homosexuality", *USA Today*,30 March 2000, 10D.Men typically tend to have shorter index fingers than ring fingers. In women the two fingers tend to be about the same length.The fingers of lesbians were found to be

closer to the typical male configuration than the female configuration and overall, homosexual men showed higher masculine finger patterns than heterosexual men.The leader of the Berkeley group, Dr M Breedlove, suggested that the finding "calls into question all of our cultural assumptions that gay men are feminine" because the difference (involving only fractions of measurement) is supposedly traced to a greater exposure of the foetus to male sex hormones in the uterus.

[33]Gray, above n 26 at 215.

[34]Editorial (U Schüklenk) (2000) *Monash Bioethics Review* 1 at 1-2.

[35]Byne, above n 20 at 26.

[36]American Psychiatric Association, Commission on Psychotherapy by Psychiatrists, *Position Statement on Therapies for Focussed on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies*) (December 1998).

[37]M King and A Bartlett, "British Psychiatry and Homosexuality" (1999) 177 *British Journal of Psychiatry* 106.

[38]Letter in the author's possession.

[39]J Parkinson, "Sex and Mental Health of Psychiatry:A Reflection", unpublished paper for the *Australian Gay, Lesbian and Bisexual Interest Group in Psychiatry* (2000), emphasis added.

[40]See eg United States:*Baker v State of Vermont* 744 A 2d 864 (1999); *People v Garcia* (2000) *Daily Appellate Report* 1235 (4th Dist);Canada:*Egan v Canada* [1995] 2 SCR 513; *M v H* [1999] SCR 23; United Kingdom:*Fitzpatrick v Sterling Housing Association Ltd* [1999] 3 WLR 1113; Europe:*Lustig-Prean and Beckett v United Kingdom,* unreported, European Court of Human Rights, 27 September 1999; United Nations:*Toonen v Australia* (1994) 1:3 IHRR 97.

[41]*Property Relationships Act* 1999 (NSW); *Property Law Amendment Act* 1999 (Qld).cf *Quilter v Attorney-General* [1998] 1 NZLR 523.

[42]M D Kirby, "Same-Sex Relationships and the Law" (1999) 19 *Australian Bar Review* 4; D F Dugdale, "Same-Sex Relationships" [2000] *New Zealand Law Journal* 3.