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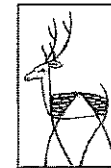
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Sexuality Repositioned: Diversity and the Law

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7

Intersecting Oppressions: Ending Discrimination against Lesbians, Gay Men and Trans People in the UK

ZOË-JANE PLAYDON

*The decadent apostles of the most hideous and loathsome vices no longer conceal their degeneracy and degradation . . . They appear to revel in their defiance of public opinion. They do not shun publicity. On the contrary, they seek it, and take a delight in their flamboyant notoriety.*¹

ACTIVISM

I wish to provide an activist perspective on the gaining of gay, lesbian and trans civil liberties and, in particular, to focus on what is held in common by activism in these areas. Activism still depends heavily on voluntary work by community organisations, which require a sense of shared values and purpose in order to coalesce. Equally, though, activism requires internal discussions, fuelled by heterogeneous ideas, in order to progress. The activist dynamic, therefore, is one both of commonality and variety, and charting these characteristics is important. Set against those diverse but cohesive standpoints is the lumping together, in the majority public arena, of lesbian, trans and gay issues as a homogenous undesirability, subjected to generalised exclusions, which elide different minority community identities. This chapter, therefore, is also in part an attempt to moderate that homogenised view taken by majority culture.

As trans activist Stephen Whittle (2002: 62) points out 'Theory and activism are inextricably intertwined bedfellows, especially when it comes to the development of policy and law.' Trans, gay and lesbian activism is played out against and within a variety of theoretical perspectives. To take lesbian feminism as an example, in the 1970s, the notion of the personal being political meant that the

¹ 'A Book that must be Suppressed,' *The Sunday Express*, 19 August 1928.

separatist organisation strategy of the Women's Liberation Movement was logically extended to lesbian separatism, as 'the ultimate sign of repudiation of and withdrawal from male society.' (Simms, 1981: 227-39, 231). Lesbian feminism developed as heterogeneous, however, and during the 1980s:

challenges from a number of sources have resulted in the decentring of lesbian feminism: firstly . . . sex-radical lesbians rejected feminist prescription of sexual behaviour . . . secondly, Queer politics challenged the separatist emphasis of lesbian activism . . . more indirectly, black feminism challenged all white feminists to examine their racism and theorize 'whiteness' . . . lesbian feminism in the 1990s is a self-conscious, intellectually and politically diverse field which abuts on a wide variety of other discourses, including Queer Theory, Chicana Theory and Postmodernism (Andermahr *et al.*, 1997: 123).

Equally, theoretical perspectives may arise from activism, so that, for Whittle, the origins of Queer Theory were in 'the work done in the late 1960s . . . to gain that removal from DSM III of homosexuality as a psychiatric disorder,' so that 'Queer Theory arose from this utilitarian mix of activism and academia.' It did so even though 'at the time, this work would have been recognised not as the start of a major theoretical movement, but rather as part of the process of political activism.' (Whittle, 2002: 62, 65). More self-consciously, theorisation of 'difference' emerged from the disjuncture between majority culture's homogenisation of gay, trans and lesbian people and the lived experience of individuals themselves. That discussion has almost been polarised around positions, which support either a social constructivist approach or an essentialist viewpoint. It has also been deconstructed into 'différence', using Derridian ideas of the operation of language, to challenge 'the very concept of a coherent identity and a self from which intellectual and political positions flowed' (Andermahr *et al.*, 1997: 61).

The idea of 'history' thus becomes problematic in these connections. The chronicling of experiences of trans, lesbian and gay people has only recently begun. For those engaged in activism, the felt experience and the affinities arising from that are perhaps fore-grounded more than events validated by the 'rules of evidence' of historical science as it is usually conceived. Some matters remain 'secret history,' the lore and wisdom transmitted inside a minority group, through which it negotiates its relationships with external groups. Lesbian invisibility has been countered by oral history projects, the purposeful, sustained process of collecting, editing and publishing spoken accounts of personal experience from members of a minority group. The purposes of such work are often valorisation, providing accounts which support the discrete identity and dignity of a group, through witnessing and through theorisation. This chapter, perhaps, will have more of the character of 'herstory', that is, history told by women, as a story of *sameness*, valuing emotional engagement and evoking solidarity (Purkiss, 1996). An activist approach, however, is closer to that of the *bricoleur* than the historian:

The *bricoleur* reads widely and is knowledgeable about the many interpretative paradigms . . . works between and within competing and overlapping perspectives and paradigms.

The *bricoleur* understands that research is an interactive process shaped by his or her personal history, biography, gender, social class, race and ethnicity, and those of the people in the setting. The *bricoleur* knows that science is power, for all research findings have political implications. There is no value-free science. The *bricoleur* also knows that researchers all tell stories about the worlds they have studied . . . The product of the *bricoleur's* labor is a bricolage, a complex, dense, reflexive, collage-like creation, that represents the researcher's images, understandings, and interpretations of the world or phenomenon under analysis (Denzin and Lincoln, 1994: 2).

Inevitably, activists have no foreknowledge of the kinds of narratives that will be created from their work. They seek to shape compelling arguments to arouse the awareness of a specific forum or of the public in general, to interest them in their issues, and to arouse them to act. History and historiography are data to be interrogated for what they may yield in the way of approaches, or precedents, or weaknesses in the arguments of the other side. History is essentially something which activists hope to make.

Similarly, personal identity is less important than political identification. In an arena where sweat equity is the major asset, the work that someone is willing to take on and complete for the group is crucial, in a way that genealogy is not. Identity politics thus constitute a strategic essentialism: to take forward a legal case of discrimination, it is necessary for the appellant to be gay, or lesbian or trans, but not for their legal team to share that identity. However, there may be an argument to be made for the legal team to have affinities with the emotional experiences of the defendant. For example, in the case of *P v S and Another (Sex Discrimination)*,² the trans woman P was supported by a lesbian solicitor, Madeleine Rees and a black barrister, Rambi de Mello. She specifically asked for Helena Kennedy as QC in the case, because she believed her to have 'the passion,' the emotional engagement with a struggle for freedom, as a necessary concomitant to an intellectual engagement with the legalities of the case.³ In a different vein, as the chapters by Johnson and by Chau and Herring in this book discuss, identity may also be constructed through biological arguments, which support the idea of essential physiological differences, and which may be decisive for some individuals.

Further, although complex theoretical understandings are a necessary part of the bricolage of activism, less sophisticated viewpoints are also invaluable. Althusser's idea of the Ideological State Apparatus, taken with Foucault's critique of power relationships, still provides a useful, practical way of framing activism, more recent theoretical positions notwithstanding. It brings into clear

² *P v S and Another (Sex Discrimination)* [1996] 2 FLR 347.

³ Personal recollections as a member of the team supporting the case.

focus the institutions and their processes, through which social exclusion is created and maintained: pragmatically, the Church, law, medicine and education are, in the end, the arenas in which gay, lesbian and trans liberties are lost or won. From this standpoint, exclusion commenced with a dominant religious ideology defining a particular group as morally bad, continued with the law carrying out specific sanctions against the group's members, and conscripted medicine to 'cure' the social evil and end the moral panic. Finally, education is brought into service to disseminate justifications for these actions, and to suppress the voice of the minority group.

Unpicking and reversing these actions is the practical task of activism. Often, it requires relatively simple messages, to gain attention, and thus there is a difficult balancing act to be maintained in seeking equal civil status in a way that is true to community understandings. The aim is to weigh the experiences and needs of excluded individuals and groups against what is practically achievable in the public arena at any given point. Thus, activist groups may produce homogenised (and sometimes sanitised) versions of their minority community, for the purposes of legal argument and political lobbying. Such strategic essentialisations are actions of political expediency, fundamental to the provisionality which informs the processes of activism. They are hostages to fortune, given to be taken back, and given as reminders of the power inequity that action must change. They represent a nomadic position, a transit in the arc of movement towards freedom, not a final, definitive, resting point.

Activism is also something that is held in general, as well as being the specific preserve of particular specialist groups in minority communities. Three broad activist responses to social exclusion are made in the areas of language, direct action and organising, and while new directions may be discovered and promoted by specific individuals and groups, every community member is able to engage in this agenda. Language and identity will be reclaimed, so that, for example, the abusive terms 'gay', 'queer' and 'dyke' have been reclaimed and used as acts of political defiance, while trans people have refused the pathologised terminology of 'a transsexual' or 'transsexuals' as ways of speaking to or about them. 'We're here, we're queer, get used to it,' is one populist way of expressing this reclamation, with sloganised tee-shirts finding an equally honourable station. Second, relationality and public space is reclaimed, by actions ranging from a woman kissing her girlfriend in the street, to Gay Pride marches, being 'out' at work, and challenges to predominant stereotypes of dress or activity. Third, a pressure for change in civil status will be created, legal remedies will be sought and political lobbying will be combined with wide-ranging educational programmes, through the media, conferences, publications and lectures. As people organise, activist communities will be created, able to provide support to each other, in a variety of ways, apart from politically. Now, the Internet produces new interest groups for gay, trans and lesbian people on almost a daily basis but before them, small ads or word of mouth provided knowledge of clubs, pubs, safe meeting-places, and sources of help, despite all of society's attempts

at suppression.⁴ Just going to a lesbian, gay or trans pub or club is, in and of itself, at some level an act against social exclusion, a reclaiming of space.

Finally, writing about activism from this standpoint is problematic. Breadth is gained at the expense of depth and in seeking to generalise intersections between trans, lesbian and gay activism, I shall lose particularities. However, what is held in common is relatively broad: action in support of 'that fundamental and inalienable value which is equality.'⁵

SOCIO-LEGAL INTERSECTIONS

*All lawyers who have had criminal and divorce practice know that there is in modern social life an undercurrent of dreadful degradation, unchecked and uninterfered with.*⁶

A militant, Christian orthodoxy, legitimised by a transcendent male God,⁷ was a crucial part of Victorian mind and society. That ideology provided aggressive denunciations of gay, lesbian and trans people, and social exclusion was operationalised through the emerging science of medicine. Early sexologists described three communities interchangeably as, for example, 'constitutional invert', 'sexual intermediacy', or 'psychic hermaphrodite' (King, 1993), thus refusing to recognise the different groups of people (see Chau and Herring, this volume), and denying their rights to debate and define their own identities—a process now called abjection.⁸ However, such 'cases' were still only a matter of casual censure, such as the magistrate's comments about Bill [Mary] Chapman in 1835: 'She may be a disorderly and disreputable character, which, in fact, her dressing as a man clearly shows, but I know of no law to punish her for wearing male attire.'⁹

The second intersection in the abjection of gay men, lesbians and trans people, however, is provided by legal debates and actions which took place out of the public gaze, in privileged settings, not subject to public debate. Labouchère's addition to the Criminal Law Amendment Act in 1885, added homosexuality to the list of punishable offences. Instantly, gay men who expressed their sexuality were effectively criminalized, with their future offering a choice of complete secrecy about their sexuality; or prison with hard labour,

⁴ For example, see Gardiner, J (2003) for an account of the famous Gateways club.

⁵ See footnote 2.

⁶ Parliamentary Debates (House of Commons), Criminal Law Amendment Bill, 4 August 1921, para. 1799–1806, *Criminal Law Amendment Bill [Lords]*. Cited in Oram and Turnbull (2001: 158).

⁷ The political purposes of orthodox, transcendent Christianity are interestingly discussed by Pagels (1979).

⁸ By 'abjection' I mean the socio-political processes of casting out that which disturbs identity, order, systems, by denying it a voice or an identity: effectively denying it agency, excluding it from social discourses. For definitions, discussions and further reading see Andermahr et al (1997).

⁹ Anon quoted in 'The Sinks of London Laid Open: A Pocket Companion for the Uninitiated,' (Oram and Turnbull, 2001: 23–8, 25).

or a 'cure' by the sexologists. Gay male identity was excoriated, as in Queensberry's notorious, insulting card left 'To Oscar Wilde posing Sodomite' (Ellmann, 1987: 412), and was severely punished if that apparent identity could be linked with gay sexual behaviour. Although since Henry VIII buggery had been punishable by death or life imprisonment, and this act just extended illegality to cover all forms of homosexual acts in private or in public, the change in the law, and Wilde's case in particular, brought gay male sexuality into the public eye as a focus for renewed punishment and panic.

In 1921, a similar attempt to add lesbianism to the Criminal Law Amendment Act was defeated in the Lords, since as Lord Birkenhead warned:

You are going to tell the whole world there is such an offence, to bring it to the notice of women who have never heard of it, never dreamed of it. I think this is a very great mischief.¹⁰

Case-law, rather than statute, operated in the case of trans people. In the case of *X*,¹¹ it was decided that no trans people in Scotland could have their birth certificates corrected or receive civil recognition in their sex. However, in 1968, Ewan Forbes, well-known in the trans community as a trans man whose birth certificate had been corrected in 1952, won the case that he, rather than his non-trans male cousin, should follow the male succession and inherit the title from his father Lord Sempill. All records of that case disappeared, to the extent that the Public Records Office in Edinburgh was unable to find any traces of it, until a direct request by Dr Lynne Jones MP, Chair of the Parliamentary Forum on Transsexualism, stimulated its discovery (Playdon, 1996).

Stereotyping provided the third intersection. The trials of Oscar Wilde in 1895, the obscenity case brought against Radclyffe Hall's *The Well of Loneliness* in 1928, and the nullity of the marriage of trans woman April Ashley in 1970 [the case of *Corbett v Corbett*]¹² each produced 'a brilliantly precise image' by 'grafting of a narrow set of cultural signifiers' onto an ostensibly homogenous body of people (Doan, 2001: xii). All gay men were witty, elegant aesthetes. Lesbians were mannish unfortunates burdened with Stephen Gordon's 'mark of Cain'. And, in the public imagination, trans people would always be trans women [so that trans men became invisible] and trans women would always be, in the judge's terms, 'a pastiche of femininity', a sort of piss-elegant drag-queen, a kind of figure of fun. Interestingly, all three stereotypes occupied wealthy circles, either the upper-middle class social and literary circles of Wilde and Hall, or the 'jet-set' film and entertainment world of Ashley. The majority of ordinary people were cut off from identification with these powerful public symbols and their cultures, so that access to a gay or lesbian or trans identity was made more problematic for working class individuals, for example.

The practical consequence of these changes in social identity provides the fourth intersection of oppressions for trans, lesbian and gay people. Because each was socially abhorrent, each had no employment rights. Even though it was not and is not illegal to be lesbian [apart from in the Armed Services until 1999], 'as lesbianism became a clearer concept during the twentieth century, it was also increasingly associated with a semi-criminal underworld of violence, murder and sexual depravity generally.' (Oram and Turnbull, 2001: 158). This meant that it was considered reasonable to dismiss a woman from employment for being a lesbian, on the grounds that a hypothetical future customer or employee might object to working with them, and that there is no legal redress in employment law. This was redressed in December 2003, with the implementation of the Employment Equality (Sexual Orientation) Regulations although their effectiveness in reducing workplace discrimination has yet to be tested.

In a money-based society, the right to work is the most fundamental right: people should be judged by their economic potential, and denial of employment security is in effect denial of security of home, family and life. This point was argued successfully in 1996 in the European Court of Justice case, *P v S and Another (Sex Discrimination)*, which extended the Sex Discrimination Act to trans people.¹³ Similar arguments were used in the European Court of Human Rights to end discrimination against lesbians and gay men in the UK Armed Services in 2000.¹⁴ In both cases, it might be speculated ironically, the moral anxiety of an earlier age had perhaps been offset by Reaganomics and Thatcherism, with the dogma of money redefining people by their utility as production units, rather than by their human need. Consumerism as a social ideology may also have influenced the rise in university programmes in women's studies and gender studies, since, as a colleague running such a programme once put it to me, 'Provided it makes money, the authorities don't seem to care what you teach'.

Viewed holistically, these are degradations of labour, not liberators of it, since consumerism offers only some severely restricted freedoms, which operate to its material advantage. In support of this view, it might be noted that gay, lesbian and trans people still cannot marry and that Section 28 until recently inhibited the teaching of LGT issues in schools in England and Wales. Further, since 1970 it has not been possible for trans people to correct their birth certificates, or to adopt, and only strong community action has prevented trans people being sent to the wrong sex prison, where trans women at least were routinely raped by male inmates and warders alike. In spite of Home Office assurances, the treatment of trans people by the Prison Service continues to be a matter for concern to trans activists, since it often does not provide hormone treatment for trans people in custody and no apparent policy lies behind decision-making.¹⁵

¹³ See footnote 2.

¹⁴ *Smith and Grady v United Kingdom* (2000) 29 EHRR 493; *Lustig-Prean and Beckett v United Kingdom* (2000) 29 EHRR 548.

¹⁵ Parliamentary Forum on Transsexualism, *Notes of Meeting 5 June* (Westminster, Dr Lynne Jones MP, 2003).

¹⁰ Quoted in Souhami (1998: 112).

¹¹ *X (Petitioner)* (1957) SLT (Sc Ct) 61.

¹² *Corbett v Corbett (Otherwise Ashley)* [1970] 2 All E.R. 33.

SOCIO-MEDICAL INTERSECTIONS

*'I have seen the plague stalking shamelessly through great social assemblies.'*¹⁶

Contrasting clinical viewpoints provided the first medical intersection in the treatment of lesbians, gay men and trans people. Those represented by Krafft-Ebbing, viewed patients as perverted and degenerate as a result of their inherited vice; and those such as Havelock Ellis, viewed patients as often intellectually and artistically distinguished and experiencing an unavoidable biological disposition to same-sex partnerships. One viewpoint advocated coercive violence while the other advocated corrective understanding. In the first regime, gay men experienced hormone therapy as an alternative to imprisonment (Alan Turing, cracker of the Enigma code and progenitor of computer science, committed suicide after his treatment; Hodges, 1992), aversion therapy, or more extremely in the Third Reich, termination as part of the 'final solution.' Lesbians were committed to mental hospitals—the asylums are largely peopled by nymphomaniacs and people who indulge in this vice [lesbianism]¹⁷—or might be clitorectomised (Dally, 1991). Transsexualism was not recognised as a distinct medical category until 1968, when it appeared as a separate heading in the *Index Medicus* (American Medical Association, 1968). Sectioning into mental hospitals, aversion therapy and ECT were used in its treatment, while as late as April 2002, exorcism was advocated as a 'cure,' by a UK psychiatrist working in the field.¹⁸

The more benign medical approaches to gay men, poignantly fictionalised in EM Forster's (1971) posthumously published *Maurice*, ranged from denial, to hypnotism, to marriage either as a cure or as a convenient charade. If you did not act as though you were 'cured' then the alternative was to go abroad, as Wilde's friends begged him to do. Lesbianism might be benignly regarded as neurasthenia or as temporary hysteria, and treated with similar 'cures' as gay men, unless, of course, the women concerned were able to live independent social lives and thus escape the concerns of their families. More recently, it has been regarded as a behavioural disorder, and treated accordingly. *The Last Time I Wore a Dress* describes Daphne Scholinski's experience of being placed in a mental hospital at the age of 15, for what her psychiatrist called 'failure to identify as a sexual female,' and being subjected to a regime of compulsory

¹⁶ See footnote 1.

¹⁷ Parliamentary Debates (House of Commons), Criminal Law Amendment Bill, 4 August 1921, para. 1799–1806, *Criminal Law Amendment Bill [Lords]*. Cited in Oram and Turnbull (2001: 158).

¹⁸ Royal College of Psychiatrists Educational Meeting, 16 April 2002, London, Royal Society of Medicine. Speaking from the floor, the medical practitioner said that while he did not expect wide acceptance for his viewpoint, he asked that it be taken seriously; in his experience, exorcism had been very effective in treating transsexualism, as had constant prayer.

re-education, which required her to wear makeup, walk with a swing in her hips, and pretend to be obsessed with boys. The confinement and treatment to make her behave 'like a woman' took place from 1981 to 1984 (Scholinski and Adams, 1997). These standards of behaviour are those still required from trans women by medical practitioners, where there remains a reigning medical idea that a major purpose of the real life experience (RLE), is to ensure that trans people will be invisible in society, that they will be able to 'pass.' In some NHS clinics, at time of writing, trans women are obliged to attend wearing a skirt and high heels, or they are told that they are 'not serious' and their healthcare is cancelled. In at least one other clinic, quite bizarrely, trans people are obliged to go before a panel of lay-people, who will contribute to the decision as to whether they should receive clinical care based on their appearance. This is not only a breach of patient confidentiality, but is also not used for access to any other surgical procedure. Some psychiatrists claim that rectal or vaginal examinations are a necessary part of their assessment processes and effectively impose them, in breach of informed consent, to say nothing of common-sense. Certainly as recently as 1993, surgeons required trans women to sign a humiliating form of consent, produced just before treatment, which said 'I . . . of . . . do consent to undergo the removal of the male genital organs and fashioning of an artificial vagina as explained to me by . . . (surgeon). I understand it will not alter my male sex and that it is being done to prevent deterioration in my mental health.'

In 1980, as the main entry for homosexuality was removed from the American Psychiatric Association's third, revised edition of the *Diagnostic and Statistical Manual of Registered Mental Illnesses* (American Psychiatric Association, 1980: 261–4), so transsexualism was entered into it. These classifications provided clear signposting for the need for specialist clinical care for trans people, and in that sense were helpful, more, perhaps, in the USA, where DSM categories were related to claims on private healthcare insurance. Less helpfully, these medical categorisations indicate a second intersection between trans people, gay men and lesbians, the idea that they are 'unhappy with themselves.' Homosexuality remains in the DSM as 'ego-dystonic homosexuality,' a sense of unease with one's sexuality, just as transsexualism, entered as 'Gender Identity Disorder,' is a sense of unease with one's gender. Intrinsically, however, none of these people are mentally ill: their 'discomfort' arises from heterosexist bigotry.

The separation between body and mind, which the DSM propagates, indicates a third intersection, the use of heterosexual genital sex as the baseline for defining relationality, as Chau and Herring discuss elsewhere in this work. In this discourse, lesbians are viewed as usurping male sexual privilege, so that the varieties and possibilities of their relationality are reduced, in the popular phrase, to the question 'what do lesbians do in bed?', a reductionism which emerges as the internalised homophobia 'lesbian bed-death' in populist lesbian writing. Gay male sex is conceptualised as anal sex, and used to elide transwomen's sexual possibilities, since, discussing Ashley's vagina in *Corbett v*

Corbett, the judge declared that 'the difference between sexual intercourse using it, and anal or intra-canal intercourse is, in my judgement, to be measured in centimetres.'¹⁹ The supposed sexual life of heterosexual trans men lies somewhere between these discourses: for example, their female partners are assumed to be 'taken-in' by them, in some instances, while some phalloplasty focuses on developing a prosthetic penis capable of erection, clearly a major patriarchal site of anxiety. Gay trans men still do not exist in the public mind, and interestingly, their assumed absence forms the keystone of the transphobia of pseudo-sociological works such as *The Transsexual Empire* (Raymond, 1979).²⁰ Like lesbian trans women, gay trans men are a particular source of uncertainty (and thus a particular locus of discrimination) because their circumstances operate immediately, and directly, against the values and assumptions of a viewpoint constructed on the primacy of heterosexual genital sex as the basis for relationality. That these viewpoints are founded in a medical discourse, is demonstrated by the continued existence of sexology as a medical specialty, by the textbooks illustrating 'phenotypes' of gay, lesbian and trans people (the latter still current), and by the research, still being produced, into 'tomboys and sissies' which focuses on modifying children's behaviour rather than seeking to treat parental anxieties, as Johnson discusses in this book.

Leading from this, a fourth intersection, then, lies at questions of etiology. Is it nature or nurture? Are lesbians, gay men and trans people the 'product' of inherited congenital determinants (like having blue eyes or blonde hair) or are they 'creations' of their upbringing and social circumstances? Victorian sexology decided for nature, but in penalising homosexual behaviour in public and in private, the 1885 Criminal Law Amendment Act, seemed to be asserting that homosexuality was espoused behaviour, a matter of choice. Politically, a 'nurture' argument opened up the possibility of a cure by the new discipline of psychiatry, rather than punishment. On the other hand, a congenital etiology offered a powerful argument for reforming the punitive treatment of gay men, lesbians and trans people. Natural justice demands that people are not penalised for that which is beyond their control. Biologists' observations of the animal kingdom were marshalled to support the idea of a 'gay gene,' or a 'brain-sex,' which predisposed individuals to certain forms of behaviour. The choice to follow this predisposition then became a matter of individuals' freedom of expression. Some part of this ideology, at least, informed the work of the Albany Trust, set up in 1958 to inform and educate, alongside the Homosexual Law Reform Society, after government's refusal of the recommendations of the Wolfenden Report that consenting gay sex be legalised for men over 21 years of age (Altman, 1971).

It was also the prevailing medical discourse for trans people, following Harry Benjamin's introduction of the syndrome of transsexualism into the general

¹⁹ See footnote 12.

²⁰ For an analysis of the text see Stone (1987).

medical community in 1954. Throughout the 1950s and 1960s, trans people in the UK were understood to experience a congenitally-based condition. They were entitled to appropriate, if limited, clinical care, had their birth certificates corrected, could marry and adopt and had full civil liberties. The route was not easy; since name changes on social security documents were not available pre-operatively, automatically outing people in anything other than casual jobs. A few prominent people received unwelcome attention from the Press, such as Roberta Cowell, whose father was Surgeon-General to the King, but the vast majority of this tiny minority lived their lives unremarkably and out of the public eye.

Professor John Money's 'John/Joan' case is discussed in detail by Chau and Herring in this volume. Briefly, in 1967, American physician and self-styled 'missionary of sex (Colapinto, 1997: 59),' Professor John Money, announced that he had solved the nature/nurture debate. One of a pair of twin boy babies had accidentally been penecromised during circumcision: he had been re-assigned as female, never been told of his reassignment and brought up as a girl. Money announced that, after long-term follow-up, the girl had successfully adjusted to her new role. Thus, it was clearly nurture, not nature, which decided the sex of people. By implication, it might be argued that it was nurture, too, which decided the sexuality of mentally stable people who had no anti-social desires—heterosexuals, in other words—thus further confirming homosexuality as a mental illness and criminal activity. From the point of view of the trans communities, it is not possible to overestimate the influence of this single, highly publicised case. Many of the senior medical practitioners who still provide care for trans people in the UK were Money's students; his work made it to the high street bookshops as pop-science; and he was successful in seeking a high media profile. As one trans activist put it to me:

You know, I bought that paperback, *Sexual Signatures*, and I thought, right, now I'll find out who I am, now I'll sort out . . . I must have been about nineteen or twenty and I was just exhausted by trying to work out who I was, what I was, whatever. And he told me I was mad. If I'd been brought up properly, and as far as I knew I'd had the same upbringing as my brother, I'd be fine. And I was like so clearly not fine. So I must be insane. I spent years wondering if I'd go madder, years controlling everything I did so no-one would find out I was really mad, wasn't this respectable, intelligent, responsible person but really a crazy person.²¹

Gender reassignment programmes were closed and the same set of 'therapies' that had been used on gay men and lesbians were transferred wholesale for use on trans people. This new pathologisation was followed by a new disenfranchisement of trans people in the UK, through the 1970 case of *Corbett v Corbett*, in which medical evidence of congenital disposition, which had formerly been accepted in courts of law, was now ignored.²² From that point on, civil identity

²¹ Personal discussion. The individual in question prefers to remain anonymous.

²² See footnote 12.

was refused to trans people, who felt outlawed, criminalized, abjected. It was not until 1998, that, in the USA, Professor Milton Diamond discovered the real outcome of John Money's iconoclastic research. The child who had been re-assigned had never been happy in their new gender, had always believed themselves to be a boy, and as soon as they were able to, had reassigned to male. Money's findings were revealed as being grossly overstated at best, but not before a generation of tertiary specialists had been misled, a generation of patients mistreated, and a generation of citizens denied civil identity.

Interestingly, though, even before Diamond's discovery, Money's 'nurture' position had shifted towards a multifactorial one, so that in 1994, he stated 'causality with respect to gender identity disorder is subdivisible into genetic, prenatal hormonal, postnatal social, and postpubertal hormonal determinants' and suggested that 'there is no one cause of a gender role . . . Nature alone is not responsible, nor is nurture, alone. They work together, hand in glove.' (Money, 1994). This clinical view of transsexualism as multi-factorial was supported by the tertiary specialists and researchers (including Money) who contributed to the Parliamentary Forum's production, *Transsexualism: the current medical viewpoint* (de Ceglie *et al.*, 1996). That document, which was produced by activists to provide a clear and authoritative overview of transsexualism, for clinical and non-clinical professionals, rapidly became a standard item of evidence in legal cases in this area.

As the pendulum swung further from nurture and closer to nature, so the idea of transsexualism as an intersex condition began to be raised. Part of the activist agenda in the UK was to provide analogies between transsexualism and other medical conditions, which would erode its formal inclusion in the DSM as a mental illness. For example, medical treatment for trans people was described as a process of moving from an already healthy state of being to an even healthier one, and an analogy was made with pregnancy as a similar movement from healthiness to increased health. The long-term medication that trans people require was compared to that required by diabetics, whose physical condition is otherwise stable. A similar analogy was made with what little is known about the etiology of transsexualism, that it is like an intersex condition, where individuals are born with physical characteristics of both sexes (see also Chau and Herring, this volume).

This metaphorical view was concretised in the public mind by popular science as brain-sex, and in the scientific mind by authoritative clinical research (e.g. Zhou *et al.*, 1995; Swaab *et al.*, 2001; discussed by Johnson, this volume). However, at a cultural level, organisations representing intersex people have strongly contested this identification, and in the discussions currently taking place, there is a sense that the literalisation of the metaphorical analogy has been seen as an encroachment by trans people onto the territory of intersex people. One view that has been expressed to me is that this represents a kind of cultural imperialism by trans people, an attempt to justify themselves by intruding on a medical categorisation that belongs to others, which is culturally oppressive.

Another view I have heard expressed is that these objections are simply transphobia, that these are medical classifications rather than definitions of people's whole lives and beings, and that intersex people seem to be perpetuating a cycle of abuse rather than seeking a broader social emancipation.

EDUCATION

'The following section shall be inserted after section 2 of the [1986 c. 10.] Local Government Act 1986 (prohibition of political publicity)' Section 28, 1988

Education was used starkly as handmaiden to politics with the introduction of Section 28 to the Local Government Act in 1988. This effectively removed teaching about gay, lesbian and trans issues from schools, and thus provides a major, obvious intersection between the communities. It provided that:

A local authority shall not—

- (a) intentionally promote homosexuality or publish material with the intention of promoting homosexuality;
- (b) promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship.

This was education at the service of ultra-conservatism, enacting a centralist propagandist agenda, with the purpose of silencing, and removing identity from, particular minority groups in society. The consequences for school-goers who might suffer in the process were of no concern. Whether they were the siblings, children, relatives or friends of people who were gay, lesbian or trans (see below), or were themselves identified as one of those groups, they were to be given no help, support or sympathy by their teachers. By default, homophobia and lesbophobia became state-sanctioned and acceptable to government, since there was no state-sponsored route to teaching that this might be unacceptable behaviour. As far as sexual behaviour is concerned, transphobia was arguably similarly legitimised: if you are physically male but legally female, or vice-versa, any sexual relationship with any partner is a homosexual one. Sex education became heterosexist sex education, with an elision of issues of sexuality or gender. Children might be curious about sex, but that curiosity could be directed in only one, state-sanctioned direction. The parallel here in compulsory education is with religious education of an earlier period, which taught and allowed inquiry only into Anglican Christianity. In a secularised, multi-faith society, an extreme right-wing viewpoint erected 'the family' in place of 'the Church,' and specified what counted as 'the family'—or, more explicitly, what did not.

Where the Department for Education and Science was gagged by the Conservative government, the Department of Health took over. Healthcare education could legitimately deal with issues forbidden to Local Education Authorities, and at least, at some point in their young lives, adolescents had a

possibility of accessing information about a way of living that, while not illegal, was strongly sanctioned against. This was, of course, contrary to ruling orthodoxy about what constituted 'the family,' but it seems to have been placed under the same broad umbrella of acceptable male sexual irresponsibility, as was sexually transmitted disease, the kind of hypocrisy made famous by Michael Portillo's coyly sanctimonious confessions. Healthcare education provided a loophole through which young gay and lesbian people had an opportunity to find some limited authentication of themselves, in a relatively supportive environment, and to develop a starting point for a sense of self-worth.

Adequate education in transsexualism at any level is a more recent phenomenon. Standard psychiatric works, such as the *Oxford Textbook of Psychiatry*, tended to replicate outdated descriptions of trans people. It said little about trans men, focusing on trans women, and provided a diagnostic description which includes 'they usually apply for the kind of work that is done by women and enjoy cooking and sewing.' (Gelder *et al.*, 1997). Similarly, a 2001 survey of Medical School and Postgraduate Deanery teaching about transsexualism in the undergraduate and postgraduate medical curriculum showed that a minority provided any teaching on the subject to medical students. Indeed, one Medical School deliberately excluded it from the curriculum as an inappropriately salacious subject (Playdon, 2002). Fortunately, however, both the *Oxford Textbook* and the various teaching agencies for medicine have demonstrated their willingness to take this issue on board. The former has revised its entry after representations were made to it, and several undergraduate and postgraduate agencies have incorporated new material into their curricula, in response to the Survey.

The enforced elision of GLTB issues from education had a further knock-on effect. Gutter-press journalism became the only generally available source of expertise, and thereby the mediating, educational agency for the UK public. Part of the project of reclamation and re-education thus became challenging unacceptable press coverage. In trans lobbying two major strategies were deployed. One was to complain repeatedly to the Press Association about the use of insulting headlines, such as 'No Nobby Bobby', to report on a trans woman in the police service. The other was to provide deliberately low-key, issues-led press conferences, as fringe meetings at the major national party political conferences until, as one campaigner reported, press officers were overheard to say that they weren't going to the conferences 'because there's nothing sensational there.'²³ This work was accompanied by the dissemination of material produced by support groups. Press For Change and GIRES (Gender Identity Research and Education Society: www.gires.org.uk) were and are pre-eminent in the trans communities in this area, as the Albany Trust and the Campaign for Homosexual Equality (CHE) were in 1960s and 1970s campaigning for gay men,

²³ Christine Burns, former Vice-President of Press For Change, both led many of these press conferences and reported this success at a meeting of the Parliamentary Forum on Transsexualism.

as Radicalesbians were in the 1970s, and as the Hall-Carpenter archives (renamed *The Lesbian and Gay Newsmedia Archive* in 2001) continues to be.

The need for education is huge, therefore, to open the silenced discussions about lesbian, gay and trans lives, to remediate distorted images such as that of 'predatory homosexuals,' and to end the moral panics that associate, variously and seemingly interchangeably, homosexuality and transsexuality with paedophilia and anti-social behaviour. This continues to be a crucial arena for activism, with voluntary groups appearing to provide much of the impetus and most of the information needed in this educational project. For example, the Gay and Lesbian Association of Doctors and Dentists (GLADD) produced in 2002 a set of *Guidelines on Dignity at Work for Lesbian and Gay Doctors and Dentists* (GLADD), and lobbied effectively so that, by 2003, their *Guidelines* had been formally adopted by the Department of Health, the General Medical Council and the British Medical Association (GLADD, 2002).

That example also suggests another set of intersections, the hidden discussions and exchanges that take place between different groups of activists, so that each can learn from, and benefit by, the work of others. So, as part of this informal educational agenda, the barrister who spoke at the GLADD workshop through which its *Guidelines* were initiated, Rambi de Mello, was the same barrister who worked with Madeleine Rees to create and carry through *P v S and Another (Sex Discrimination)*²⁴. Similarly, on a personal note, while that case was waiting to be heard by the ECJ, Madeleine and I were casting round for ways by which it might inform and be useful to lesbian and gay campaigning, and hit on the Armed Forces as a fertile possibility. A phone call to Stonewall, the gay and lesbian campaigning body, established that they were thinking along the same lines. Consequently, on one hot June evening, a lot of people crammed a small room in St James, Stonewall's then headquarters, including Madeleine, myself, Rank Outsiders and the solicitor who had just won the landmark Armed Services pregnancy case. Out of that first meeting, where different activists were pooling experiences and sharing possibilities, came the successful action to end discrimination against lesbians and gay men in the Armed Services.

In this connection, the Internet has proved invaluable as a source of information and exchange of ideas. For researchers, it provides archived documents that otherwise are difficult to obtain, and ephemera that would be impossible to source. For activists, it provides a network of contacts that is invaluable. Ceri Edwards, the researcher who put together Liberty's Amicus brief for the case of *Horsham & Sheffield*,²⁵ provided as part of that brief a chart showing the civil liberties enjoyed by trans people across the world (Liberty, 1997). Press For Change, the lobbying organisation that supplied him with the information, did so by trawling the Internet, and where information was not readily available, found someone elsewhere in the world who could provide it.

²⁴ See footnote 2.

²⁵ *Sheffield and Horsham v United Kingdom* [1998] 2 FLR 928.

ROADS TO FREEDOM

'Freedom at last! Long sought, long prayed for—ages and ages long: The burden to which I continually return . . .' Edward Carpenter (1896: 3)

The roads to freedom for gay men, lesbians and trans people both intersect and diverge, as the communities seek to work together and also pursue their own legitimate interests. This has produced a curious counterpoint, in which trans people first had a civil identity while gay men were criminalized and lesbians narrowly avoided the same fate. Then when gay men were decriminalised, trans people lost their civil status. Now, at a point when government has announced a draft Gender Recognition Bill to allow trans people to gain legal recognition in their real gender,²⁶ and new legislation has been implemented in December 2003 to provide employment protection for gay men and lesbians, there is a resurgence of opposition to the removal of Clause 28. It is as if society always needs a victim to assuage its (hetero)sexual anxiety.

The most crucial intersection has been the common actions of organising and activism. If the end-point of the social processes of exclusion is education, as a means of disseminating the outsidership of the abjected group, then the starting point for activism against it is also education: tell the story again, but tell it differently. Valorising the standpoint of marginalized individuals, beginning research with their lived, daily experiences, and developing theories out of that—the approach of feminist praxis—became the almost instinctive response of lesbian, gay and trans activists.

In 1967, homosexuality was decriminalised in England and Wales by Parliament's acceptance of 21 as the age of consent, although it took another thirteen years for Scotland to accept that, another fifteen years for Northern Ireland, and the Isle of Man only got there in 1992. The Stonewall Riot, in New York City, in June 1969, heralded a new phase of gay civil rights lobbying and a new sense of 'gay pride', expressed in the UK by the foundation of the Gay Liberation Front in 1970. This phase found expression in a 'we're here, we're queer, get used to it' approach to public campaigning. In 1973, the Campaign for Homosexual Equality (CHE) was started, working with the National Council for Civil Liberties (now Liberty). In cooperation with other agencies, it established the counselling service, FRIEND. In the same year, the National Union of Students annual conference included 'gay civil rights' on its agenda. Following the punitive introduction of Section 28 of the Local Government Act in 1988, Stonewall was founded in 1989, and is now the most prominent contemporary UK lobbying organisation for gay and lesbian civil liberties. By 1996, a case against the UK government had been brought in the European Court of Human Rights, alleging that the different ages of consent for gay and hetero-

sexual people breached human rights. This case was suspended in 1997 after the then Home Secretary, Jack Straw, said that the government would do everything possible to change the law. In 2000, the age of consent for gay men and lesbians was set at 16, in England, Wales and Scotland.

The issues of the gay male community were not necessarily those of the lesbian community. After all, lesbianism had never been illegal, and lesbians were not distinguished from other Victorian women in being badly treated—all were disenfranchised, barred from the universities, forbidden the professions, emphatically second-class citizens who should know their place. First-wave feminism was concerned with women in general, therefore, not lesbians in particular. Invisibility was and is an issue for lesbian activists, however. The automatic assumption that all women wish to have a husband and children, and the social invalidation of those who do not, which comprises 'compulsory heterosexuality', is one cause of lesbians being unacknowledged in society. Another facet is the interpretation of the lives of distinguished women in patriarchal terms, so that marriage or absence of marriage is presented as the defining feature of their lives; these are areas investigated by Lynne Segal (this volume). Second wave feminism, in the 1960s and 1970s, presented a robust challenge to these mores, with ideas such as 'until all women are lesbians there will be no revolution' (Johnston, 1973: 166), and the notion of a 'lesbian continuum' (Rich, 1980) of relationality between women, from close affectionate friendship to committed lifelong sexual partnership. As the women's movement developed, so it took different directions in the USA and in Europe. In the USA, the emphasis tended to be on a homogenizing view of 'Women' as being somehow a single, collective group. Politically, US feminism was criticized as 'limited reformism, improving the lot of an already relatively empowered selection of White, middle-class, heterosexual, female individuals' (Munt, 1994: 35). By contrast, European feminism was more open to European social and political critiques, which led it to embrace diverse counter-cultural projects; to adopt a particular approach of welfare radicalism; and to understand women as occupying a series of intersecting oppressions in society, which could be understood only by an analysis of the lived, everyday experience of individuals. While recognising the differences in these approaches, all were invaluable, in raising consciousness, producing debate, developing written accounts and discussions of lesbian lives and issues, and thereby contributing to the construction of a multiplicity of lesbian identities. Lesbian 'invisibility' had not prevented individuals being treated harshly, and perhaps had contributed to it, since there was less possibility of organised resistance to oppression. The debates produced by, and in response to, second wave feminism were crucial in facilitating organised activism, such as the Lesbian Avengers, the lesbian women at Greenham Common, or the Dykes on Strike who marched against the war in Iraq on International Women's Day 2003 in seventy different countries.²⁷

²⁶ Cm 5875, announced by Department of Constitutional Affairs, 11 July 2003.

²⁷ International Wages Due Lesbians (2003) *Dykes on Strike* [flyer]. <http://womenstrike8m.server101.com>.

for example, 'ownership' of figures such as Billy Tipton and Brandon Teena/Teena Brandon (passing women or trans men?), about gay and lesbian monogamy or not monogamy, about the arguable oppressive misogyny of drag queens, about loud and proud or quiet assimilation, and about the suitability of lesbians, gay men and trans people as parents, to name a few late-night dinner-party discussions.

Stretching over all this demotic discussion is the post-modern debate, tantalising, exciting, and refusing completion: are lesbian/gay/trans identities based in some kind of biological essentialism or are they purely socially constructed? Or is it possible that there is a kind of self-determined personal essentialism, from which one negotiates the variety of identities available in a socially constructed society? The pragmatic activist might note the power that essentialism has in the courtroom and the public mind, and might wonder whether gay activism would have progressed further if it had not dropped the 'gay gene' argument in favour of a 'gay pride' stance. Such an activist might also acknowledge that their long-term goal was a society in which such arguments had no influence, where people were allowed to construct their lives and identities in freedom. Interrogating the balance between pragmatism and utopianism, judging where only a short term benefit is available but nevertheless acting with long-term objectives in mind, is part of the necessary contradiction through which activism is carried out.

So, what do these alternatives and possibilities mean about the agency of individuals? How do we create difference to denote separate people and groups, while maintaining communality and group identity? Is the idea of gender liberating or oppressive? What would a gender-free society look like? Are such ideas deterministic utopias or achievable socio-political realities? Must political action always be at the reductionist expense of intellectual debate? Is postmodern narrative potentially oppressive in its general inaccessibility and its neglect of the literal difficulty of everyday existence of ordinary people? Isn't it essentially at odds with feminist research? And does post-feminism really open up new possibilities? . . . to name a few post-dinner-party feverish anxieties.

I am pleased to say that I have no answers. Activism, by its nature, is full of questions and neat answers are invitations to scepticism. At the moment, it appears that some significant gains are about to be made in this particular field. But in the same breath, it is necessary to ask how these concessions might be diluted in their administration, how far, for example, Genuine Occupational Qualifications will be used to protect bastions of homophobic bigotry, such as the Anglican Church, from participating in social change? What measures will be taken by employers to implement new legislation, apart from a surface cosmetic change to their Equal Opportunities Policies, if we are lucky? Will government allow the painfully tiny number of trans people—perhaps less than a handful—who still remain in marriages they entered before they transitioned to maintain that marital status or will they be obliged to divorce in order to take up their full civil status, out of the establishment's fear of condoning gay

marriages? What pieces of case law will still be vulnerable to challenge and how will we be able to protect them? What interpretations will courts put on cases and how can we second-guess them? Questions. That is the activist's legacy. Questions.

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Trans activism came relatively late to the party. Crushed by the law in 1970, the entry of transsexualism in DSM in 1980 at least provided a rallying point for a sense of shared identity for trans people, as well as providing diagnostic criteria for the first time, and thus ushering in a possibility of more effective healthcare for trans people. Trans issues had been taken on to some degree by Gay Liberation, so that, for example, one of the founding members of the Gay Liberation Front, Roz Kaveney, was later a representative for trans issues at Liberty and at the Parliamentary Forum. However, many of the issues were different from those of gay men and lesbians since, for example, all people treated for transsexualism require a degree of clinical intervention which gay men and lesbians do not, and in the process of gaining that healthcare, they necessarily 'out' themselves: staying 'in the closet' is not an option. In 1978 the Self-Help Association for Transsexuals (SHAFT) was founded, with a strong awareness that the community had previously had full civil liberties. A first political focus was on that issue through contact with trans people who had had their birth certificates corrected in the past, while at the same time providing support to individuals who were in the processes of transitioning. In 1986, the first attempt to gain correction of the Birth Certificate in the European Court of Human Rights failed, as did the second in 1990, the third [in the High Court] in 1998 and the fourth in 2000. But in the early 1990s, the various self-help groups into which SHAFT had developed, collaborated to form an over-arching lobbying group, Press For Change,²⁸ and shortly afterwards, the Parliamentary Forum on Transsexualism was established. These two bodies brought together legal, medical, and other experts, and sympathetic Parliamentarians, and between them produced a strong pressure for change. The first victory came in 1996, when a case in the European Court of Justice meant that trans people had employment rights.²⁹ In 1996, Kate More of Gender and Sexuality Alliance produced Guidelines for the Prison Service on the treatment of trans prisoners (More, 1996), which were subsequently used by the Prison Service as the basis for its own draft Guidelines (HM Prison Service Directorate of Healthcare, 1999). In 1998, a High Court case decided that Health Authorities had to make appropriate provision for treatment for transsexualism on the NHS: until then, the norm was for people to pay privately for treatment, something made particularly difficult by their generally unemployed status.³⁰

Soon afterwards, in 2002, the decision of the European Court of Human Rights in the cases of *Goodwin* and *I v United Kingdom*, held that the government's failure to alter the birth certificates of transsexual people or to allow them to marry in their new gender role was a breach of the European Convention on Human Rights³¹. Accordingly, the UK government has put into

motion machinery to provide full civil status for trans people, for the first time since 1970. Although a late arrival in the field, and with slender resources at its disposal, trans activism and lobbying has proved to be highly successful.

At the time of writing, then, all three groups are engaged in the project of reclaiming their community for dignity, not abjection, and in rewriting a history, which has systematically excluded or humiliated them. All are now articulate, professional, legally experienced and well-organised, capable of resisting exclusion, committed to working for equality and nothing less. And increasingly, all three are gaining a European identity which is separating them from the USA's fragmented legal system, moralistic medicine, and aggressively conservative politics.

NO FINAL DESTINATION?

My highly selective narrative may have given an impression of cohesion in a series of fields, which are, in reality, fragmented and debated. I have pursued this course of action for five reasons. First, because the areas of commonality between lesbian, gay and trans issues are less frequently considered. Second, because in the practice of activism, it is usual for each group to seek to avoid actions which might have negative repercussions for the others. Third, because the legal teams, which work to advance lesbian, gay and trans issues, are often made up of the same people and certainly cross-consult to use each other's arguments and law. Fourth, because the areas of medical interest, which deal with gay and lesbian issues, intersect with those which deal with trans issues, often informing and supporting each other in a similar way to that of legal teams. Fifth and finally, because there is a growing theoretical literature on queer theory and trans studies, to which this approach may make a contribution.

However, I cannot conclude without turning to a final intersection. As society starts to become, in some degree, less repressive for gay men, lesbians and trans people, in terms of legal sanction and medical punitiveness, so there is an increasing possibility for individuals and groups to understand, debate and assert their own views of their identities. This has been a constant undercurrent in, and backdrop to, all of the activism in the UK for a generation, and from time to time, the divergences of interests have been at least as evident as the intersections. Some second wave feminism rejected lesbians as not really having access to 'women's life-experience'. Gay men were initially consigned to the patriarchy by lesbian feminism, with a return to shared interests only occurring with the AIDS epidemic. Some lesbians—the so-called 'lesbian police'—rejected other lesbians who had formerly been married, as not really having access to 'lesbian life-experience'. Gay politics polarised along the propriety of forcibly 'outing' closeted gay men in prominent public positions. Some feminists rejected trans women as having formerly enjoyed 'the fruits of the patriarchy'. Lesbian politics polarised along the propriety of S & M. There are ongoing debates about,

²⁸ www.pfc.org.uk

²⁹ See footnote 2.

³⁰ *R v North West Lancashire HA ex p A, D and G* [2000] 1 WLR 977, QBD.

³¹ *Goodwin v United Kingdom* [2002] 2 FLR 487; *I v United Kingdom* [2002] 2 FLR 518.

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Part 2

The Development of Sexuality:
Contemporary Debates